



professional regulatory news

Hussain v Surrey and Sussex Healthcare NHS Trust [2011] All ER (D) 91 (Jul)

Queen's Bench Division

Andrew Smith J

5 July 2011

The proceedings arose from the claimant consultant paediatrician's management of a baby (Baby S) at the defendant NHS Trust's hospital in June 2010. In September, the claimant's management was treated as a Serious Untoward Incident (SUI), and a team was instructed in late October to investigate the matter. That was not a disciplinary investigation but an examination of the chronology of incidents, root causes and factors involved and an attempt to redress any issues that arose with recommendations. On 18 November, the claimant was informed of her immediate exclusion from her work and Trust premises. That exclusion was confirmed by letter. The Trust advised the claimant that further investigations would be conducted into clinical notes that she had made and other matters. In February 2011, a report was produced that was to bring together the findings of the investigations (the February Report). The February Report stated that the investigators had found that the claimant had demonstrated a gross lack of capability and that she had demonstrated gross misconduct and that she had failed to act with probity. A management report was produced in March, which concluded, *inter alia*, that the claimant's conduct was not in the best interests of her patient and recommended charges of gross misconduct for consideration by a disciplinary panel. On 1 April, the claimant was advised that a conduct hearing was to be held on 11 April 2011 to consider allegations relating to her conduct emanating from the investigations.

The claimant's solicitors wrote to the Trust setting out numerous complaints about the disciplinary procedures against her. They included complaints:

1. that the Trust were pursuing allegations about her capability through the disciplinary procedures designed to deal with complaints of misconduct, and
2. that the composition of the disciplinary panel was not proper. The claimant issued proceedings in which she sought an injunction to prevent the Trust from proceeding with the conduct hearing on 11 April 2011, and other relief. The disciplinary hearing was postponed from 11 April 2011 and had not been held pending the trial of the instant proceedings.

The claimant contended that in dealing with her case the Trust had not complied with the provisions of a document entitled 'Surrey and Sussex NHS Trust Medical and Dental Staff Disciplinary Procedure' (the Practitioners Disciplinary Procedure) dated 2 February 2007 and agreed between the Trust and its Local Negotiating Committee. She submitted therefore the Trust had acted in breach of its obligations under her contract of employment with regard to (i) her exclusion, and (ii) the procedures adopted and the decisions taken to deal with the allegations against her and to convene a conduct hearing; and that, if it continued to pursue that course with regard to her exclusion and its intended course with regard to a conduct hearing, it would continue to do so.

The court ruled that in the circumstances, the Trust had been entitled to place some restrictions upon the claimant under its procedure for excluding practitioners from work, particularly with regard to clinical practice, but it had not been entitled to place as extensive restrictions upon her as it did, and some of the restrictions had been in breach of the Trust's procedures and the claimant's contract of employment. The Trust would not have been entitled to proceed to a conduct hearing against the claimant on misconduct charges, and it would have been a breach of the contract of employment for it to have done so. However, the Trust had been entitled to proceed to a conduct hearing to determine the allegations contained in the amended charges (see [2]-[177] of the judgment).

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