

Disciplinary hearing permitted during grievance process



CLIENT ALERT

Employers are constantly faced with difficult decisions when it comes to their employees. One issue which has troubled employers is when dealing with the disciplinary process of an employee who has raised a grievance. This often causes confusion.

Court ruling

Traditionally, employers were advised to complete the grievance before actually going through the disciplinary process but, of course, this can be quite time-consuming.

However, a recent ruling has shed some light on this sometimes murky area. In the case of Samuel Smith Old Brewery v Marshall, the employer instructed employees to reduce their working hours for economic reasons. The employees refused and raised a grievance which was rejected and they lodged an appeal. However, they were then invited to attend a disciplinary meeting on this matter because of their alleged gross misconduct. They refused to attend because their grievance appeal was outstanding. However, the employer decided to go ahead with the process and they were dismissed for gross misconduct. Subsequently, the grievance appeal was rejected.

EAT gives disciplinary process the green light

The employee brought a claim for unfair dismissal which the Tribunal upheld but the EAT has reversed this decision, stating very strongly that an employer should be permitted to proceed with a disciplinary process before completing a grievance appeal unless there is some clear evidence of unfairness or an "uncompensatable prejudice".

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Good news for employers

This very important decision gives a clearer indication to employers of how to deal with such matters when they are faced with a similar situation. However, employers must be careful and take action which relates to the specific details of the grievance. For example, in a situation where an employee maintains that the employer's behaviour had a racial or sexist basis, then it would be advisable for such a grievance to be dealt with first. If, however, the grievance and the disciplinary hearing are connected, it may be possible to deal with both matters simultaneously. Thus it is a question of fact in each case to see how much link the grievance has to the disciplinary process before the appropriate action can be taken.

Employers should welcome this decision by the EAT, as it gives them more flexibility to manage contentious employee matters than in the past.

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