

# Corporate and business law assignment 2012

Law



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The tribunal I chose to view and write this report on is an employment tribunal, that involved the claimant putting forward a case of unfair dismissal and breach of contract that was based on the fact that she felt she was unfairly dismissed while carrying out her duties that were set to her by her employer (Dr Monoghan). \* Less formal than other court proceedings. \* Lower costs. \* Benefit of tribunal is they can choose to represent themselves. \* Lay members specialise in their area of expertise regarding the case.

Below are details of the claimant, defendant, time, date and venue. The Case Unfair Dismissal and breach of contract Venue: Croydon Tribunals Date: 13th November 2012 Time: 10: 00am - 16: 00pm Defendant: Dr Hester Monoghan Claimant: Ms Davidson Evidence: 8 minutes Audio recording After Ms Davidson was dismissed from her job, she later received a call from the nanny agency that she was working for, stating that they had been informed by the police that of an allegation of child abuse by herself on the children.

She was then refused to be represented by the agency as they did not want to put forward her name as it would reflect badly on the agency as she had a

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case on going against her. This prevented her from finding work and therefore was out of work for a period of five months. Ms Davidson opened this case up against the defendant as she feels she unfairly dismissed and had a bad reputation in regards to her occupation. She therefore wanted to be reimbursed for the loss of the work she missed out on and also wanted to clear her name regarding this issue.

Proceedings Upon entering the tribunal room, the judge was seated front centred facing both parties involved in the case, the parties involved were Miss Davidson the claimant, her representative Peter Mathews, seated next to her and parallel to her on the left hand side were the respondents Dr Monaghan and Mr Monaghan. Once entered the judge introduced her and then allowed the defendant and claimant a chance to introduce themselves, preceded by giving defendant an opportunity to provide a brief history of the events which had taken place.

Dr Monaghan believed that the claimant had not been fulfilling her duties properly and was in breach of the employment contract as it had come to the Monoghans attention that she was using foul words in front of her children, which the children had picked up and started to use whilst in the homeenvironment. Dr and Mr Monaghan did not approve of this and believed that the claimant had been lying about taking her kids to activities and used to say she did in the diary that had been prescribed to the claimant.

For this reason she felt she had to take the situation in to her own hand and therefore had her husband put in place voice recording measures in an open plan kitchen/living/dining room. On 8th March 2012 they made an eight hour recording of Ms Davidson's shift at her house. This was broken in to  
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segments totalling a twenty minute recording. After listening to the audio recording they felt that they had “ reasonable grounds to believe that Miss Davidson was verbally abusive and showed a lack of empathy and lovingness towards her children.

The evidence The judge then gave Dr Monaghan a chance to play the evidence that had been produced but Mr Monaghan then intervened and then asked the judge “ Is it not against privacy right to play a recording in a public tribunal”. The judge then referred to a ruling book and then she made a judgment that it would be allowed as she felt it corresponded to the guidelines of the tribunal proceedings. Mr Monaghan then setup the audio to show the recording that was made on the 8th March 2012 whilst his children were in care of Ms Davidson.

I felt this expression was used for the fact that it was a public viewing and Mr Monaghan felt it was a sensitive situation as it involved his children of a minor age which could be seen as a private matter to him and his family as he would not want his kids further involved in this situation. The audio recording was of snippets of dinner time while the children were in care of Ms Davidson. The children were not paying attention to what Ms Davidson was telling them to do and therefore this was frustrating her.

Her mannerism towards the children then indicated that she was persistent for the children eating their food also indicating threatening behaviour indicated the comment by “ if you don't eat your food the trolls are going get you”. There were words used such as; “ Go away” “ Shut up” “ Can you just eat your food!! ” “ Stop it” There was a constant rudeness to the children throughout this recording. The male child was especially picked on by Ms

Davidson as she would say to him “ You, stop being bossy to your sister! During the recording there was a clear sharpness to Ms Davidson’s voice towards the children and there was a continuity of abusive behaviour towards the children. Questioning of Dr. Monaghan Once this audio recording was finished the judge then asked the defendant, Dr Monaghan, to come up on the witness stand. Dr Monaghan was then asked to read out the Oath of Truth in court. The judge then began to ask her questions to break it down and try and work out really what happened.

Talking about the appraisal meeting in January defendant explained that she had raised the fact that the children had been using inappropriate language to her and her husband such as “ shut up” and “ that’s tough”. She then went on to say that she had highlighted this to Ms Davidson and asked her to restrain from using these words in front of them as felt it would have a negative impact on their upbringing. She also asked Ms Davidson to focus on the male child as she felt her relationship with the female child was a good one. To this Ms Davidson replied by saying that the male child was the most difficult child she has ever looked after.

To this the defendant replied that this meeting had been set up simply to raise their concerns but were given no reassurance by Ms Davidson stating that these problems would be sorted. They informed her of the fact that they had a recording and asked her if she would like to hear it but Ms Davidson said she could not do this as she had a job interview to go to as she was going to become redundant within the next month and Mr Monaghan had been made redundant from his job and was therefore going to take control of the child care himself. Dr.

Monaghan then stated they both left the room and decided between themselves that they were not happy for the claimant to continue her job and therefore dismissed her there and then. Questioning of Mr Monaghan Mr Monaghan stated that he raised concerns and for this reason he was not happy for Miss Davidson to continue looking after his children as he was concerned about the safety of his children. He then stated that he offered to play the recording to Ms Davidson but she refused as she had an interview to attend as she was coming to the end of a contract.

This was due to Mr Monaghan becoming redundant from his job and therefore taking control of his children's wellbeing. Questioning of Ms Davidson Ms Davidson confirmed that the transcript of the meeting was correct. She then went on to say that she felt that she was not prepared for the meeting and felt as if she had the right to have an independent witness with her. She then went on to say that she had only said " Shut up" to the children once and it was unfortunate that she had been caught out on that one instance.

She did admit to wrongfully doing by using this phrase towards the children. She was angered with the fact that she was told it was a reference and holiday pay meeting but turned out to be her last day of work. The final verdict The judge felt that as Ms Davidson had been out of work for three months due to the allegations that were made to the police that she should be compensated three months wages. The judge then ordered the defendants to pay Ms Davidson for the two weeks' notice that she should have had.

She dismissed any allegations of MS Davidson physically abusing the children as there was no evidence found and advised the defendants to go through the police if they still felt this was a serious issue and also added that no further action would be taken within the tribunal system. Achievement of tribunal proceedings Speed Although the defendant arrived one hour late it still allowed the case to be completed within five hours.

From the case I visited I soon realised there was a very productive speed throughout. The case I visited was scheduled for 1 day but was wrapped up within 5 hours and that included a 1 hour lunch, evidence, questioning and the judgment to take place. . There was not much waiting around and the whole case was to the point as through Expertise The judge who was appointed to the case for unfair dismissal was a specialist in this area she specialised in.

Off the record the judge mentioned to us that this particular case was a difficult one as it involved one employee and one employer which meant she was dealing with a delicate situation. This was due to it involving children of a minor age and there had clearly been strong relationship between the family and Ms Davidson as it was previously stated in the appraisal meeting which clearly documented Ms Davidson as having a “ loving and caring relationship” with her children.

The judge began by introducing herself and unfortunately she did not have anyone else along with her judging the case so. There was an instance when Mr Monaghan raised an issue of the audio recording being heard while we were present as it children of a minor age talking on it throughout and after consulting a book for a few minutes she then came to a decision that it

would not be a problem for this to be played out loud while the public was present. Accessibility There are different mediums in which the claimant can use to put forward a case.

The most commonly one used is usually the ET1 form, requiring the claimant to state the details of the case which they wish to put forward outlining the circumstances and any other issues regarding the case. However there are other formalities that can be used such as contacting the authorities through email or telephone. The accessibility of the case falls upon the representative to send through the relevant forms in order for the case to be reviewed and considered for a tribunal hearing. Fairness From what I witnessed at the tribunal case I felt that Dr.

Monaghan and Mr Monaghan were unfairly judged by the judge as by the evidence that was heard it was clear to see that Miss Davidson was clearly not exercising her job efficiently enough as she was clearly heard using foul language in front of the children and I do believe she should of controlled her temper as this is what she was trained to do. I felt she Miss Davidson won the case based technicality as she was able to say she wasn't directing her language towards the children and as of this was able to bypass the system and win the case.

The judge should have shown more compassion towards Dr. Monaghan and Mr Monaghan as it was a case that applied to their children and therefor was a sensitive one for them as it could affect the children on the long term. Precedents set by tribunals The lower tribunals are not there to set binding precedents for any other court or even themselves. They are bound by the decisions of superior courts and appellate tribunals.

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Appellate and Employment appeal tribunals are bound by the decisions that are made by the Supreme Court but they would usually be required to be bound to the decisions that they made themselves (English legal systems, Richard Ward and Amanda Akhtar 11th edition). In regards to employment appeal tribunals, matters of law are binding on decisions of appeals and the House of Lords, although decisions of the high court in England and Wales would usually have a great persuasiveness and the tribunals would similarly go with the principles that can be found in those decisions. There are certain precedents rules and guidelines that have been set out by previous legal cases and these have to be followed by tribunals. This allows there to be more of efficiency throughout the case as the defendants can refer back to the case that is in conjunction with the case however within the judicial system of a tribunal court there is a leniency and flexibility based on the case this was as well as the evidence and information provided by both parties.

Taking this information into consideration the tribunals will then deliberate and make their decisions. Similar cases may have different outcomes which will not be based on the same precedents. Tribunals such as an employment based cases are required to follow certain procedures and take in to consideration such as reasons for dismissal with the notice given for dismissal and other externalities that are relevant to the case for dismissal.

Main issue

The main issue with tribunals setting binding precedents for other courts and themselves is that in tribunals there is a sense of flexibility in their operations and the judges and the courts use their interpretation of the

situation to make a judgement and it would be optimistic to think that the doctrine of the binding precedents achieves the certainty and flexibility. Conclusion The judgement of the case went in favour of the claimant in the tribunal.

I feel this is an unfair judgement as the parents had intrusted the claimant in taking care of their children in an appropriate manner but it was clear throughout the audio that was played that was not applied by the claimant and there was a constant rudeness and aggressiveness towards the children. I feel that as the claimant would have been a trained with the necessary skills to look after the children she should have still been able to detach her emotions from her actual duties towards the children as she is trained in this profession. Reference <http://terryandco.hubpages.com/hub/Advantages-and-Disadvantages-of-Administration-Tribunals>