

Contents

No obligation to disclose misconduct

Basildon Academies v Amadi and anor UKEAT/0342/14/RN

Is an employee obliged to report his own misconduct under express or implied terms in a contract of employment?

The Employment Appeal Tribunal held that there was no express term or clear policy statement requiring such a disclosure and it was not appropriate to imply a duty to disclose into the contract of employment.

Facts

Mr Amadi was employed part-time as a Cover Supervisor at Basildon Academies.

In September 2012, he then accepted a zero-hours contract to work at Richard upon Thames College.

He did not inform the Academy about this, which was a breach of an express term of his contract requiring him to inform his employers of any other employment taken up by him during the course of his employment.

In December 2012, Mr Amadi was dismissed from Richard upon Thames College after an allegation of sexual misconduct was made against him; however, he was not prosecuted.

When the police notified the Academy of this in March 2013, Mr Amadi was suspended.

The Academy conducted a disciplinary

hearing concluding that Mr Amadi had deliberately decided not to inform his employers about his employment at Richard upon Thames College and also about the allegation of sexual misconduct. It concluded that both were acts of gross misconduct and therefore dismissed him.

The Employment Tribunal held that Mr Amadi had been unfairly dismissed. It did, however, reduce Mr Amadi's compensation by 30% to reflect his contributory conduct in failing to inform the Academy about his employment at Richard upon Thames College.

The Academy appealed against this decision, arguing that Mr Amadi was under a duty to comply with the Academy's Code of Conduct, namely the rule that imposed upon the Claimant an express obligation to report allegations of misconduct, even when they arose from another school.

Employment Appeal Tribunal decision

The Employment Appeal Tribunal dismissed the appeal, finding no express term in his contract of employment or the Academy's policies requiring Mr Amadi to report an allegation, which he did not believe, nor had any reasonable ground to believe to be true.

Since there was no reasonable evidence upon which the Academy could conclude that Mr Amadi ought to have reported the allegation, he was not in breach of his

contract in failing to make that disclosure.

The Tribunal held that it is clearly not a legal requirement that an employee is under such an implied obligation.

Mr Amadi's omission did not amount to misconduct; therefore the Academy's decision to dismiss him was unfair.

What does this mean for employers?

This case highlights the importance of checking the wordings of policies and contracts of employment. If there is no clear obligation on an employee to disclose certain information, then it would appear that a dismissal for gross misconduct would not be justified in these circumstances. If you require your employees to disclose their misconduct to you, this needs to be expressly provided in the contract.

The Tribunal did note that it was a critical omission in the Academy's case that no evidence was presented to the Tribunal regarding the national standards imposed on those who are responsible for the care of children to report allegations of impropriety made against them. If that had been so, Mr Amadi might well have been in breach of the express term in his contract of employment and so liable to be dismissed.

Accordingly, the Tribunal stated that its conclusion need not necessarily be of wider application.

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