

Employee Allegations During a Disciplinary or Redundancy Process

Sometimes during a disciplinary investigation, or even during a consultation process for redundancy, an employee makes allegations, especially about his or her manager. What is the right response?

The recent Employment Relations Authority decision of *Dolan v The Roman Catholic Bishop of Auckland* provides a useful example of what should be done.

Ms Dolan was being consulted about possible redundancy from her property management role, when she made allegations against her manager relating to conflicts of interest, favouritism towards one contractor, and misuse of funding.

1. Investigate the employee's allegations

It's important to take the allegations seriously, not to ignore them or sweep them under the carpet as being irrelevant to the current process.

Ms Dolan's employer appointed an independent lawyer and a quantity surveyor to jointly investigate her allegations. They reported back three months later. None of Ms Dolan's allegations were upheld.

2. Consider whether the employer process needs to be put on hold

This may be appropriate depending on whether and to what extent the employee's allegations are in some way connected to the employer's disciplinary or redundancy process.

Ms Dolan claimed her employer breached an undertaking to put the redundancy process on hold but her employer had only ever agreed for her to have special leave until her allegations were fully examined. The redundancy process was resumed once the investigators' reports were received. The Employment Relations Authority held that the Diocese Property Committee of the employer was entitled to continue the redundancy process when it did, even though Ms Dolan didn't agree the investigation of her allegations was complete.

3. Review whether the employee's manager should still be involved

If there is a risk that the employee's manager cannot be objective, then a good solution may be to continue the employer's process without that manager's continued involvement.

The Employment Relations Authority held that there would have been some merit in Ms Dolan's manager not being involved in the redundancy process any further, but he was not the decision-maker. On the facts of that case his continued involvement was at worst a minor defect which did not result in any unfairness to Ms Dolan.

Ms Dolan's employer was able to appoint independent investigators, delay its redundancy process temporarily, and handle the redundancy process without the employee's manager. These actions may not be practicable for all employers. The Employment Relations Authority has regard to an employer's resources in deciding whether the employer acted as a fair and reasonable employer could have.

It is possible to run separate processes at the same time, for example investigating an employee's complaints while also running a disciplinary investigation. However where the outcome of the investigation of the employee's allegations might affect the other process which the employer is following, if it is practicable to wait then that is often the wisest course of action.