

PRESS CUTTING

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Comment: Was Sky right to sack Andy Gray?

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This week one pundit has been sacked and another has resigned over incidents which have shone a spotlight on what seems to have been an unchecked culture of sexism in one particular workplace. But any employment lawyer will tell you that the only thing different about this workplace is the presence of cameras and microphones.

By Jo Plumstead

The rules are the same everywhere, but 30 years of equality law don't seem to have made much of an impression in some quarters. Richard Keys, in his attempt to justify himself, suggested that the same sorts of things are said in the Manchester United dressing rooms. This is missing the point. Just because everyone else is doing something doesn't make it okay.

So did Sky do the right thing in sacking Gray? Well, it goes without saying that remarks of the sort we've been seeing on YouTube this week would be hard to describe as anything but gross misconduct, and that will normally justify dismissal without notice. But that doesn't mean instant dismissal. If Sky haven't followed a fair procedure the dismissal will be unfair -but even a maximum award for that is unlikely to be significant in relation to a claim for lost contractual pay. However, if gross misconduct is established, an employee is not entitled to contractual notice. That is where the big pay-outs you see in high profile cases come from.

But if they hadn't? Well, if a sex discrimination case is ever made against the organisation in future, it would be an uphill struggle to convince a tribunal that they had taken all reasonable steps to prevent discrimination if a senior employee had escaped disciplinary action so publicly.

There may be other issues too, relating to the release of the tapes of the off-mic remarks. On-or off-mic, the remarks were still made in a work context, so the employer bears responsibility for the commentator's actions. One question to consider is whether any of the protagonists can legitimately complain that their privacy rights have been breached by the disclosure. Outside the public sector, the right to privacy is a factor to be considered in conjunction with other claims, rather than a stand-alone right. But in any event it is doubtful whether a public figure who knows perfectly well that they are wearing a microphone can argue this point with much chance of success.

Unauthorised disclosure of those recordings will itself have been a disciplinary offence; this is no doubt something which is being investigated, if this matter is genuinely being taken seriously. It would be cynical to suggest that Sky's priority is to make sure none of their presenters are caught out again, rather than a making a genuine effort to tackle a management problem.

Let's hope that one outcome of the affair is that although no-one much seems to have been surprised that there may be sexism in football, those in the sport who have been allowing it to go unchallenged will take note of the fact that that the wider world (including Sky subscribers) don't think it's big or clever. The world of sport will be a better place for women as a result.

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