



employment law news

using 'some other substantial reason' when trust and confidence is gone

One of the potentially fair reasons for dismissal is the mop-up "some other substantial reason" (SOSR). There is no statutory definition of SOSR and it is not always well understood. However, 'substantial' means not frivolous or trivial (which will depend on the facts of the case). Examples of situations that could give rise to an SOSR dismissal include changes to terms and conditions where there is no redundancy situation; a conflict of interest which can only be resolved by dismissal; a third party (such as a client) imposing pressure to dismiss; or a breakdown in trust and confidence. Whatever the grounds for it, an SOSR dismissal must be reasonable in all the circumstances, and a fair procedure must still be followed.

In a recent case, the employer cited SOSR as the reason for dismissal due to a breakdown in trust and confidence. However, although the employer could show that it had genuinely lost confidence in the employee, the dismissal was not found to be reasonable.

A deputy head teacher, Mrs Sylvester, was friends with another teacher at her school, Mr Quinney. Mr Quinney was arrested and suspended for possessing indecent images of children. Mrs Sylvester was advised not to maintain contact with Mr Quinney, but she did, discreetly and with the school's knowledge. The education authority met with Mrs Sylvester and concluded that no action needed to be taken in connection with her friendship with Mr Quinney. However, concerns were expressed by parents (unknown to Mrs Sylvester), and she was called to a meeting with the head teacher. She asked if it related to the friendship, and the head teacher confirmed that it did. Without further warning, Mrs Sylvester was suspended and then ultimately dismissed for a breakdown in trust and confidence between her and the head teacher. She appealed. Other allegations that she was affecting the school's reputation and presenting a safeguarding risk were rejected by the appeal panel, but the dismissal was confirmed on the grounds of loss of trust and confidence. When Mrs Sylvester brought a claim for unfair dismissal, the school alleged the reason was SOSR, not misconduct.

The Employment Tribunal (ET) found that the lack of warnings given to Mrs Sylvester about the consequences of her continued friendship with Mr Quinney made the dismissal unfair. The school and education authority had tacitly condoned it. The loss of trust and confidence was a consequence of conduct, which Mrs Sylvester could have changed – indeed she had asked if she could avoid suspension by giving up her friendship with Mr Quinney. Her dismissal was so close to being a dismissal for conduct, that the ACAS Code of Practice on Disciplinary and Grievance procedures, in which warnings are fundamental for misconduct cases, could not be ignored. The EAT noted that otherwise it would be a way for employers to get around the ACAS Code if the employer could show a genuine loss in trust and confidence.

This case is a reminder that even in SOSR cases, an ET has to assess whether the employer acted reasonably in all the circumstances in treating the SOSR as a substantial reason to dismiss. In such cases the employer must show it had a genuine belief that trust and confidence had been lost and that the reason was not whimsical or capricious. SOSR can be important where neither conduct, capability, redundancy nor illegality truly fit; but it must be used with as much care as any of those reasons. It seems logical that the ACAS Code will still apply at least to certain types of SOSR (if not all). Indeed, dismissal without warning for continuing a friendship that had previously been condoned is perhaps a classic example of an unfair dismissal.

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