



## No table is safe after table “humping” found not to be gross misconduct

A tribunal has held that a man who ‘humped’ a table in front of colleagues had not committed an act of gross misconduct and was therefore unfairly dismissed.

On 25 October 2016, a sex toy in a parcel without a named addressee arrived at engineering giant Siemens’ reception. Robert Cuthbertson (who worked training apprentices for the company and had been there for 40 years) was involved in the bemused gossip in the factory about this package, during which he twice lowered his trousers to expose his underpants and, in “a moment of madness” (his own words), proceeded to “hump a table”.

Siemens considered that this behaviour amounted to gross misconduct sufficient to dismiss Cuthbertson without notice. The company’s disciplinary rules specifically prohibited undertaking serious actions or behaviour which were likely to bring the organisation’s name into disrepute and listed this as an example of gross misconduct warranting a dismissal.

However, the tribunal Judge decided that the decision to dismiss Mr Cuthbertson was “wholly disproportionate” to his actions, after hearing that Siemens’ engineering factory in Newcastle was often home to conversations including strong, sexual language, and it was not uncommon to see photos of nude women. The tribunal also held that Mr Cuthbertson was remorseful for his actions and that none of the young apprentices had witnessed his behaviour. However, the tribunal did acknowledge that Mr Cuthbertson’s own actions had contributed to his dismissal and reduced his damages by 25% to reflect that.

Although this is an extreme (and bizarre) example, it serves as a useful reminder that gross misconduct has to be assessed in the context of each workplace.