



EMPLOYMENT TRIBUNALS

Claimant: Mr S Cooke

Respondent: DHL Services Limited

Heard at: Leeds (by video) **On:** 20 September 2024

Before: Employment Judge T Knowles

Representation

Claimant: In person

Respondent: Ms Firth, Counsel

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The Claimant's claim of unfair dismissal is not well founded and fails.
2. The Claimant's claim of wrongful dismissal is not well founded and fails.
3. The Claimant's claim that he suffered unauthorised deductions from his wages is not well founded and fails.
4. The Claimant's claim concerning holiday pay is well founded under breach of contract principles. The Respondent is ordered to pay to the Claimant damages in the sum of £20.68 (twenty pounds sixty eight pence).

RESERVED REASONS

Issues

1. The Claimant's claims are for:
 - 1.1. Unfair dismissal
 - 1.2. Wrongful dismissal
 - 1.3. Unlawful deductions from wages

- 1.4. Holiday pay
2. The issues for me to determine are:
 - 2.1. What was the reason or principal reason for dismissal? The respondent says the reason was conduct [or some other substantial reason]. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
 - 2.2. If the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:
 - 2.2.1. there were reasonable grounds for that belief;
 - 2.2.2. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - 2.2.3. the respondent otherwise acted in a procedurally fair manner;
 - 2.2.4. dismissal was within the range of reasonable responses.
 - 2.3. What was the claimant's notice period?
 - 2.4. Was the claimant paid for that notice period?
 - 2.5. If not, was the claimant guilty of gross misconduct or did the claimant do something so serious that the respondent was entitled to dismiss without notice?
 - 2.6. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?
 - 2.7. Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

Evidence

3. The Respondent called 2 witnesses to give evidence:
 - 3.1. Ms L Whittle, Lead HR Business Partner, who attended the disciplinary hearing.
 - 3.2. Mr P Davis, Wakefield Site Manager who handled the Claimant's appeal against his dismissal.
4. Both witnesses produced written witness statements.
5. The Claimant gave evidence and produced a written witness statement.
6. The parties produced a joint bundle of documents, 253 pages. References in this Reserved Judgment and Reserved Reasons to numbers in brackets are

(unless otherwise denoted) references to page numbers in the bundle of documents.

7. The Respondent also produced an additional document entitled holiday pay disclosure and some further documents concerning the Claimant's pay.
8. The Respondent also submitted a written skeleton argument.

Findings of fact

9. I made the following findings of fact on the balance of probabilities. These findings are not intended to cover all of the evidence heard over the two days of the hearing. These are the material points in evidence which are relevant to the issues and to my determination of the issues.

10. The Claimant was employed by the Respondent from 1 March 2015 and by the time his employment ended 22 December 2023 was employed as a First Line Manager.

11. The Respondent is a distribution company.

12. The Claimant's place of work was the Respondent's distribution centre in Thorne which consisted of a warehouse dedicated to servicing one client only.

13. The premises has since closed.

14. At the time of his dismissal the Claimant worked on the Respondent's night shift.

15. The Claimant had been issued with a contract of employment when he began work for the Respondent as a Warehouse Operative (41-53).

16. He had not been issued a revised contract when he was promoted to First Line Manager on 2 July 2023.

17. The Respondent does not challenge that at that point in time the Claimant's contractual terms improved, and relevant to this claim, his holiday entitlement improved.

18. The Respondent has produced records of the Claimant's holiday entitlements, he had been entitled to 28 days as an operative but this increased to 33 as a manager. This means that his accrual of leave had to be calculated pro-rata to each employment for the 2023 year.

19. Ms Little went through her calculation of what had accrued at the termination date, the leave the Claimant and taken, and what was due on termination of employment, which was rounded up to 4 days, and paid to the Claimant, less an overpayment of his December 2023 salary which was recovered.

20. The Claimant is claiming 8 days but was unable to explain how he calculated this. He simply said he made enquiries before he left and that was what he was told.

21. The Claimant's contract provides that he would be paid on a monthly basis on the 25th day in each month. The Claimant claims he worked a month in hand but that is not what his contract provides nor is that the arrangement for any

employee according to Ms Little.

22. I preferred the evidence of Ms Little on this point; this corresponded to the Claimant's payslips which appeared to clearly show a current basis for pay, with only adjustments being deferred to the following month.

23. The Claimant provided no payslips from the beginning of his employment or bank statements which would have assisted his case.

24. I concluded on the balance of probabilities that the Claimant did not work a month in hand.

25. On the evening of 11 December 2023 the Claimant was working a night shift.

26. Two employees made allegations to Mr Fletcher, the Respondent's Shift Manager, that the Claimant displayed aggressive and intimidating behaviour towards them.

27. The allegations were that the Claimant had accused them of "shit stirring", told them that "you're going to get what you deserve and what's coming to you".

28. In a later conversation with one of those employees, it was alleged that the Claimant said "did you say something to me, did you say something to me" and when she replied no, the Claimant had replied "make sure [you] don't".

29. Mr Fletcher stated in the internal proceedings (68) that the Claimant, when first asked about the incident, accepted that he made the comment.

30. However he adds that when he told the Claimant that it was unacceptable conduct the Claimant then attempted to retract his comment.

31. The Claimant asserted to Mr Fletcher that the one of the complainant's had called him a "puff". She denied that.

32. Mr Fletcher then decided to suspend the Claimant.

33. Mr Fletcher stated in the internal proceedings that he advised the Claimant that he would have to leave site suspended.

34. The Claimant disputes this, stating that he was simply told to leave.

35. The Claimant refuses to leave. Mr Fletcher stated in the internal proceedings that the Claimant began making confusing comments, that the complainant's were "trying to get his flat", made accusations about Mr Fletcher and suggested that he had already spoken to the police.

36. Mr Fletcher called security and two guards attended to attempt to remove the Claimant from the site.

37. Mr Fletcher explained in the internal proceedings that the Claimant refused to leave site and the Claimant repeatedly told them to call the police which in the end they did.

38. It takes the attendance and intervention of the police to remove the Claimant from the site.

39. Mr Fletcher wrote a statement about the above on 12 December 2023 (69).
40. The two colleagues who had complained about the Claimant's aggressive behaviour made statements on 12 December 2023.
41. Other colleagues were also interviewed, who did not witness the events complained of, but were witnesses to the aftermath (69-72).
42. On 12 December 2023 Mr Fletcher writes to the Claimant to confirm his suspension on full pay pending an investigation into the following allegation:
- "On Tuesday 12 December 2023 it is alleged that you displayed aggressive and intimidating behaviour on two occasions towards two work colleagues and that you were also verbally abusive to those people. This allegation constitutes a breach of the Company's Code of Conduct" (163-164).*
43. On 13 December 2023 the Respondent invites the Claimant to an investigation meeting into the above adding to allegation a sentence as follows:
- "You also refused reasonable a request from the shift manager to leave site whilst suspended and as a result the police had to be called".*
44. On 15 December 2023 the Claimant was interviewed by Mr Bentley, another shift manager.
45. Ms Little is in attendance as HR Representative.
46. Notes of the interview are in the bundle of documents at pages 75-84.
47. In a long discussion, the Claimant essentially denies making any comments to the complainants. He states "nothing happened". The Claimant queries the process followed and questions why he has not been provided with any statements, and criticises the Respondent for not taking his statement on the night in question. He explains that he asked for the police to be called because he felt his blood pressure rising, felt intimidated and wanted back up. The Claimant suggests that he agreed to leave once it had been confirmed, in front of the police, that he was suspended on full pay. He asks for CCTV footage.
48. The Claimant is asked if he accepts it's a reasonable management instruction to ask you to leave if you are suspended. The Claimant replies "only if there's just cause, I know nothing happened, no threatening gestures, nothing. That's why I didn't want to leave site because of that reason, why leave when nothing happened? That's why I called for the police" (82).
49. The Claimant appears to be arguing that had a statement been taken from him, he would have accepted his suspension. He describes the suspension as hasty without anything written down from him (83). He suggests he cannot remember if he was called a "puff".
50. The meeting was adjourned to 18 December 2023. Notes of the reconvened meeting are contained in the bundle of documents at pages 84-90). The Claimant says he does not recall calling the complainants "shit stirrers". The assertion that the Claimant told Mr Fletcher that they were trying to steal his flat was put to him and the Claimant replies "what's that go to do with the incident? I might have said it, I might not". He denies telling Mr Fletcher that one of the

complainant's called him a "puff", then suggested "I might have said it before, I don't know, I can't recall it". He disputes that Mr Fletcher told he was suspended before the police were called.

51. At best, the Claimant's answers to questions during the investigation meeting can be described as awkward, argumentative and at times plainly odd.

52. Both of the complainants are interviewed again on 16 December 2023 (92-95).

53. Mr Fletcher is interviewed 17 December 2023 (96-97).

54. A member of the security team was interviewed on that day too (98-99).

55. On 19 December 2023 the Claimant is invited to a disciplinary hearing (102-104). The letter says:

"The purpose of the Disciplinary Hearing is to consider the following allegations and whether any disciplinary action will be taken against you: - The meeting will be about: On Monday 11th and Tuesday 12th December 2023, it is alleged that you displayed aggressive and intimidating behaviour towards two work colleagues in the workplace and that you were also verbally abusive to these people. Furthermore you refused a reasonable request from the shift manager to leave site whilst suspended and as a result the police had to be called. This allegation constitutes a breach of the company's code of conduct and a breach of the diversity and respect at work policy."

56. The witness statements are sent with the letter.

57. The Claimant is offered the right to be accompanied.

58. The letter warns the Claimant that the outcome may be dismissal.

59. Mr Gill, Shift Manager, hears the disciplinary hearing. Ms Little attends as the HR Business Partner.

60. Notes of the disciplinary hearing are contained in the bundle of documents at pages 104-120.

61. During the hearing, the Claimant's position does not change in any material respects. The whole thing is a fabrication according to the Claimant, who accuses one of the complainants of wanting to take his job, whilst conceding he has not evidence to support that. The Claimant does accept that calling the police to the site was not the right thing to do and he should have dealt with the situation better. The Claimant disputes having refused to leave site on the night, suggesting that he didn't agree to leave. The Claimant draws a distinction between refusing to leave and not agreeing to leave.

62. Mr Gill gives a verbal outcome to the Claimant which is recorded as follows:

"Throughout this disciplinary hearing you have made claims that the allegation and subsequent statements are a clear fabrication to have you removed from the night shift position. You have admitted in the disciplinary hearing that you couldn't substantiate this claim."

From the statements and evidence available throughout this whole process, the concurrent theme is that there were supportive statements from not only DHL management but also from site security stating you were agitated and anxious.

We covered the statements from the 4 separate managers, 2 of the claimants of your aggression, one Shift Manager and 1 FLM. The latter 2 clearly highlight that [M] was showing signs of distress and was shook up. I believe you were aggressive which is a misconduct offence.

Your actions as a manager on that date were not conducive to that of what I would expect of a DHL FLM.

I support this in the fact that you refused to leave site and the police had to attend site to support your removal from site which portrays a poor reflection on the site and DHL.

Further to this I believe the Shift manager Ben Fletcher did inform you of your suspension and this led to you refusing to leave site which is a gross misconduct offence. Furthermore, you refused to leave site when security were called to assist in the situation. We cannot be in a position where we have to call the police because a colleague disagrees with his manager's decision.

Therefore, I believe that I have no alternative but to summarily dismiss you from the Company with immediate effect without notice pay or pay in lieu of notice."

63. A letter is sent confirming the outcome on 22 December 2023 (121-122) and offering to the Claimant the right to appeal.

64. On 27 December 2023, the Claimant sends in an appeal letter (129). In essence, the Claimant asserts that the allegations are fabricated, that CCTV footage was requested but not provided and that he was not shown the statements before the investigation meeting.

65. On 5 January 2024 the Respondent writes to the Claimant inviting him to an appeal hearing on 12 January 2024 (130-131). The Claimant is offered the right to be accompanied.

66. The appeal hearing takes place on 12 January 2024 and is chaired by Mr Davis. Ms Potts attends as support from Human Resources.

67. There is little material change in the Claimant's position other than he adds that the statements of witnesses are inconsistent, but is not able to point to specific inconsistencies. He also complains that Ms Little had been present in the investigation and disciplinary stages, suggesting that someone independent should have attended the disciplinary stage.

68. On 18 January 2024 Mr Davis writes to the Claimant to confirm his outcome. He upholds the decision to dismiss. He gives the following grounds in his letter:

"After careful deliberation, I have decided that the original disciplinary sanction of dismissal will remain unchanged.

The reasons the disciplinary action remains are:

I have listened to your arguments, re-read all of the information, and

gathered more details to get clarification on the points you raised.

Due to the fact that there were 4 colleagues that put in a statement and one from security, I have reasonable belief that an incident did occur which led to Ben Fletcher asking you to leave site for threatening behaviour, he did not take a statement on the night of the incident which is explained above.

It was a reasonable request from your immediate manager with a reason given. You said you called the Police for your protection yet you confirmed Ben was not intimidating to you, but he did talk sternly, so I am struggling to understand your thoughts behind feeling like you needed police protection.

You explained that you felt that Shaun wanted your job, and you believe that all the evidence was fabricated yet you could provide no evidence to back this up for me to consider.

Your behaviour on that night was not what is expected of a DHL manager, ultimately you refused to leave site and called the police, which in addition to the initial allegations, does not look positive for our corporate identity.

As a manager I would expect you to know if you are asked to leave site for threatening behaviour that there would be a full investigation. You could have asked Ben at any time if you needed clarification on if you were being suspended, if there would be an investigation or if you wanted to provide a statement, yet by your own admission you did not ask those questions. From then your behaviour escalated to the point of demanding that the police be called.

I feel that during the hearing you did not provide any new evidence and relied on the argument that you did not agree. I still feel that on the night, after reviewing all the evidence of the incident that your behaviour was Gross Misconduct, and I seen no reason to overturn the original decision of summary Dismissal.”

69. The Claimant accepted in evidence in Tribunal that Mr Fletcher had the authority to suspend him. No other material information was added in evidence during the hearing.

Submissions

70. The Claimant made submissions that he had 9 years service and a good rapport with colleagues. He submitted that he took his job seriously and would never threaten anyone in the workplace. He submitted that he always followed management instructions. He submitted that he did not feel that he was listened to and the process was one sided with Ms Little being involved throughout. He submitted that he believes the primary cause of his dismissal was threatening behaviour and not the refusal to leave site. He submitted that he has never threatened anyone and tried to prove this in the process. He submitted that the process had been unfair.

71. The Respondent made written and verbal submissions. The Respondent's case is that the reason for dismissal was misconduct and that the Respondent's managers had a genuine belief in that misconduct. The reasons for dismissal are detailed and recorded. The investigation was thorough and well within the range of reasonable responses. The Respondent weighed the evidence and concluded

that they preferred the accounts given by the other witnesses. They concluded that the Claimant's submission that the case against him had been fabricated was implausible and could not be substantiated. Concerning the management instructions, much of this was admitted conduct. They drew a conclusion that the Claimant was from the outset told he was suspended and rejected the Claimant's contentions. They held a reasonable belief and dismissal was within the band of reasonable responses. The case has been made out on the balance of probabilities, therefore the Claimant was not wrongfully dismissed. His wages were not paid on a "month in hand basis"; the Claimant is plainly wrong about that.

72. Counsel for the Respondent calculated holidays accrued against holidays taken and conceded that 2.37 hours pay was owing at £10.91 per hour, i.e. £25.86.

The Law

73. Section 98 of the Employment Rights Act 1996 sets out how this Tribunal should approach the question of whether a dismissal is fair. There are two stages.

74. First, the employer must show the reason for the dismissal and that it is one of the five potentially fair reasons set out in sections 98(1) and 98(2).

75. Second, provided the respondent is successful at the first stage we must then consider whether the employer acted reasonably in dismissing the employee for that reason under section 98(4).

76. A reason for dismissal is a set of facts known to the employer or belief held by him which caused him to dismiss the employee (**Abernethy v Mott Hey & Anderson [1974] IRLR 213 CA**).

77. It is sufficient that the employer genuinely believed on reasonable grounds that the employee was guilty of misconduct. The employer does not have to prove the offence (**Alidair Limited v Taylor [1978] ICR 445 CA**).

78. Guidance applicable to cases of misconduct was given by the EAT in **British Home Stores Limited v Burchell [1980] ICR 303**. The issue of fairness involves three elements:

- 1 Whether the employer believed the employee was guilty of misconduct, and
- 2 Had in his mind reasonable grounds upon which to sustain that belief, and
- 3 At the stage at which he formed that belief on those grounds, he had carried out as much investigation into the matter was reasonable in the circumstances of the case.

79. This guidance must be read in the light of **Boys & Girls Welfare Society v McDonald [1996] IRLR 129 EAT** which reminds the Tribunal that in considering the question of fairness for the purposes of section 98(4) the burden of proof is neutral.

80. I also reminded myself of the decision in **Iceland Frozen Foods Limited v Jones [1982] IRLR 439 EAT** that the function of the Employment Tribunal as an industrial jury is to determine whether in the particular circumstances of each case

the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted.

81. The Court of Appeal in **Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23** held that the range of reasonable responses test applies to both, the decision to dismiss and to the procedure by which that decision is reached.

82. In determining the fairness of dismissal on grounds of misconduct we have regard to the provisions of the ACAS Code of Practice on disciplinary practice and procedure as well as the overall principals of natural justice and fair hearings.

83. Under Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, an award may be increased or reduced where the employer or employer unreasonably fails to follow the ACAS code. The amount of the adjustment is up to 25% in the following circumstances:

- the claim concerns a matter to which a relevant code of practice applies
- the employer or employee has failed to comply with the code
- the failure was unreasonable, and
- the tribunal considers it just and equitable in all the circumstances to make an adjustment.

84. Under section 122(2) of the ERA 1996, where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

85. Section 122(2) of the Employment Rights Act 1996 provides that “*Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.*”

86. In respect of any compensatory, section 123(6) provides that where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding. In **Nelson v. BBC (No. 2) 1980 ICR 110 CA**, it was held that three factors must be satisfied if the tribunal is to find contributory conduct:

1. The relevant action must be culpable or blameworthy.
2. It must have actually caused or contributed to the dismissal.
3. It must be just and equitable to reduce the award by the proportion specified.

87. Under section 123(1), the tribunal may also make a reduction to the

compensatory award where it considers it just and equitable having regard to the loss sustained by the employee. Under this section, employers often argue that an employee might have been dismissed had a fair procedure been followed, either at the time of or after the dismissal occurred and therefore this should be reflected by reducing or limiting the duration covered by a compensatory award. This is known as the **Polkey** principle (**Polkey v AE Dayton Services Ltd [1988] ICR 142 House of Lords**).

88. Section 13 of the Employment Rights Act 1996 contains the right not to suffer unauthorised deductions from wages and provides as follows.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

89. The Working Time Regulations 1998 contain provisions for payments in lieu of accrued but untaken leave on termination of employment but in this case, his holiday pay claim should be considered on the more preferential basis under breach of contract as his contractual entitlement exceeds that under the Regulations.

Conclusions

What was the reason for dismissal or the principal reason? Did the Respondent genuinely believe that the Claimant had committed misconduct?

90. I am satisfied that Mr Gill and Mr Davis genuinely believed that the Claimant had committed misconduct. No other matters were engaged in their minds.

91. The conduct leading to dismissal was the refusal to leave the site when suspended.

92. The aggressive behaviour was categorised as misconduct not gross misconduct, and had there been nothing else to consider would have probably triggered a disciplinary warning but not dismissal.

93. Their reasons for finding that the Claimant refused to leave site when suspended are clear and articulated completely.

94. The Claimant's case against this appears to be that the complainants wanted their job.

95. He has no evidence supporting that contention.

96. Mr Gill and Mr Davis were more senior managers capable of reaching their own decision notwithstanding what the complainant's motives may have been.

Were there reasonable grounds for that belief?

97. There were reasonable grounds for believing that the Claimant refused to leave site.

98. The Claimant refused until security then the police were called.

99. The Claimant's distinction between refusing to leave and not agreeing to leave is absurd.

100. His words can only be read as an admission that he did refuse to leave.

101. There was a conflict of evidence between the Claimant and Mr Fletcher over whether before the security guards then police were called Mr Fletcher had told the Claimant he was suspended.

102. The Respondent had reasonable grounds for preferring Mr Fletcher's account to the Claimant's.

103. The Claimant's answers to questions during the investigation meeting can be described as awkward, argumentative and at times plainly odd.

104. It is not surprising that the Respondent determined that little weight could be attached to the Claimant's denials.

At the time the belief was formed had the Respondent carried out a reasonable investigation?

105. The Respondent interviewed relevant witnesses more than once and interviewed the Claimant twice.

106. The conduct causing dismissal was, as set out above, conduct that the Claimant admitted.

107. Where conduct is admitted, there is no real need for any spectacular investigation.

108. The investigation was within the range of reasonable investigation which may have been adopted by a reasonable employer.

109. The Claimant has suggested that the CCTV should have been reviewed. The

CCTV was unnecessary for the conduct for which he was dismissed, i.e. the refusal to leave when suspended.

Did the Respondent otherwise act in a procedurally fair manner?

110. Different people carried out the investigation and disciplinary hearing.

111. The period of suspension is short.

112. There was no material delay in the investigation or in interviewing the Claimant.

113. It is only just over one week between suspension and when the Claimant is invited to a disciplinary hearing.

114. He is offered and a right to be accompanied at the disciplinary hearing and appeal hearing.

115. The invite to the disciplinary hearing clearly states the issues that will be considered at the disciplinary hearing.

116. He is sent the output from the investigation including all relevant documentation.

117. The hearing takes place quickly; there is no material delay.

118. The Claimant had time to prepare his case.

119. The Claimant was afforded and exercised his right to appeal.

120. A different more senior manager, who was independent, heard the appeal.

121. The Claimant was informed of the outcome of the appeal which included the reasons for the decision.

122. In my conclusion, the procedure adopted by the Respondent is in accordance with the ACAS Code of Practice on Discipline and Grievances at Work 2020.

123. There is no unfairness in Ms Little providing HR support at the investigation and disciplinary stages.

124. The key question from a fairness perspective is whether the person deciding the outcome was different to the person undertaking the investigation and it was.

125. It was not unfair to decide not to provide the CCTV recordings to the Claimant. This was discussed in the disciplinary hearing and the Claimant does not challenge that it would be relevant only to the aggression issue and would not have captured what was said.

126. It was not unfair to not provide the statements to the Claimant before initially interviewing him.

127. The Claimant had argued that the complainants had been interviewed at the time whereas he was not but he agreed with me that the witnesses were interviewed on the following evening not during the evening of the events in

question.

128. The procedure followed was, in my conclusion, within the range of reasonable procedures which may have been adopted by a reasonable employer.

Was dismissal within the range of reasonable responses?

129. Mr Fletcher's request for the Claimant to leave site was legitimate; the Claimant accepts that Mr Fletcher had the authority to suspend the Claimant.

130. The request was reasonable; on the face of the information provided to Mr Fletcher he had two witnesses telling him that the Claimant had been aggressive towards them and the Claimant had initially admitted speaking to them in the terms that they had alleged.

131. It was reasonable in those circumstances to suspend pending an investigation.

132. Aggressive behaviour between colleagues could potentially have been misconduct.

133. It was reasonable for Mr Fletcher to suspend the alleged aggressor, the Claimant, and ask him to leave the workplace.

134. Suspension is not a disciplinary sanction, it is a neutral act.

135. The Claimant's refusal to leave was unreasonable.

136. The Claimant has himself admitted in the internal process that he could have handled the situation better and the police should not have been asked to come in.

137. The Claimant was himself a manager required to undertake disciplinary matters. He will have been fully aware that suspension would trigger the beginning of an investigation and process through which he would be given the opportunity to put his side of the story and state his case.

138. In all of the circumstances of this case, in my conclusion dismissal was within the range of reasonable responses that a reasonable employer may have adopted.

139. The Respondent therefore acted reasonably in all the circumstances, including their size and administrative resources, in treating that as sufficient reason to dismiss the Claimant.

140. The Claimant's claim of unfair dismissal is not well founded and fails.

What was the claimant's notice period?

141. The Claimant's contractual entitlement to notice was 8 weeks.

Was the claimant paid for that notice period?

142. The Claimant was summarily dismissed without any notice.

If not, was the claimant guilty of gross misconduct? Did the claimant do something so serious that the respondent was entitled to dismiss without notice?

143. There was in my conclusion no breach of the Claimant's contract in categorising his insubordination as gross insubordination.

Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?

144. I accept the calculation of leave due to the Claimant under his contract which was provided by the Respondent's counsel in submissions.

145. The Claimant has provided no basis himself for calculating otherwise.

146. The amount due to the Claimant is £25.86 gross but damages for breach of contract should be awarded at net pay. The Claimant usually took home 80% of his gross pay in net wages. I therefore awarded damages for breach of contract in the sum of £20.68.

Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

147. As I set out in my findings of fact, the Claimant's claim that he worked a month in hand was not supported on the evidence.

148. The Claimant was paid on a current month basis, only adjustments were processed a month in arrears.

149. The Claimant has therefore failed to establish the basis of his wages claim.

150. His claim of unauthorised deductions from wages is not well founded and fails.

Employment Judge T Knowles

14 October 2024

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge.

There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>