NO BREACH OF PRIVACY WHEN EMPLOYEE DISMISSED USING MATERIAL FOUND ON HIS MOBILE PHONE

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The Claimant, Mr Garamukanwa, was employed by Solent NHS Trust as a clinical manager. He was involved in a personal relationship with a female colleague which ended. Shortly

afterwards, he emailed another colleague, expressing concern that she had formed a personal relationship with a junior female staff member. They both complained to a manager who spoke to Mr Garamukanwa about his behaviour. A campaign of harassment and stalking against the two women then took place for around 10 months. This included a number of anonymous, malicious emails and messages that were sent to employees of the Trust and to the women personally, making various allegations against them. Property belonging to both of them was also damaged.

A complaint was made to the police who informed the Trust that they were investigating the claims and there were serious concerns regarding the conduct of the Claimant. The Claimant was suspended and during the course of the police's investigations, the police found photographs of one of the women's home addresses on the Claimant's phone and a sheet of paper containing details of the email accounts from which anonymous messages had been sent. The police passed this information onto the Trust, which was carrying out its own internal investigation. The person carrying out the investigation concluded that there was sufficient evidence to link the Claimant to at least some of the anonymous emails. At the subsequent disciplinary hearing, the Claimant voluntarily provided the panel with further evidence on his behalf, including personal emails and WhatsApp correspondence between himself and the complainant. Taking the personal iPhone material into account, the Trust dismissed the Claimant for gross misconduct.

The Claimant brought unfair dismissal proceedings in which he alleged that the Human Rights Act and the European Convention on Human Rights were breached by the Trust as matters relating to his private life were examined and used to justify his dismissal. The Claimant contended that he had a reasonable expectation that this material would remain private. The Claimant took his case to the European Court of Human Rights.

The Court dismissed the appeal. It held that the fact that an email touched upon both professional and private matters, or was sent from a workplace email address did not automatically mean that it would fall outside the scope of “private life” for the purposes of the right to privacy. However, given the facts, the Claimant did not have a reasonable expectation of privacy in respect of the iPhone material and private communications relied upon by the Trust. The Claimant had been placed on notice for almost a year that concerns had been raised about his behaviour by the Trust. This was enough notice that allegations of harassment had been made against him and he could not have reasonably expected that, after this date, any materials or communications which were linked to the allegations would remain private.

It was also held relevant that the Claimant had not challenged the use of the material obtained from his iPhone or any of the private communications during the course of the disciplinary hearing and that he had voluntarily provided the disciplinary panel with further private communications of an intimate nature between him and the complainant. Hence, there was no reasonable expectation of privacy over any of the material or communications before the panel.

This case is a reminder of the importancefor employers of putting employees on notice about allegations of misconduct against them at an early stage.

Garamukanwa v United Kingdom (79573/17) [2019] 6 WLUK 109

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