

Disobeying instruction not to contact external independent authority is grounds for dismissal

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“Too many foreigners in the English game” has been cited by the Brazilian football legend Carlos Alberto as a reason for the English national side’s poor showings in international tournaments. Could Brexit give more English-born players a chance to play in the Premier League?

An employee who disobeyed an instruction not to contact the Information Commissioner’s Office was fairly dismissed.

Mr Barton was a tenancy relations officer employed by the Royal Borough of Greenwich. Having heard from a colleague that his manager may have sent confidential personal data to her home computer, Mr Barton contacted the ICO requesting advice. Mr Barton was then asked by Mr O’Malley, the department head, whether he had sought his manager’s authority before doing so. Mr Barton responded by saying that he did not require such authorisation. Mr O’Malley then made clear that Mr Barton was not to have any further communications with the ICO whilst he investigated the allegations.

Despite this instruction, Mr Barton subsequently contacted the ICO to check whether his employer had the authority to prevent him from contacting the ICO. The ICO confirmed that they did not. The outcome of the subsequent investigation showed that only 11 emails had in fact been sent by Mr Barton’s manager to her home computer, none of which contained confidential information. There was a subsequent tenant complaint regarding Mr Barton, following which he was dismissed for gross misconduct. Mr Barton brought a claim for unfair dismissal as a result of whistleblowing.

It was relevant for the tribunal that the instruction to Mr Barton had been simply not to contact the ICO without his manager’s consent. Furthermore, the instruction was for a

limited duration, and there was nothing to suggest that the manager would not have given Mr Barton consent to contact the ICO afterwards. Therefore the tribunal could not find that the instruction was unlawful, and concluded that Mr Barton's dismissal as a result of his disobedience was a reasonable response.

In light of the facts of the case, it would be dangerous to construe this decision as a carte blanche for employers to prevent employees from contacting external authorities. The scope of the instruction, in particular the limited duration of the prohibition, was a decisive factor in the tribunal's decision. Nevertheless, this decision will help employers, as it is in line with most employers' aims which would be to address any concerns internally before external bodies are contacted.

Barton v Royal Borough of Greenwich UKEAT/0041/14

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