

How to dismiss an employee who has a prior written warning

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An employer should be wary of relying upon previous unfair disciplinary sanctions to justify a subsequent dismissal.

Mr Bandara worked for the BBC for 18 years, most recently for

the Sinhala Service as a Senior Producer. He had an unblemished disciplinary record. In March 2013, he shouted at a colleague, and in July 2013, he defied his manager's request to prioritise a news story about Prince George's birth over a story about Black July (a time of remembrance in Sri Lanka for victims of anti-Tamil violence). A disciplinary procedure was commenced in relation to both incidents and, as a result, Mr Bandara was handed a final written warning in November 2013 to remain on file for 12 months.

A little later, a further investigation was carried out into allegations that Mr Bandara had bullied and intimidated his colleagues, created a 'culture of fear' in the office and disobeyed instructions. Following a disciplinary hearing, and taking into account the previous final written warning, Mr Bandala was dismissed in August 2014 on the grounds of gross misconduct. Mr Bandala claimed that the dismissal was unfair.

The Employment Appeal Tribunal upheld a decision that the prior final written warning was manifestly inappropriate in the circumstances. The decision as to whether Mr Bandara's dismissal was fair overall must be considered in the light of that. If the prior written warning was solely background, and the later conduct was enough by itself to justify dismissal, the dismissal could be fair. However, if the unfair warning was relied upon, the EAT remarked that it would be hard to see how the dismissal decision could be reasonable.

In the light of this case, employers seeking to rely on a prior disciplinary sanction to support a dismissal decision should think critically about how the dismissal decision is worded; where there are multiple factors influencing the decision (such as a prior warning) the best approach is to try to cover both bases. One could say that whilst it is believed that the final act of misconduct was of itself gross misconduct and justified immediate dismissal, even if that were not the case, the combination of that act in the light of previous warnings was also sufficient to justify summary

dismissal.

Bandara v British Broadcasting Corporation UKEAT/0335/15

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