



THE RIGHT TO LEGAL REPRESENTATION IN DISCIPLINARY HEARINGS

All employees invited to a disciplinary hearing have the right to be accompanied at the hearing. This right extends to a fellow employee and/or a trade union representative with experience and knowledge of disciplinary and grievance matters. Representation can extend outside these statutory requirements to others if the contract specifically provides for it. A recent Court of Appeal decision in January 2010 considered the right to legal representation at disciplinary hearings.

The employee in this case was a teaching assistant at a school. A complaint was made that he had kissed and had sexual contact with a 15 year old boy who was on a period of work experience at the school. It was accepted by all parties that if the allegations were true they intended to disclose and offence under Section 16 of the Sexual Offences Act 2003. However, the Crown Prosecution Service in this case did not take criminal proceedings and thereafter the Governors of the school conducted an internal investigation and a disciplinary hearing and dismissed the Claimant for abuse of trust. The disciplinary hearing was held on 21 February 2008. The Claimant brought proceedings against the Board of Governors challenging their decision not to allow him to have legal representation at the disciplinary hearing or the appeal hearing. He argued that the decision not to allow legal representation violated his rights under Article 6 of the European Convention of Human Rights.

Article 6 of the European Convention of Human Rights states that "in the determination of his civil rights and obligations everyone is entitled to a fair and proper hearing ... everyone charged with a criminal offence has the following minimum rights to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance to be given it free when the interest of justice so require".

Under the Education (Prohibition from Teaching and Working with Children) Regulations 2003 the Governors of the school were obliged to report the circumstances of the Claimant's dismissal to the Secretary of State, so that he might determine whether to place the Claimant on the statutory register of persons prohibited from teaching, or other work directly or indirectly involving children. The Secretary of State was notified of the circumstances of the Claimant's dismissal by letter dated 7 May 2008 from the Chair of the Governors who stated that the panel had been satisfied that the Claimant's actions had "harmed a child or placed a child at risk of harm".

The High Court Judge held that the Claimant was entitled to to legal representation before the Disciplinary Committee and the Appeal Committee. The Court of Appeal concluded that the disciplinary proceedings were determinant of the employee's rights to practice his profession and based on previous case law which stated that "it is well established here and in Strasbourg that the level of procedural protection which Article (6) guarantees depends on what is at stake". The Court of Appeal upheld the decision that "the disciplinary proceedings before the Disciplinary Committee (and the Appeal Committee), including the referral to the Secretary of State . . . by virtue of the seriousness of the conduct alleged and the severity of the consequences of the referral these constituted proceedings in respect of a "criminal charge" against the Claimant within the meaning of that term in Article 6 (1) of the European Convention of Human Rights. The Judge went on to state that the disciplinary proceedings involved the determination of the Claimant's "civil rights and obligations" under Article 6 (1) and in view of the gravity of the allegations and of the consequences, legal representation at the disciplinary hearings was and is in any event required as a commensurate measure of procedural protection.

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