

Mutual trust and confidence damaged by refusal of employee's choice of companion

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An employer's refusal to allow an employee to be accompanied to an investigation meeting by a representative from a professional defence organisation was held to be a breach of contract even though the representative was neither a Trade Union representative nor colleague.

Professor Stevens was employed by the University of Birmingham as Chair of Medicine. As required by his contract with the university, Professor Stevens was also engaged under a contract with the Heart of England NHS Foundation Trust, for whom he performed clinical duties as a consultant. Amongst Professor Stevens' duties was to oversee 5 clinical trials, 4 of which were jointly sponsored by the university and the Trust, whilst the fifth was run solely by the university. Allegations of misconduct were made about Professor Stevens in relation to the trials; in response, the university suspended Professor Stevens and began an investigatory process into the allegations in accordance with the terms of the university employment contract. The university employment contract contained a term allowing employees to be accompanied to investigation or disciplinary hearings by another member of university staff or a representative from a trade union.

Professor Stevens asked to be accompanied to the investigatory hearing by Dr Palmer, a representative of the Medical Protection Society, which assists doctors in defending allegations of clinical misconduct. Dr Palmer had assisted Professor Stevens since the allegations were made and had expertise in clinical trials. The university refused on the grounds that Professor Stevens' employment contract with the university only provided for staff to be accompanied to hearings by another member of university staff or a trade union representative, of which Dr Palmer was neither.

Professor Stevens argued that the only people he knew at the university were his colleagues on the clinical trials, who would be witnesses and so could not accompany him, and he was not a member of a trade union, so the university's refusal unfairly required him to attend the hearing alone.

The High Court held that the university's refusal to allow Dr Palmer to attend the hearing was not a breach of an express term of the contract, as the university had clearly been applying an express term of the contract in requiring that companions be from one of the specified categories. However, the Court held that the contractual disciplinary procedure allows the university some discretion in the way it conducts investigation procedures and it was unfair for the investigating officer not to use that discretion to allow Dr Palmer to attend. The effect of the decision was to undermine the relationship of mutual trust and confidence between Professor Stevens and the university which was a breach of the implied term of mutual trust and confidence.

ACAS recently changed its guidance to state that employers can allow companions other than co-workers or union representatives to attend hearings.

Whilst the facts of this case are unusual, the message to employers is clear: employers should think twice before refusing to allow an employee to be accompanied by a person even if they are not an accredited union representative or colleague.

Stevens v University of Birmingham [2015] EWHC 2300 (QB)

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