

EMPLOYMENT LAW ROUND-UP FROM HR NOW

Nikla Sumesar-Rai v AXA ICAS Limited

Claim:

- Unfair Dismissal
- Wrongful Dismissal

Ms Sumesar-Rai was dismissed for gross misconduct after administering a vaccine outside of her employer's Protocols on Vaccination Management.

Summary:

Ms Sumesar-Rai is an experienced Nurse and Occupational Health Advisor. Due to an administrative error, a patient attended an appointment for a booster vaccination 4 months earlier than they should have. Contrary to the employer's Protocols, Ms Sumesar-Rai administered the booster vaccination, potentially diminishing the effectiveness of the vaccine. The patient's employer who was sponsoring the vaccination, complained to Ms Sumesar-Rai who maintained that she did nothing wrong. The client then escalated the complaint, and a full investigation was launched, which found similar incidents had happened before. After a full disciplinary procedure, Ms Sumesar-Rai was summarily dismissed for gross misconduct. Ms Sumesar-Rai appealed, but after a hearing, the dismissal was upheld.

Ms Sumesar-Rai raised a claim at Tribunal, claiming the process followed was unfair and not impartial. She further claimed that the Protocols in question were wrong and she should have been given the flexibility to apply her own experience and judgment to administer vaccinations outside of the set guidance.

Tribunal Judgment:

Tribunal found that the investigation and disciplinary process were fair and could not find any evidence to support a finding of bias.

Furthermore, as Ms Sumesar-Rai had signed a confirmation that she had read and agreed to abide by the protocols set, this amounted to a breach of contract and therefore the employer was right in finding her guilty of gross misconduct, which resulted in summary dismissal.

Lessons to be learnt:

Make sure that you document the policies and procedures that employees are given, especially if these are vital to your business. The investigation and disciplinary process here were also very thorough and well documented, which meant that the employer could provide evidence and sound reasoning to support their decisions.