Dismissal for Facebook ‘banter’ was fair

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An employer can fairly dismiss an employee for making derogatory comments on a personal Facebook account. This is so even where the posts in question were made a number of years previously and were explained by the employee as ‘banter’.

Mr Smith was employed by the British Waterways Board as a

manual worker on canals and reservoirs. A rota provided that for one week of every five, Mr Smith was required to be on standby, during which time he could not consume alcohol. The Board had a social media policy whereby "any action on the internet which might embarrass or discredit" it was prohibited. Mr Smith raised a number of grievances and a mediation was scheduled in May 2013 to deal with them. In response to that, one of Mr Smith's managers produced disparaging comments Mr Smith had made on his personal Facebook page. HR subsequently searched his page for further comments. It was found that Mr Smith had uploaded a number of posts to Facebook around two years previously, which included: "good old bw cant wait to see all my friends again lol"; "going to be a long day I hate my work"; "on standby tonight so only going to get half p***** lol" and; "im on vodka and apple juice first time ive tried it no too shabby". The privacy settings on Mr Smith's Facebook page were set to public, though Mr Smith denied knowledge of or responsibility changing the settings.

Mr Smith was suspended from work on his arrival at the mediation. A disciplinary hearing on 4 June 2014 resulted in Mr Smith's summary dismissal for gross misconduct on grounds that the posts were derogatory to the Board and suggested that Mr Smith was drinking on standby, which would affect the Board's reputation. After an unsuccessful appeal, Mr Smith brought proceedings for unfair dismissal.

The Employment Appeal Tribunal held that the dismissal was fair. It held that summary dismissal for gross misconduct was one of the options open to the Board in response to Mr Smith's Facebook posts. Whilst there were mitigating factors, such as the length of time since the comments were posted and the fact that Mr Smith had an otherwise exemplary record, the Board was entitled to attach minimal weight to them.

This confirms that, at least in some circumstances, an employer will be able to rely on historic misconduct to

justify summary dismissal. It also emphasises the importance of an employer having and implementing an appropriate social media policy.

The British Waterways Board v Smith [2015] UKEATS/0004/15

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