



Misconduct in the workplace - carrying out a reasonable investigation*

The UK case of Shoksi -v- Royal Mail Group Limited UKEAT/0280/15/LA was one in which an employer found obscene material in a manager's cloud storage belonging to his cloud storage account.

The police were notified and the employee was summarily dismissed despite protesting that he was completely unaware of the material which included twenty eight video files. The employee did admit sharing his password with someone else and said they could have stored the material in his account while logged in. His dismissal was both for the obscene material and breach of the IT and Code of Conduct. This was despite the fact that password sharing was common within the organisation and was necessary for effective working.

The UK Employment Tribunal found the dismissal on the basis of the obscene material was fair.

The employee appealed to the UK Employment Appeal Tribunal. The Employment Appeals Tribunal ruled that the employer had not sufficiently investigated the assertions by the employee that password sharing was common. Therefore it had failed to conduct a reasonable investigation. In addition the disciplinary officer himself would not, on the factual material available have deemed password sharing to be so serious as to warrant summary dismissal. The matter was remitted to the Employment Tribunal to further consider on the basis that there was an error of law.

Employers should make no assumptions about the purported reason for misconduct before taking disciplinary action. Employers should take seriously potential alternative explanations given by an employee in the case of misconduct. A reasonable investigation is to be carried out before decisions are made as to what disciplinary action to take. Failure to do so may well result in an Unfair Dismissal claim being made and being successful.

The very basis of a fair investigation is that the employee is entitled to put their side of the story and that the employer or the person undertaking the investigation listens to same and considers it in the context of the issue being investigated.



***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**