

P Taylor v Weatherseal Holdings Ltd (2005)

Employment Tribunal. 15 March 2005

Tribunal finds Claimant had been unfairly dismissed for alleged abuse of company email system and release of sensitive information.

The Case

The Claimant brought proceedings against his former employer for unfair and wrongful dismissal. He had been employed by the Respondent for a period of 11 years in the capacity of Customer Services Manager.

The Claimant had sent confidential documents and information to his home email address as well as to the email work address of his wife using the Respondent's email system. He claimed that the reason for sending the email to his home address was to enable him to work from there whilst the email received by his wife had been sent by mistake. Furthermore, that his wife had deleted the email she received as soon as the mistake had been realised.

The Respondent summonsed the Claimant to a disciplinary hearing on the basis that he had abused both the company email system and had without authority released company and commercially sensitive customer information. The disciplinary tribunal immediately dismissed the Claimant on the basis that his actions amounted to gross misconduct. Previously, the Claimant had already received a formal written warning for failing to comply with a managerial instruction.

In the proceedings, the Claimant alleged that the entire disciplinary process to which he had been subjected had been specifically designed to necessitate his dismissal.

Held

The Employment Tribunal found that the Claimant had been unfairly and wrongfully dismissed. The main reasons given by the Tribunal can be summarised as follows:

1. Although the Respondent may

have had a genuine belief as to the Claimant's misconduct, it had erred by failing to undertake a reasonable investigation of the circumstances surrounding the alleged misconduct.

2. A reasonable investigation would have included:

- whether the email sent to the inbox of the third party had in fact been opened;
- checking whether the email that had been sent to his wife had been deleted without it being accessed; and
- whether the information contained in the emails were prejudicial to the Respondent given the circumstances in which they had been sent.

3. It was wholly unreasonable for any reasonable employer to dismiss an employee for sending company documents to his home email address in circumstances where that employee was expected to work beyond normal working hours and where it would not be possible to do that work without sending that information home by email.

Commentary

Although the ruling of the Employment Tribunal in this case is based upon the Respondent's failure to follow proper employee disciplinary procedures, it also raises a number of issues as to the information to which employees have access and how that access is to be regulated. This is particularly the case where:

- Confidential information can be transferred at the touch of a button, and without authorisation, with the result that businesses are more than ever at risk of losing confidential information;
- Losses are not necessarily confined to those of the employer but may also include losses that their customers may have suffered as a result of the disclosure;

● Working at home presents a whole new set of risks to the employer in circumstances especially where the employee's own computer network may not be secure.

The Judgment highlights the need for there to be an effective policy in place to which the employee is bound, by virtue of its contract of employment, in instances where an employer expects an employee to work from home. The policy would include the following:

- The level of employee entitled to remove information for the purposes of working from home;
- Access to confidential or sensitive information should be limited to those that require access to it;
- The person from whom the employee needs to obtain prior authorisation in order to obtain the information;
- The method by which the information may be transferred;
- The security of the employee's own computer system, should such information be released;
- A procedure to check that the information has been returned.

This is not as onerous as it sounds as this may be done by the development of personal authentication systems and correct database management, meaning that it is now quite possible to log and track information released via internal email systems. A well managed document management system will provide benefits in terms of risk management.

In addition employers should consider:

- A continuing program to educate employees as to the risks and indeed legal implications involved in working not only from home but from other potentially insecure surroundings such as a hotel or WiFi installation.
- The enforcement of correct

housekeeping rules regarding information such as locking of computers etc.

It goes without saying that there is little, if any, point in having a policy unless it is implemented. Given the potential damages faced by a business if confidential information is lost, a director or his equivalent should be responsible for ensuring that the policy is implemented.

The Judgment also highlights a further issue. The tribunal stated that the Respondent should have checked the Claimant's explanation as to how the email had been sent to his wife by mistake and that it had been deleted as soon as that mistake had been realised.

Whilst such a finding is understandable in the circumstances of this case, a heavy burden may be imposed upon employers in other cases. Given the simple nature of sending an email, it is easy to make a mistake as to the recipient. What would be the position of an employee who worked from home and who claimed to have accidentally sent an email containing confidential information to a competitor. In those circumstances, would an employer be required to investigate the explanation before taking any appropriate action?.

In such a scenario the risk is that, if confidential information was being unlawfully disclosed, then the recipient would be tipped off before any injunction could be obtained to restrain its use and to obtain delivery up.

Ultimately, employers will have to consider each case on their merits but this does not substitute the need for there being an effective policy in place to deal with working from home.