



An Introduction to Law

Session Three: Sports and the Law

Reading: Extract from the following article: 'What are the legal obligations on sports clubs looking to dismiss an underperforming manager?' by Charlotte Davies.

This article was first written for and published by LawInSport on 3 March 2016. The original article can be found by clicking on [this link](#). Details of the article can be found in the further reading section of this session.



The performance of sports managers is a constant subject of discussion both in the media and amongst fans, with many holding strong views over whether an individual is properly performing in their role.

Recently, there has been great debate over the performance of various football managers, including Jose Mourinho, after his departure from Chelsea following their run of disappointing results, and in recent weeks Louis van Gaal of Manchester United.¹

Capability under the Employment Rights Act 1996

This includes the right not to be unfairly dismissed.² Sections 98(1) and (2) of the Employment Rights Act 1996 (the "Act") provide that there are five potentially fair reasons for an employer to dismiss an employee.

One of these reasons is capability, which includes a person's competence to perform the job they have been employed to do. Therefore, if someone is unable to perform their role to the required standard this may be a fair reason for terminating their employment. For this reason, dismissals of poorly performing employees are usually by reason of capability.

However, in certain circumstances aspects of poor performance may also overlap with misconduct, for instance if a manager failed to follow reasonable instructions from the club or failed to attend training sessions. In this case, the club would consider dismissing the employee for misconduct, another potentially fair reason under the Act, rather than capability.

However, the Act provides that whether a poor performance dismissal for one of the five reasons is fair or unfair depends on the particular circumstances of the case and on whether the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the particular employee.

In cases relating to capability, an employer will usually only be considered to have acted reasonably if it can be shown that:

1. the employee was aware of the standard expected of them;
2. the employer followed various steps aimed at giving the employee the chance to improve their performance before making a decision to dismiss for that reason; and
3. if there is not sufficient improvement, the employer held a proper disciplinary meeting and gave the employee the right of appeal.

Proper disciplinary procedure

Finally, if an employer has taken the appropriate steps but the employee's performance has still not improved to the required standard, then it would need to follow a proper disciplinary process prior to terminating their employment. The standard process is set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures.³

Process vs. pragmatism

As will be evident from the above, following the appropriate procedures in respect of under performance can be a time-consuming process. This may be time that a professional club can ill afford to spend, given the detrimental impact that an underperforming manager can have on the success of the club as a whole. Alternatively a club may consider that the most commercial solution is to simply dismiss the manager and negotiate an exit settlement. This is likely to be the most commonly used route in practice, given the bureaucracy involved in following proper procedures and the relatively low level of damages that the manager would be able to recover in a claim for unfair dismissal.

References

1. For example, see: Jack Lang, 'Thierry Henry: Louis van Gaal is not cutting it – Manchester United must go for Jose Mourinho', [mirror.co.uk](http://www.mirror.co.uk/sport/football/news/thierry-henry-louis-van-gaal-7280250), 31 Jan 2016, last viewed 2 March 2016, <http://www.mirror.co.uk/sport/football/news/thierry-henry-louis-van-gaal-7280250>, and Paul Wilson, 'Louis van Gaal still has time to rediscover the old Manchester United' [theguardian.com](http://www.theguardian.com/football/blog/2016/jan/30/louis-van-gaal-manchester-united), 30 January 2016, last viewed 2 March 2016, <http://www.theguardian.com/football/blog/2016/jan/30/louis-van-gaal-manchester-united>
2. Section 94 Employment Rights Act 1996, <http://www.legislation.gov.uk/ukpga/1996/18/contents>
3. Discipline and grievance - ACAS Code of Practice, <http://www.acas.org.uk/index.aspx?articleid=2174>

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