

LEGAL UPDATE

Driving instructor rightly summarily dismissed for sexually transgressive behaviour

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On 17 February 2022, the 's-Hertogenbosch Court of Appeal handed down its [ruling](#) on sexually transgressive behaviour by a driving instructor toward his students. In this case, the court found that the summary dismissal was justified.

Background

On 3 November 2020, the employer learned from a student that a driving instructor had engaged in verbally sexually transgressive behaviour towards her. The employer confronted the driving instructor about this on 5 November 2020. In this conversation, the driving instructor indicated that things were actually the other way round. He said that the student liked him and that she had shown him that she did. He showed the employer a WhatsApp message from the student in which she had sent him a kiss emoji. The driving instructor was given the benefit of the doubt but also a warning. A bit later, on 13 November 2020, the employer received another complaint about the driving instructor regarding verbally sexually transgressive behaviour. The employer then decided to call several of the driving instructor's female students and ask questions about his behaviour. As a result of those phone calls, five written statements were prepared, all of which covered the verbally transgressive and intimidating behaviour by the driving instructor. Subsequently, during a meeting on 16 November 2020, the driving instructor was summarily dismissed for transgressive behaviour, inappropriate sexual comments, sexual harassment and the intimidation of a number of female driving school students.

Legally valid summary dismissal

At the subdistrict court, the summary dismissal was upheld. The driving instructor appealed the subdistrict court's ruling. The court of appeal also ruled that there was a legally valid summary dismissal.

The court of appeal found that the immediacy requirement had been met. It was understandable that the employer – out of caution, given the seriousness and nature of the complaint – had not immediately proceeded to a summary dismissal after the initial report. It was only after the second report that it became clear that there had actually been transgressive behaviour, and the employer had acted expeditiously from then on. There was also urgent cause, according to the court of appeal. Witnesses had given evidence at first instance, and each statement on its own proved that the driving instructor had exhibited transgressive and intimidating behaviour. The court of appeal further found that the driving instructor had a certain position of authority over the (vulnerable) student who was mostly alone with him in a small environment (car). Due to the driving instructor's behaviour, the employer could no longer ensure the safety of (vulnerable) students. Moreover, the driving instructor had only been employed for six weeks. All things considered, the court of appeal concluded that there was urgent cause for summary dismissal.

Do you have any questions about (sexually) transgressive behaviour? Then check out [our theme page](#) or contact one of our specialists.

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