

THE DISCIPLINARY TRIBUNAL
OF THE TAXATION DISCIPLINARY BOARD

TDB/2019/08

TAXATION DISCIPLINARY BOARD
(TDB)

v

MR RAJA BAINS, CTA
(Membership Number 173079, CTA)

DECISION
(6.12.2019)

INTRODUCTION:

1. The Disciplinary Tribunal of the Taxation Disciplinary Board sat on Friday 6th December 2019 at 30 Monck Street, Westminster, London SW1P 2AP. The hearing was chaired by Mr Peter Cadman, solicitor who was sitting with Ms P Griffith (lay member) and Ms Teresa Payne (Member).
2. Mr Alex Mills, counsel, represented the TDB. Mr Bains was not present and was not represented.

PROCEEDING IN MR BAINS' ABSENCE:

3. Mr Mills on behalf of the TDB applied for the matter to proceed in the absence of Mr Bains. He drew the Tribunal's attention to the relevant case law and in particular the case of GMC –v- Adeogba. The Tribunal also noted that Mr Bains himself had specifically consented to the matter proceeding in his absence and had provided written representations.
4. In the circumstances the Tribunal decided to proceed in the absence of Mr Bains. The Tribunal considered that it was in the public interest to do so and that outweighed the rights of Mr Bains to attend in person. Mr Bains had in fact of course specifically consented to the hearing proceeding in his absence.

THE ALLEGATIONS

5. Mr Bains faced the following allegations:

Charge 1

- 1.1 On one or more occasions between 28th October 2018 and 3rd February 2019 you sent emails ("the emails") from your work email address to your personal email address containing information that was:
 - (a) Acquired in the course of your employment;
 - (b) Confidential to your employer; and/or
 - (c) Confidential to your employer's clients
- 1.2 You sent the emails without the consent of your employer and where relevant their client
- 1.3 You breached paragraph 26.1 of your contract of employment by sending the emails
- 1.4 You used the resources of your employer in sending the emails in that the information was sent from an email address belonging to your employer
- 1.5 At the time of sending the emails, you:
 - (a) Knew you were sending the emails and of their contents;
 - (b) Knew that you did not have the consent of your employer and where relevant their client to send the emails;
 - (c) Knew or suspected that your employer would not, if asked, consent to you sending the emails;
 - (d) Knew or suspected that sending the emails was in breach of your contract of employment;
 - (e) Knew that you were using the resources of your employer for your own advantage; and/or
 - (f) Were intending by sending the emails to be in a position to use the information within them if the opportunity arose to do so thereby obtaining an advantage for yourself.
- 1.6 As a result of your actions at 1.1 to 1.5 you:
 - (a) Acted dishonestly, contrary to Rule 2.2.1 [PRPG 2001 and 2018];
 - (b) Acted without integrity, contrary to Rule 2.1 [PRPG 2011 and 2018];
 - (c) Breached Rules 2.5.1 to 2.5.2 [PRPG 2011] and Rules 2.5.1 to 2.5.2 [PRPG 2018];
 - (d) Breached Rule 2.6.2 [PRPG 2011] and Rule 2.6.3 [PRPG 2018].

[Alternative to 1.5 and 1.6]
- 1.7 Your actions in respect of 1.1 to 1.4 above were reckless.
- 1.8 As a result of your actions at 1.1 to 1.4 and 1.7, you:
 - (a) Breached Rules 2.5.1 to 2.5.2 [PRPG 2011] and Rules 2.5.1 to 2.5.2 [PRPG 2018];
 - (b) Breached Rules 2.6.1 and 2.6.2 [PRPG 2011] and Rules 2.6.2 and 2.6.3 [PRPG 2018]

Charge 2

2.1 By sending the emails you did not comply with Articles 5 (1) (a) of the General Data Protection Regulation 2016 in that:

- (a) The emails contained personal data (defined in Article 4);
- (b) The personal data was "processed" (defined in Article 4) and
- (c) The personal data was not processed lawfully (as required by Article 5) in that none of the bases for lawful processing (as defined in Article 6) applied.

2.2 As a result of paragraph 2.1 you breached Rule 13.7.1 [PRPG 2011] and Rule 2.5.3 and 11.6 [PRPG 2018]

6. In his response Mr Bains denied all the charges.

7. Mr Mills drew the attention of the Tribunal to matters within the bundle of documents presented. On 4th February 2019 Mr Bains ceased his employment with Smith & Williamson where he was working in their private client tax services. He moved to work for Baldwins Accountants. Upon interrogation of Mr Bains' Smith & Williamson email account a spreadsheet was produced. This spreadsheet suggested there were 796 emails sent from Mr Bains' work address to his personal Hotmail address. Emails were sent over a period of time from October 2018 to February 2019. The subject title of the emails suggest that many of the emails were either confidential to Smith & Williamson or to their clients. By way of example they show:

- (i) Client lists for partners
- (ii) UG Limited – UK tax returns 2017/18
- (iii) H Limited – 2017/18 UK tax returns
- (iv) Personal tax returns for clients H, J, N, A and E
- (v) H Investments Limited
- (vi) Indicative IHT calculations
- (vii) SDLT review – 4 Regent Square
- (viii) Non-dom slides
- (ix) T Properties Incorporated – company accounts
- (x) Birmingham BD calendar screenshots
- (xi) 66C Square and S Limited
- (xii) ATED – review sheet

8. The emails were sent in batches during periods of time when it was suggested that Mr Bains knew he was leaving the employment of SW.

9. TDB did not suggest that every email in the spreadsheet contained material that was confidential to SW or its clients. From the spreadsheet it is clear that some of the material was personal to Mr Bains. However it was suggested that a considerable number were not.

10. Mr Bains' representations dated 2nd December 2019 confirmed that he was contesting all the allegations in the charges brought against him. He asserted that the only emails which he intended to send to his personal email address were those

that contained personal information (i.e. his personal information) and he did not believe that he sent to his personal email address any confidential information.

DECISION

11. The Panel gave careful consideration to the documents presented to it, the written submissions produced by Mr Bains, the opening note from Mr Mills and the Panel has listened to the submissions from Mr Mills.
12. The Panel has reminded itself that the burden of proving the case rests on the TDB and that the standard of proof is the balance of probabilities.
13. The Panel notes and accepts that the emails were sent from Mr Bains' work email address to his personal email address and the Panel accepts that this was for a period from October 2018 to February 2019. The Panel has seen the spreadsheet of those emails with the titles of the subject matter. The Panel does, however, accept as Mr Bains has asserted that some of the emails were emails personal to him and were sent from his work email address to his personal email address. There were, however, a substantial number of emails sent by him over that period that the Panel finds were emails containing information that was either confidential to his employer or confidential to his employer's clients. The Panel cannot accept that these were sent accidentally by Mr Bains. The sheer number of those emails, their content, the period of time within which they were sent (October – February) and the actual time during office hours that it would have needed Mr Bains to send the emails means that the Panel cannot accept that they were sent accidentally. The Panel finds that they were deliberately sent and constitute a pattern of behaviour. The Panel also noted the size of some of these "confidential files" and note that many of them had a substantial number of attachments.
14. In the circumstances the Panel finds that allegation 1.1, 1.2, 1.3, 1.4 and 1.5 are proved. With regard to 1.6 the Panel has concluded that the actions of Mr Bains were dishonest. Indeed, the Panel has concluded that he actually knew that what he was doing was dishonest. What he did over a period of months constituted deliberate raids on his employer's confidential information and involved harvesting that information which was confidential to his employers and to their clients. He knew what he was doing was dishonest and it was a deliberate course of conduct. The Panel noted his changing recollection after he was challenged and this supports the Panel's conclusion.
15. With regard to Charge 2, in the light of the findings with regard to Charge 1, for the same reasons Charge 2 is proved.

SANCTION


16. The Panel had regard to the indicative sanction guidance of the Taxation Disciplinary Board when reaching its determination as to sanction. The Panel reminded itself that the sanction was not to punish a member but was to protect the public, uphold the proper standards of conduct in the profession and maintain the reputation of the profession. The Panel noted its findings that this was a sustained course of dishonest conduct. The Panel concluded that Mr Bains had not demonstrated any insight into his conduct. The matters proved were ethical misconduct involving dishonesty and the misuse of confidential information.

17. The Panel bore in mind that Mr Bains was of good character. However, the Panel concluded that no sanction other than expulsion was appropriate in these circumstances.
18. The Panel noted that the costs involved in this matter were £4,929.12. Although Mr Bains had stated in his letter that he was "unable to pay....costs as we do not have the funds available to us" he had not produced to the Panel any supportive financial information. In the circumstances the Panel ordered that Mr Bains pay the full sum of £4,929.12 in costs.
19. The Panel also ordered that the matter be publicised in the ordinary way in accordance with Rule 28.1

PETER CADMAN

(Chair)

6.12.2019

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line and a small upward flick.