



HR Broadcast – Defamation

Any correspondence, including e-mails, may lead to actions of defamation if the contents are not true. The High Court has recently considered a defamation claim in relation to e-mails sent to the employer's client database which stated among other things that an employee had been dismissed for gross misconduct.

The employee unsuccessfully sued for defamation, but this case acts as a reminder that such correspondence may come under scrutiny by a court and should therefore be always carefully drafted to ensure there is sufficient evidence to support the truth of any allegations made.

It is possible that in the event of an employee, who is close to say a group of key suppliers, being dismissed for gross misconduct then the employer may wish to notify these people so that they know who they should deal with moving forwards.

The High Court has recently considered a defamation claim relating to e-mails of this nature sent to the employer's client database. The claim was brought by a recruitment consultant, T, against his former employer.

The relationship between T and his employer had deteriorated, partly because T had entered into an intimate personal relationship with KK, a former member of the employer's team who had moved with another team member, ZC, to a rival firm. A meeting took place at which the employer alleged that T had given confidential information to KK and

the rival firm. As a result of this dispute, T's employment ended, although the precise facts of that termination were disputed - the employer believed it had dismissed T for gross misconduct the following morning, whereas T claimed he had resigned and had been constructively unfairly dismissed.

Over the next few days, the employer e-mailed over one hundred companies in its client database, and named T, and said that he had been dismissed for gross misconduct. The employer actually sent two versions, a short version and a longer version.

At a preliminary hearing of T's defamation claim, the Court held

(a) That T had regularly supplied commercially important confidential information about the employer's business and its customers' businesses to commercial rivals in breach of his contractual obligations;

(b) As a result the employer had dismissed T for gross misconduct; and

(c) His misconduct was so serious that there were reasonable grounds to suspect it amounted to a criminal offence.

The Court went on to hold that it was persuaded, on the balance of probability, that the e-mails had caused harm to T's reputation of a sufficient degree of seriousness to pass the minimum threshold for a defamation action. T's claim was therefore permitted to proceed to trial.



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At the full trial of T's claim, the Court held that the employer had a defence to T's defamation claim because the contents of the e-mails were substantially true. The Court was satisfied that T had passed confidential information to KK and her colleague ZC (and in turn to the competitor firm).

So, in conclusion, although the employer on this occasion was held not to have said anything defamatory about T in its e-mails, please remember that such correspondence may come under scrutiny by a court and should therefore be carefully drafted to ensure there is sufficient evidence to support the truth of any allegations made.