RadcliffesLeBrasseur

Employment Briefing

April 2010

Case of the Month

Cases on wrongful dismissal rarely reach the High Court and even more rarely the Court of Appeal. ***Dunn* v *AAH Limited*** [2010] EWCA Civ 183 was such a case.

The facts concerned the directors of a pharmaceutical business, which was a subsidiary of a German parent. To comply with German law relating to risk management strict and detailed guidelines were issued to the directors of all subsidiaries. They required a twice-yearly inventory of risks to be submitted and added a continuing duty of ad hoc reporting on an immediate basis on "each individual member of the company's Board."

The problem that arose concerned a supplier that failed to deliver goods to a satisfactory standard and who took advantage of a badly worded letter of credit to supply substituted goods. These problems subsisted for most of 2006 and in 2007 the subsidiary instructed lawyers to deal with shortfalls of stock valued at several million pounds. The date for the regular risk inventory came and went in 2007 without the problem being reported. On 25th May 2007 the lawyers reported in writing their fears that fraud had been committed and still nothing was done to inform the parent company. In fact this was reported until October 2007 by which time the exposure was in the region of £10.9M.

A disciplinary process followed which involved an appeal heard by a QC and resulted in summary dismissal. Both the High Court and Court of Appeal upheld the dismissals.

The Court of Appeal confirmed that whether the conduct was described as wilful neglect or gross misconduct made no difference to the basic test, which was to ask if the behaviour had so undermined the duty of trust & confidence that the employers were not required to retain the services of the employees. At the very latest the court held that the problem should have been reported after the lawyers said they thought fraud had been committed. The duty to report immediately was a legitimate order, which had been ignored. It was no excuse that the directors feared to make the report because they had concerns that the information, which was confidential, would leak. It also did not help one of the directors to say as Finance Director he had reported to his line manager and his responsibility ended there, particularly as he knew his boss had done nothing to report to the parent company.

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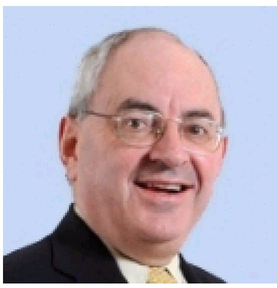
Further Information

If you would like further information or to comment in general regaring this case, please contact



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