

THE EXPERTS' ADVICE

“ A HR manager often had to ask senior executives how much they were willing to tolerate non-conformist behaviour by talented employees

THERE CAN be no question of “sacking the developer on the spot”. Such an extreme step would leave the company seriously exposed under the Unfair Dismissals Acts. Moving to dismissal without complying with the company’s disciplinary procedure and the employee’s contract, without following fair procedures and, particularly, without affording the developer a hearing, would surely give rise to a determination of unfair dismissal and if the developer could not secure alternative employment over a lengthy period, could give rise to a significant compensatory award or reinstatement.

In circumstances where Ryan is stating that there might “possibly” be “some kind of problem” related to the abuse of alcohol, Cassidy should note that problems with alcohol abuse can constitute “disability” for the purposes of the Employment Equality Acts.

An “on the spot” dismissal could also expose the company to a discriminatory dismissal claim under the equality legislation. That said, the developer would not be able to secure compensatory awards in respect of an unfair dismissal claim and a discriminatory dismissal claim and would ultimately have to elect and pursue one or the other.

While High Court injunction applications are perhaps not quite so common as they once were, if the company sacks him, the developer might look for a High Court order preventing the company from giving effect to the dismissal. Such injunction applications give rise to significant legal costs and even if the company was to succeed in opposing such an application, it is normally extremely difficult for the employer to recover those costs.

Cassidy should not rush to talk to the employee’s family. As of now, he is contemplating acting solely on Ryan’s word to the effect that there might “possibly” be “some kind of problem”. Cassidy needs to deal directly with the developer. Cassidy should confront him with regard to the issues that have arisen. He should probe the alcohol issue with him. If it emerges that the work issues are related to alcohol abuse, the company should seek expert assistance.

If the alcohol abuse is considered a disability under the Employment Equality Acts, it will be incumbent on the company to consider whether there are any measures which would address those issues and enable the developer to work while having regard for his disability and the treatment of that disability.

If it emerges that the work issues are not related to alcohol or that there are no measures that would address the work issues or if such measures would give rise to a disproportionate burden on the company, the company can contemplate moving to dismissal, in accord-



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ance with the disciplinary procedure and the developer’s contract and fair procedures generally and particularly, after a fair hearing.

If Cassidy also wants to confront Ryan with regard to his performance, he will also have to comply with the company’s disciplinary procedure and Ryan’s contract, follow fair procedures and particularly, afford Ryan a hearing.

– *Michael Kennedy*

THE DEVELOPER’S behaviour almost lost the company a key investment partner, endangering its future, and appears also to have been responsible for significant staff turnover. Responsibility for this rests squarely with Cassidy as the senior executive manager. His role is – or should be – to ensure the smooth running of the firm, as well as charting the strategic direction of the business. This extends to making sure that other managers manage adequately – a key imperative in any business, but especially so in a high-technology firm, where developers’ first allegiance is often likely to be to their jobs or current projects.

Cassidy’s problem is that he failed to recognise that as businesses grow, there is a need for management systems and processes of a more formal kind than may be required in early start-ups. Talented staff bring with them challenges and demands which require robust management systems. In the area of human resource management these include some kind of performance management process – which need not be, and should not be, unduly bureaucratic, or dissonant with the culture of the firm. Such a process would have spotted the developer’s alcohol problem earlier for his immediate manager, and Cassidy would have had a better chance, in turn, of becoming aware of this before it threatened the future of the company.

As for the developer, the options appear stark. I recall a very experienced and respected HR manager, who had experience of working in a creative, high-technology, knowledge-based organisation, telling me that he often had to ask senior executives how much they were willing to tolerate non-conformist behaviour by talented and valuable employees.

In the case of the developer, the answer may well be not this much, or type, of non-conformist behaviour. Still it seems an open question whether the developer can be rehabilitated through intervention of an appropriate kind, or whether the firm, operating in accordance with labour law, will, in effect, initiate a process that may lead to the termination of employment. The strategic upshot of the incident is clear. Cassidy needs to develop management

systems, especially in the area of HRM, which can assist in the proper management of a developing company. These include an appropriate performance management system, provision for HRD, possibly an outsourced employee assistance programme.

– *Bill Roche*

THE DEVELOPER described appears to be a highly competent and indeed motivated employee. Due to his exceptional skill Ryan has taken a laissez faire approach to managing him. This is not uncommon, particularly when a manager is more comfortable with technology than with people.

By being “hands off” Ryan was communicating to the employee that it is okay to be erratic once you are technically good and we meet deadlines. As a professional manager, however, Ryan could be regarded as negligent in that he failed to manage the developer’s performance.

At a business and management level Ryan has clearly let the company down. At an individual and personal level Ryan has let the employee down by being complicit in the slippage of his performance. At an even more serious level he may have “stood idly by” as a valued employee succumbed to a dangerous addiction. If the developer’s behaviour is not seen as a gross disciplinary issue, I would suggest that Ryan has a “powerful conversation” with him to detail the behaviours he is unhappy with and the consequences for all concerned.

Take on board his good suggestions and identify why certain items will not work/help. If the response is inadequate, tell him directionally what he must do. If appropriate Ryan could insist that he attends a medical.

Turn this into a contract so that if he fails to deliver he will have failed to respond to an agreed action. Ryan should set out review dates (14 days suggested) and offer support and/or access to professional counselling.

He should identify the consequences of not complying and state clearly that he believes in the developer and in his capacity to change. If it is decided that the situation amounts to gross misconduct the individual should be formally called to a disciplinary meeting by letter.

He should be advised that it is his right and that he should bring a representative. The letter should include the formal complaint and back up evidence. On the basis of the eventual outcome Ryan and Cassidy will need to decide whether to dismiss the programmer or go for a lesser penalty such as a final warning subject to the individual signing up to a professional rehabilitation programme and completing it.

– *Fergus Barry*