

INCREASING COMPENSATION

July 25, 2010

Mr Edwards was a consultant surgeon working for the Chesterfield NHS Trust. He was dismissed for gross misconduct and subsequently was unable to find employment within the NHS.

Rather than claiming unfair dismissal at an employment tribunal, where compensation is limited by statute (currently to an absolute maximum of £76,700), he brought a breach of contract claim in the High Court where there is no limit on the amount which can be awarded. He claimed a huge amount, a little under £4.3m including a sum in excess of £3.8 million for loss of future earnings.

He was able to go to the High Court rather than an employment tribunal because he was able to show that the Trust was in breach of contract. It had failed to follow the disciplinary procedures which were set out in his employment contract. In particular his employment contract provided that a person with legal qualifications should have chaired the panel which considered his case, that a clinician of the same medical discipline as himself should have been on the panel and that he should have been allowed legal representation at the hearing. The disciplinary procedure operated by the Trust in his case suffered from defects in all those areas. He claimed that if the procedure had been handled correctly, in accordance with his contract, no finding of misconduct would have been made and he would not have been dismissed.

At first instance he won a pyrrhic victory (the Court said his claim could proceed but initially ruled that damages would be limited to loss of earnings for the contractual three months' notice period, later varied to include damages in respect of the period during which he would have remained employed while a disciplinary procedure which complied with the terms of his contract ran its course).

He has now won a more substantial victory in the Court of Appeal. The Court of Appeal has agreed with him that damages should include compensation for loss of the chance of staying in employment.

That is quite significant. It means that an employee can, in appropriate cases, be eligible to win damages far in excess of the amount an employment tribunal can award for unfair dismissal. However this will not be an open door to huge claims. Thus in a misconduct case the employee would have to show that he had been dismissed after a disciplinary hearing conducted in a way which was seriously out of line with his contractual entitlement and that there was a genuine chance that he would not have been dismissed had the hearing been properly conducted.

No doubt in the real world it is unlikely that these conditions would often be fulfilled but even so this is a salutary warning to employers. Advice should be taken from us in good time and always before disciplinary proceedings take place, to ensure that the risk of "getting it wrong" is minimised.