

How to investigate serious allegations of misconduct

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Where the allegations of an employee's misconduct are particularly serious (especially if they are career-ending), a higher standard of disciplinary investigation is necessary to ensure a fair dismissal.

Ms Tykocki had been employed as a Healthcare Assistant for 14 years at an NHS Trust. A patient made a serious complaint about two "nurses", one of whom was identified as Ms Tykocki.

The patient said that she had not been given morphine and was left in serious pain. After begging for morphine for around an hour, the patient said that Ms Tykocki came around the curtains on her bed, put her hand over her mouth and told her to 'shut up'. The patient then said Ms Tykocki leant in close to her face and invited her to report her.

Ms Tykocki denied all allegations and was suspended whilst the Trust investigated. It interviewed the patient, Ms Tykocki and the other staff on duty, but did not give notes of those interviews to Ms Tykocki.

Disciplinary proceedings were commenced, following which Ms Tykocki was dismissed for gross misconduct. She appealed the decision. A further meeting was held with the patient and Ms Tykocki's union representative was permitted to attend on her behalf. At this meeting, the patient raised a number of new allegations surrounding that incident. The appeal was dismissed and Ms Tykocki brought an unfair dismissal claim.

The Employment Appeal Tribunal found that there were serious defects in the Trust's investigation and disciplinary process. The extent of the investigation needed to be appropriate to the seriousness of the allegations (which essentially amounted to assault and would be career-ending). The Trust had failed to give to Ms Tykocki the transcripts of the interviews with the other nurses on duty, which could have been exculpatory given that none of them had seen anything. Also, the Trust failed to investigate the further allegations raised by the patient at the appeal stage.

The EAT emphasised that it is the overall fairness of the procedure from start to finish which is relevant. This means that employers should conduct the entire process to a high standard and collect all relevant information, as opposed to relying on an appeal to remedy any earlier defects.

Tykocki v Royal Bournemouth and Christchurch Hospitals NHS

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