

The advantage of the 2009 code law employment essay

Law



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Fenly (1998) make comparison between punitive and corrective approach towards discipline. Corrective approach is aim to encourage employee self-discipline. When employee makes certain mistakes, they are given a chance to correct or to change their behavior. It often calls the soft approach management. For instance, employee are caught smoking in the office room and they are given a chance not to repeat doing it again and if it does, they will be dismissed from the organization. As natural justice principle is vital part in the organization. Punitive approach whereas is a punishment or disciplinary action that is taken by the employer or the top management who has the authority to give punishment and command toward the employee blunder. Unlike the corrective approach, it is view as harsh management approach and it will lead resulting arbitrary conduct. For example, disciplinary action will be taken such as suspension or being dismissed when employee are caught using drugs. Rollinson et al. (1997) suggest that instead of using retribution and rehabilitation, the alternative way organization may use is the deterrence approach to handle the problem occurs. Fenly (1998) and 2004 code mention that disciplinary procedure ought not to be seen primarily as imposing sanction but to encourage improvement for those employee who perform below bar or misconduct. ACAS is known as Advisory, Conciliation and Arbitration Service which is officially establish in 1975 after it name was added " Advisory" and it is fund by the Department of Business, Innovation and Skills (BIS). They are a non-departmental body which they work as independent. The mission of ACAS is to bring an organization and working life to another higher level of employment relationship among employers and to upgrade organization

working environment practices. It has been helpful use to all workers to reach and maintain the minimum standards of discipline levels in working environment and also to make sure a consistent of fair treatment among employers and employees. In 1976, the Employment Protection Act 1975 made ACAS as the statutory body. ACAS serve as a purpose to create awareness and give solution and solve conflict among employers and employees in the work place. They also give information and advice to guide employers and employees and also to create awareness and influence the working force environment ACAS (2013). (ACAS, 2004) Disciplinary rules and procedures are widely use in the organization to promote and create fairness and consistency in employment relation. Rules and regulations tell how employee should react accordingly to what employers are expecting from them and if employee fails to comply with the rules, employers will use and follow the disciplinary steps and actions to deal with the situation. ACAS code has been involve from time to time since the official launch and the recent changes of the code from ACAS 2003/2004 to 2008/2009 has been an massive impact to the working society. The code changes are depending on the changes of law. For example, grievance procedures and the authority to be accompanied were introduced in the 2000 code and statutory procedures are added in the 2004. One of the main differentiations from both codes are formal and informal dealing between two parties. Comparing with the two different ACAS codes 2004 and 2009, the 2004 codes will recommend an informal dealing among both parties if the cases are a minor misconduct or unsatisfactory performance best apply especially on small firms whereby the problems can be solve without taking up a certain amount of time. Besides

that, informal dealing with employer and employee is by giving an opportunity to change or do improvement on their performance or misconduct. Nevertheless if the informal method does not apply in that situation or a more serious matter that does not bring any improvement of the matter, employers should another step forward to formal action. However 2009 code didn't not mention about informal action been taken first but a formal action will be taken such as giving the first warning. With formal action is taken, it could involve a certain amount of time and cost among both parties (ACAS, 2010). The 2004 code has also listed out the examples of gross misconduct such as theft or fraud on company property, aggression or bullying colleague, vandalism on company property, involving the organization into serious disrespect, using of drugs and consuming alcohol at work, a whistleblower of information to outsider or competitor and etc. However, 2009 code didn't mention regarding gross misconduct. The purpose of both codes are the major evolution, 2004 code emphasize on justice and consistency in treating of employees. Whereas for 2009 code is customize to help both parties and their representatives to deal with disciplinary action. The other major changes in both 2004 and 2009 code are the statutory minimum procedure which has been removes in the 2009 code. Statutory procedure is for the employer to follow before they could take any action or make the final decision to dismiss or suspending on the employee. According to the statutory procedure, employer is required to issue a letter to notify the employee regarding the alleged conduct or characteristics or other matter which lead the employer to take disciplinary action against them together with all the official documentation before the meeting is hold.

Employers will have to give the statement and invite the employee to attend the meeting for further matter. In the statement, it should be written in simple and detail in order for the employee to understand and if English is not their mother language, employer should make an effort to explain about the details and also stated where the meeting will be held. However the meeting should not be held until the employer has informed the employee and allow them to have a reasonable time to prepare for the meeting.

Employees should try to attend the meeting and Duncan (2005) mention that employees have the right to be accompanied by colleague or someone from the trade union that is certified and has experience or training in handling the situation. They have the right to be accompanied by colleague or someone from the trade union that is certified. In the 2004 code, did stressed about the important of keep written records during the disciplinary process as reference in future and should be keep confidential. Written records should be distributed to employee. Whereas in the 2009 code, it did not mention about written record should be keep or distribute. After the meeting, employer should inform the employee the final results but employee should be given a chance to confront before the final decision is made and also should have the right to appeal upon the final decision and notify the employer. A more senior manager who is not involved in the meeting should handle the appeal (ACAS, 2004). The 2004 code has shown natural justice, however the new ACAS 2009 code has remove the statutory minimum procedure and it is badly impact employment relation. As the statutory minimum procedure is to provide and ensure employers taken all the steps that is needed before they make any decision. This could lead the

employers to misuse of their position and this give the employer to make faster decision to dismiss them as the right steps of procedure has been taken out. It will create bias and unfairness to the employee. This could lead unsatisfactory to the employees and their performance output will badly that will affect the organization and with this newly ACAS 2009, it has weakened the employee position. The effect of the changes in the 2009 code, by demolishing the statutory procedures, employees have a high potential of losing the case as the employer does not act reasonably. It also weakens the position of the employee. As Donovan report (1968) mention that not all employers are good employers. The reason why organization ought to have a standard disciplinary rules and procedures to encourage employment relations to create justice and consistency in the management of individuals (Wales Council for Voluntary Action, 2011). However nothing is perfect, as both 2004 and 2009 codes has it pros and cons. Smith Research Ltd, D. (2003) mention the advantages of 2004 code are the informality action, sometimes employer is very sure about the mistake that the employee makes. So usually the employer will take legal action against employee as they know that they are on the winning side and it also reduced the burden of both parties as to attend the hearing it might take at least fourteen to three months, so it does speed up the process. If the problem is solve by informality, it might also reduce the heavy legal fees cost that will have to pay to go through the Employment tribunals. The disadvantage of 2004 code is the jurisdiction and the limited right of appeal as the number of representatives must have to make the reservation. It might not be their own case but it might occupy others. The ACAS code is suppose to advice

employers and employees to settle any uprising issues at the early period however after introducing the 2004 code statutory minimum procedure, it has fail to lift up what it is expected to do. The 2004 is also suppose help the employment tribunal to reduce the court case but it fails to do so as to go through the statutory minimum procedure, Mckay (2009) mention that it require a certain amount of time to follow the procedure step by step and it require a lot of paper work which it is going to be slow or rigid and the longer the case is, the amount of compensation will cost. Besides that, the 2004 code help and side the employee more as employer will need to follow the statutory procedure before they could take any action against employee's mistake. Personnel Today (2007) mention that 2006-2007 the number of cases that is brought to employment tribunals has rise up to 15% from 115, 039 in 2005-2006 to 132, 577 last year. With this statistic, 2004 has not help much in reducing the cases in employment tribunals. The advantage of the 2009 code is that, the code is flexible as it is shorter and decision can be made faster whether to dismiss or suspension. The disadvantages of the new code is that, there is no statutory procedure to be follow which could lead unfair dismissed of employee. There is also no informal verbal conversation among both parties as the first warning will be written letter. Sheppard (2009) also mention that employers are not sure what amounts to unreasonable failure or what is the appropriate feature the tribunal will take as consideration. He also mention that the remover of statutory procedure has left a hole which can destroy the employment relations. Base on the Gibbons review (2007) he mention that the changes made in the 2004 code is a failure as ACAS is suppose to be created to be more flexible instead of

inflexibility. He suggested the future code will have to be much simpler and more flexible. The 2004 code has made the problem solving become complicated which the problem might have been solved informally. Gibbons (2007) also stated that the three statutory steps should be revoke and produce a clear, straightforward, non-prescriptive regarding the disciplinary procedure, grievance to the working environment for both parties. In conclusion, based on my finding, the ACAS 2004 and 2005 has its own advantage and disadvantage. ACAS 2009 code might be flexible but it does not stated very clear message for the employer and employee as a guide. However, although the ACAS 2004 code is not as flexible as the 2009 code but it is still a standard code to be follow because ACAS original purpose is to side the employees more rather than employer. It also set a minimum standard to be follow as guide for the employers to not to overuse their power to dismiss the employee.(2195 words)