# Notable Case

**Conflict of interest; constructive steps must be taken to rehabilitate a disciplined employee**

Date of Decision: 16 December 2016

## Overview

An employee, with a history of disciplinary action against them, was found to have:

* failed to have resolved a conflict of interest between the agency and their private business
* undertaken work for the private business during work time, and
* used agency facilities to promote the private business.

The employee, who had worked in an unrelated area within the agency almost 20 years earlier, was permanently redeployed out of their substantive role and work area to their previous area of work, with their classification reduced by two levels.

The employee submitted several reasons why the decision should be overturned, including:

* The penalty involved both a substantial loss of income ($10,000 p.a.) and a change in position which was very damaging to career prospects within their current field; and
* The disciplinary penalty was so severe that it amounted to a construction termination of employment.

## Decision

The agency was entitled to substantiate the allegations on the balance of probabilities with the evidence available.

The financial penalty was justified particularly when considering that the employee had been disciplined for similar conduct previously and that the nature of offences resulted in the employee extracting significant personal gain from undertaking private business while being paid by the agency.

It was fair and reasonable for the agency to conclude that the employee had eroded trust, preventing return to the area of work where the conflict of interest had occurred.

The Appeals Officer stated that given the seriousness of the current offences and the employee’s failure to correct their behaviour following the previous disciplinary process, the agency would have been justified in terminating the employment.

However, once the agency had made a decision not to terminate the employee, transferring the employee to their previous area within the agency was appropriate given the employee had relevant qualifications. The agency was then obliged to take constructive steps to rehabilitate the employee and ensure there were some prospects of advancement and career progression.

The Appeals Officer modified the penalty so that the employee was to move up one classification level after 12 months.

## Implications for agencies

If an employee is disciplined (other than termination) the employee must be given appropriate support for rehabilitation and prospects for advancement and career progression, notwithstanding the seriousness of the conduct.