

Case Update



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December 2019

Suspension – is it justified?

The employee in this case was a primary school teacher. Allegations were made that she had used unreasonable force on three occasions in relation to two children with behavioural difficulties, including dragging one of them out of the classroom. The Head Teacher looked into two of these incidents and thought that the force used had been reasonable. Despite this, the employee was suspended by the Executive Head of the school to "allow [an] investigation to be conducted fairly". The employee resigned and claimed constructive dismissal. She argued that suspension was a breach of her employment contract as it was not reasonable or necessary in the circumstances.

The High Court agreed that suspension had been unnecessary. It said that suspension had been adopted as the "default" position without the school considering whether it was necessary for a fair investigation, and therefore amounted to a breach of contract. However, on appeal, the Court of Appeal has ruled that the suspension was justified. The Court said that the school had reasonable and proper cause to suspend the teacher, given the allegations made against her of using excessive force with children and the potential risk of having her remain at work.

This case is a reminder that employers should not necessarily suspend an employee every time there is an allegation of misconduct. Such a "knee-jerk" reaction could be a breach of the implied duty of trust and confidence and lead to a constructive dismissal claim. However, the case also confirms that employers can suspend pending an investigation where there are good reasons for doing so. This would usually be the case where there are concerns about the safety of other employees or a risk of interference with witnesses or evidence if the employee were to remain at work. Where suspension is necessary, the employer should normally explain why and make it clear that the suspension does not imply guilt and that no decision has been made about the outcome of the investigation.

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