



## HR Broadcast – Grievance received during disciplinary process

An employee, on finding out that they have become the subject of a disciplinary process may well respond by raising a grievance, usually on the basis that attack is the best form of defence. The employee often believes that the disciplinary process must be automatically put on hold until their grievance is concluded.

Danny and I have often been asked for advice on this point and we have dealt with each case on its merits. I have to say at times there has been a very healthy debate between the Employment lawyer and the Human Resources Consultant with both of us looking at different angles of a case in order to give our best advice.

Sometimes the raising of a grievance could be in respect of the disciplinary process itself, for example, how the process has been handled by the employer, or about something else, such as alleged bullying and/or discrimination. In contrast to grievances that are received at other times, the motivation behind this sort of tactic can often derail or muddy the disciplinary proceedings.

In the past Danny and I, having looked at the scenario in detail, have advised a number of options:-

- Suspend the disciplinary process and hear the grievance
- Hear the disciplinary and grievance as part of the same meeting; this is especially useful when the facts are interlinked. Care has to be taken when

adopting this procedure to ensure that the employer deals with the grievance in its entirety whilst also dealing with the business of the disciplinary.

- Continue with the disciplinary but allow the employee to raise any issues or concerns at that hearing

If you find yourself caught up in such a scenario, must you put the disciplinary proceedings on hold while you investigate and conclude the employee's grievance or can you simply carry on with the disciplinary proceedings as normal? This was a question for the Employment Appeal Tribunal (EAT) in the case of *Jinadu v Docklands Buses* 2015.

To quickly summarise this interesting case, Jinadu (J) had been a bus driver for Docklands Buses (D). Concerns were raised about J's driving standards and J was instructed to arrange an assessment at D's training centre. J had repeatedly refused to make the arrangement, and during the disciplinary process that followed had raised a grievance on the grounds that the Inspector was biased against J. J was dismissed for gross misconduct but at her internal appeal the parties agreed she would attend a driving assessment. This process showed that J required some corrective training (which was undertaken) but she still failed the exam. Therefore, her dismissal for gross misconduct was upheld.

J then claimed unfair dismissal at the tribunal. The Employment Tribunal dismissed the claim on the basis that attendance at the training



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centre for assessment had been repeatedly refused by J and therefore the dismissal sanction imposed was within the range of reasonable responses available to D.

J then took her claim to the Employment Appeals Tribunal (EAT) where it was argued that D was obliged to automatically suspend the disciplinary proceedings once J raised a grievance but it had failed to do so.

The EAT rejected this particular argument (although J's appeal was ultimately successful on a different point of law but that is outside the scope of this Broadcast). This decision confirms what Danny and I have concluded in the past; that you do not have to automatically place disciplinary proceedings on hold if an employee responds by raising a grievance.

That said, you shouldn't simply push on with the disciplinary proceedings regardless - always examine the nature of their grievance first and may I suggest you seek advice on this point if / when it does happen.