

Employment E-Brief No 69

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COMMUNICATION OF WORKPLACE POLICIES - IS ESSENTIAL

The EAT has recently found the dismissal of an individual who had sent and received pornographic material via their work e-mail to be unfair; the reason being a particular part of the policy had not been communicated to them.

The case concerned an investigation by the employer to identify employees sending and receiving pornographic material. They devised a matrix which graded the offensiveness of the material from 1 to 5; 5 being the most offensive and 1 the least. The disciplinary sanction to be applied depended in which category the material fell.

The employee was disciplined and given a full opportunity to comment on the evidence obtained. They also exercised their right to appeal internally.

The Employment Tribunal accepted that the individual was fully aware of the employer's policies and the fact that offensive e-mails might result in disciplinary action. However, the central issue was that the employee did not know about the matrix at the time of the disciplinary, with the result that they did not know the basis on which their case was being decided and did not have the opportunity to argue which category the material fell within. Nor were they aware of the specific approach taken to the evidence or the way in which that dictated the outcome.

The Employment Appeals Tribunal agreed the matrix was a good idea, but held that the employer had acted unreasonably in failing to disclose the matrix, since it had such a direct impact on the outcome of the disciplinary process. The dismissal was therefore unfair.

Having said this, the EAT noted that the individual had contributed to their dismissal. The case was remitted to the Tribunal to decide remedies. Whilst one would not expect the individual to be awarded a great deal of money (given that they contributed to their own dismissal), this case highlights the importance of communicating workplace policies with staff.

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