

Employment alert

Every little helps ...



The screenshot shows a BBC News article. The header includes the BBC News logo and 'WATCH LIVE BBC News 24'. The article is dated Thursday, 3 January 2008, 14:22 GMT. The main headline is 'Cleaner suspended over 20p coin'. A sub-headline reads 'A supermarket cleaner could be sacked for pocketing a 20 pence piece he found on top of one of the tills.' A photograph of Alan Rowbotham is shown. The text states that Alan Rowbotham, 56, was suspended from his job without pay after the incident was captured on CCTV at Tesco in Macclesfield, Cheshire. A caption below the photo says 'Mr Rowbotham said he put the coin in a charity box'. The article concludes with 'He said he found the coin and kept it in his pocket as he carried out his job, and later put it in a charity box.'

You may have seen the above story in the news this week. A cleaner working at Tesco was spotted on CCTV picking up an apparently-abandoned 20p piece (he says he was not being dishonest as he later put it into a charity box).

As many of our clients enquire from time to time about suspected dishonesty we wondered what we could learn from this news story.

The first thing to note is that the employer (the company providing Mr Rowbotham's services to Tesco) did the right thing in taking disciplinary action. This story is only in the public eye because the press finds the amount interesting. However a Tribunal would agree with most employers that dishonesty is dishonesty regardless of the amount at stake.

Second, the employer was right to suspend the cleaner. The ACAS guidelines state that suspension is appropriate in cases involving suspected "gross misconduct (which theft is), where relationships have broken down or there are risks to an employer's property or responsibilities to other parties". Remember, the period of suspension should be as brief as possible and its purpose is to allow an unhindered investigation to be conducted or to remove a real risk of danger to people/property from the workplace.

Finally, this investigatory suspension must be on full pay. Suspension without pay is not an investigatory tool but a sanction and must be imposed only (a) if your disciplinary policy permits

or with the employee's consent; and (b) if you have followed the statutory DDP.

Mr Rowbotham's employers may have made a big mistake in suspending their cleaner without pay pending an investigation. If his employers suspended him without pay then they are risking a constructive unfair dismissal claim. If they now try to sack him, it is hard to see how the dismissal can be fair.

Assuming the report is wrong and he was suspended on full pay how will things pan out for Mr Rowbotham? He has a potential defence to the disciplinary proceedings but how can this be proved or disproved (if there are no witnesses to him putting the coin in the charity box)? Only by looking for his fingerprints on every 20p piece in the box.

No Tribunal is likely to say that any employer should do this before dismissing. Therefore, his employer should take a view based on the knowledge at its reasonable disposal, which will include his length of service, whether he has been disciplined for dishonesty before and, crucially, the sum of money involved. It is probably less fair not to give the benefit of the doubt over a tiny sum as compared to a large sum.

As long as the Tribunal agrees that at a reasonable employer could have taken the decision to dismiss, the employer who does will win a claim of unfair dismissal.



Stephen Conlan
Partner



BrookStreet des Roches LLP

For further information concerning any matter raised in this alert or other employment advice please contact Stephen Conlan at BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH Telephone No. 01235 836659 or alternatively e-mail Stephen direct at stephen.conlan@bsdr.com

Disclaimer

The information set out in this alert is provided free of charge for information purposes only to clients and prospective clients of this firm. We make every reasonable effort to check that the information is accurate and up to date but we cannot accept any responsibility for its accuracy or correctness or for any consequences of relying on it. Please note that the information does not and is not intended to amount to legal advice and you are advised to obtain specific personal advice from us or another lawyer about any case or matter and not to rely on the information or comments in this newsletter.

© BSDR 2008