



EMPLOYMENT TRIBUNALS

Claimant: Mr M S Doy
Respondent: Clays Ltd
HEARD AT: Bury St Edmunds **ON:** 5th December 2016
12th January 2017
(In Chambers)
BEFORE: Employment Judge Laidler

REPRESENTATION

For the Claimant: Mr M S Doy (In person)
For the Respondents: Mr A Russell (Solicitor)

RESERVED JUDGMENT

1. The Claimant was dismissed for conduct a potentially fair reason for the dismissal
2. The Respondent acted fairly in treating that as a reason for the dismissal of the Claimant and the claim of unfair dismissal is therefore dismissed.
3. The Claimant has not established that he is entitled to further payment in respect of holiday pay and that claim is dismissed.

REASONS

1. The claim form in this matter was received on 12th August 2016. The Claimant claimed unfair dismissal and arrears of pay. He asserted he had not been paid the correct hourly rate for the job and shift he

worked on. They were not, he alleged, paid fair wages for the flexi hours he had accrued on nights. That the Claimant had raised this had resulted him in losing his job through “the argument caused by Clays”.

2. In its response the Respondent defended all of the claims. It denied that the dismissal had been unfair but asserted the Claimant was dismissed for “serious and persistent verbal threats and harassment against his line manager, Mr Paul Bullen, and at various times threats against Mr Bullen and his family”. This amounted to an act of gross misconduct.

The money claims

3. There was further discussion as to the money claim brought by the Claimant. It was clarified at the outset of this hearing that he claimed a total of £621.41 calculated as follows:

16 December 2011 (page 109) (being an accumulated loss for annual leave taken in 2011 shown on p110)	£279.00
14 May 2014 (p115)	£179.36
14 March 2016 (p117)	<u>£163.05</u>
Total	£621.41

The Claimant relies on three wage slips in the bundle as evidence that he was paid the night rate for having a full flexi week off work and that is what should always have occurred.

4. The Tribunal heard from the Claimant and the following on behalf of the Respondent: -

Neil Dyke, currently General Manager of Monochrome Printing

Ian Smith, currently Manufacturing Director

5. The Claimant produced some anonymous statements to this Tribunal. They were not signed or dated. The Tribunal had to explain that it could not give any weight to these statements.
6. From the evidence heard the Tribunal finds the following facts.

The Facts

7. The Claimant commenced employment on 11th October 2004 as a Bindery Assistant. He had initially been engaged on a casual basis. The contract seen in the bundle showed that the Claimant was on a flexible working contract. The flexible workers are all employees that work on an annualised hours basis so that they receive a consistent rate of pay throughout the year. Some weeks they are, however, required to work more hours than others depending on business needs. The terms of these flexi workers have been agreed with the recognised union at the Respondent. The contract provided for contracted hours of 1695 (excluding holidays and bank holidays) per year.
8. The contract also deals with the rate of pay at two different rates, one for Class 1 job for two hours or more in any week but if only Class 2 work is being performed in any week then a lower rate is applicable. Those rates are the double day rates and the shift premiums will change as appropriate.
9. The contract provided that the holiday year runs from 1 April to 31 March and that all holidays (weeks and days) are paid at the average 13 week rate.
10. In the Respondent's disciplinary rules were examples of gross misconduct which included but not limited to "bullying and/or harassment in breach of the company's dignity at work policy".
11. The Claimant had an ongoing issue with how wages were paid for the night shift. There was a meeting on 19th February 2016 with the General Manager, Paul Bullen, the Bindery Manager, Dean Notley, the Claimant and a Trade Union representative. Minutes were seen in the bundle of that meeting. This noted that Paul Bullen and Danny Block, the Trade Union representative, believed the Claimant had been paid correctly.
12. The Claimant was unhappy with that outcome and wrote to Ian Smith, Manufacturing Director, to request a meeting with him about the same issue. By email of 7th March an administrator wrote to the Claimant to state that a meeting had been arranged for him with Mr Smith on 18th March at which Paul Bullen and Danny Block (Father of the Chapel) would also attend.
13. By letter of 14th April 2016 Mr Smith confirmed his response following that meeting. He had reviewed the contracts and custom and practice and confirmed that he believed the Bindery Management Team had acted correctly. The Claimant was not supported by the union to the extent that the Respondent had to change any of its local agreements with it.
14. Mr Smith gave evidence to this tribunal about the payment of wages and holiday pay. The tribunal accepts his evidence that the position is

governed by custom and practice as well as agreements with the union in addition to the contractual provisions. The agreement with the union does not expressly cover payment at the night rate for the weeks during which no work was undertaken or the employee was on holiday.

15. The tribunal is satisfied that clause 7.2 of the contract provides that the rate of pay is double day rates and shift premiums as appropriate. The effect is that if the employee is not working they receive the double day rate. If they were actually working and undertaking night shifts they are paid the additional premium for the night shift.
16. The contract further provides for calculation of holiday on the average pay for the previous 13 weeks.
17. Mr Smith gave further evidence which is accepted that by agreement with the union and custom and practice employees who have 2 years continuous service working night shifts as part of their regular shift pattern will be paid the night shift premium during periods when they are not required to undertake work for the Respondent (i.e. are laid off). This does not apply to those working under the Flexible Worker contracts as they do not qualify as a result of the 'lay off' periods they do not accumulate 2 years continuous service and are thus not entitled to the permanent night shift rate.
18. What Mr Smith accepted is paid at the night shift rate is if the claimant worked more than 50% of the time on night shifts throughout the year and at the end of the year had worked more than his contracted 1695 hours the 'banked hours' would be paid at the night shift rate.
19. Mr Smith was clear in evidence that unless the worker carries the night shift rate than any hours laid off are not paid at that rate.
20. With regard to the three payslips produced by the claimant for 14 November 2008, 22 October 2010 and 25 May 2012 Mr Smith accepted these appeared to show the Claimant being paid at a higher rate but these were so long ago it was not possible to establish whether this had been due to a payroll mistake.
21. The Claimant was on a night shift on 14th April 2016 and after he received the letter from Ian Smith he started making threatening comments to his colleagues about Paul Bullen and Ian Smith. These were reported to Paul Bullen and as a result the Claimant was suspended so the matter could be investigated. Peter Mansfield, Bindery Manager confirmed his suspension by letter of 29 April.
22. On 19th April 2016 the Claimant was signed off sick with "stress related problems/stress at work" until 6th May 2016.
23. Ian Smith asked Neil Dyke to conduct the investigation into the allegations. He identified who had been on shift on the night of 14th

April in the Bindery Department and arranged to meet with them on 28th April 2016.

24. The Tribunal saw his notes of the outcome of those discussions in the bundle at page 52. The Judge asked Mr Dyke how the meeting had been conducted and he explained that he saw each of the individuals with Nathan Hollis present. Mr M D Claxton, the Web Room Shift Manager, sat in on the interviews and prepared the note. Where words in the notes are in quotes that is what the witness actually said at the meeting.
25. Mr Dyke spoke to Steve Francis, Wayne Chapman, Mandy Henderson, Graham Bell and Nigel Marchant.
26. Steve Francis did not give any evidence about the comments.
27. Wayne Chapman knew that the Claimant had received his letter regarding his money and went on: -

“Knew that Mark had received his letter regarding his money. Mark said that he hoped they all die; I might have to kill them. Hope Paul Bullen and Ian Smiths children get cancer and die. Mark then said that he would get in his car the next morning and drive straight into the first car that came off the roundabout towards him. Wayne stated that the crew on the Mini Corona left Mark alone. Wayne believes that the people on the line were quite scared and are still worried, naming Mandy as a case in point. Wayne commented that Mark was a nice person but that he ‘flips’ and mentioned that Mark had threatened people before. Wayne state that what Mark had said on the night was not reported to Management. Wayne noted that Mark was on the guillotine on the Friday night. Wayne also believed that Mark had taken his letter into the office to show M Hoffman. Wayne also remembered that Gary Podd and Mathew Rudder we present when Mark made the comments regarding P Bullen and I Smith.”

28. The others were not able to give further information about the comments made.
29. Following on from that meeting Mr Dyke interviewed Gregg Gibson, Andrew Shimmon, Dean Boast and Gary Podd as they had been identified as further colleagues who may have heard the comments made by the Claimant.
30. Notes of the meeting with Greg Gibson were seen in the bundle and again Mr Hollis was present whilst this interview was conducted. The notes record: -

“GG – two weeks prior to the date Mark had commented about the company owing him money with regard to flexi rate and night shift payments and even to talk about it then he was clearly angry.

GG – I felt Mark was out of control and “they are all a bunch of cunts, Bully & Ian Smith, I wish they all die and there kids get cancer”.

GG – Comments from people on the Mini Corona that he said he was going to drive at 100mph on the way home and kill anything in his way.

GG – Confirmed he had told Dean Boast and GG was very concerned about what Mark would do ...”

31. Although some of the colleagues could not comment on the specific remarks they did comment on Facebook posts that the Claimant had made. Mr Dyke did not have copies of those and therefore was not aware of exactly what was said in them and decided to exclude them from the investigation as he was considering the issue of the Claimant at work.
32. By letter of 4th May 2016 the Claimant was invited to an investigatory meeting with Mr Dyke on 9th May. This was with regard to “threatening behaviour”. He was advised of his right to be accompanied and a copy of the company’s disciplinary rules and procedures was enclosed.

Investigation Meeting 9th May 2016

33. The Claimant was accompanied by both Nathan Hollis and Steve Minns who are union representatives. Gillian Knobs, Administrator, was present and took the notes and these appeared at page 60 of the bundle.
34. In advance of this meeting the Claimant had written to Paul Bullen apologising for his behaviour and provided Mr Dyke with a copy of that letter and it was discussed at the investigatory meeting.
35. In the meeting the Claimant said he had been told what he said but he did not remember it exactly. When asked why he had apologised then he said he had apologised for what he had said. “People say things in these moments”. His mind had been in a mess that night. He went on “Whatever I said that night I wish I had never said it. People say stupid things in life, do stupid things in life”.
36. Mr Dyke discussed the fact that the Claimant was currently signed off sick and the Claimant confirmed that he had seen his doctor. He confirmed when asked that he had spoken to his doctor about this and was due to go back to the doctor. He would not take medication.

37. The Claimant said that he had been picked on for years and gave examples as follows: -
- 37.1 Damage to my car – headlights, puncture and tyres let down.
 - 37.2 Damage to my motorbike.
 - 37.3 I keep a tidy workstation and people blow debris over it deliberately.
 - 37.4 Shrink wrap on the line
 - 37.5 He thought he knew who it was and was pretty sure who it was. He said he had reported it.
38. Steve Minns, the Claimant's trade union representative, is noted as saying, "I think MD has done nothing wrong, he just lost it when he got the letter and a few individuals heard it and reported it. It should not have come to this. There are some nasty people in this factory. MD has been picked on". Mr Hollis agreed with these sentiments.
39. Mr Dyke's evidence is following the investigatory meeting he reached the decision there was a disciplinary issue that needed to be addressed with the Claimant. However, prior to inviting the Claimant to a disciplinary meeting on 16th May 2016, Gillian Nobbs came to him to report an incident with the Claimant that had taken place on Friday 13th May 2016. She had been on reception when the Claimant came in to hand over a sick certificate. He expressed surprise that he had not heard from Neil Dyke and asked Gill Nobbs whether he had done anything yet. The Claimant said that he did not care what happened now as "I will expose this company to the media and social media. I will show them how corrupt this company is. All the flexis agree this company is taking money from them, how would you like it?" He then went on: -
- "I am going to find out where Bullen lives and I will go and tell his Mrs what kind of a bloke he really is."
40. Gill Nobbs noted that although she did not feel threatened by the Claimant she could see he was very keyed up and trembling with anger.
41. As Mr Dyke was concerned for Paul Bullen's safety he informed Ian Smith of the incident as a more senior member of staff. His understanding was that Ian Smith addressed the incident with Paul Bullen and the matter was reported to the Police.
42. By letter of 17th May 2016 the Claimant was invited to a disciplinary hearing on 20th May 2016 and was again advised of his right to be accompanied. The letter stated, "If the company considers that the allegations are founded you may be subject to further disciplinary sanctions". It did not tell him what they might be.

Disciplinary Meeting 20th May 2016

43. The meeting was conducted by Neil Dyke with Chris Earll, Web Room Line Manager, also present. The Claimant was again accompanied by two trade union representatives, Sam Riseborough, Father of the Chapel, and Steven Minns, union representative. Gemma Burke took the minutes.
44. The Claimant said he had nothing to add following the recent investigation meeting. He had apologised and could not take back what was said. Mr Dyke then referred to a further incident since the investigation involving more threatening behaviour and asked the Claimant to explain. He did not believe he had said anything threatening but "I just think that Paul Bullen's wife should know what he is doing to us flexi workers and me".
45. When Mr Dyke said that the Claimant could not go around saying things like he has the Claimant said, "I apologise, I am still very upset regarding the matter and I have already resigned myself to the fact that I have lost my job".
46. Mr Dyke advised him that following the last incident the Police had been notified and asked the Claimant if he had anything more to add. Mr Mimms asked if it would be possible to see the statement from the latest incident as the statement from Gill Nobbs had not been provided. The notes of the meeting record that "Neil, Sam and Steve entered another room so the union representatives were aware of what had been said". It appears from the evidence heard that the union representatives were then made privy to Gill Nobbs' statement but not the Claimant. The document that he gave to the union representatives was page 64. He had not said that they should not show it to the Claimant. He was unaware who read it. There was no Police statement.
47. The meeting was adjourned so that Mr Dyke could consider the matter. He determined that the Claimant had admitted what he said and apologised for it, however, he could not see any evidence the Claimant appreciated why such examples of threatening behaviour were unacceptable. He was aware that Paul Bullen had moved his wife and children out of his home when he had been informed of the incident on 13th May. Such threatening behaviour was not acceptable in the workplace and in his opinion a clear example of gross misconduct.
48. Further it was clear that despite being suspended and informed that a disciplinary investigation was being undertaken, the Claimant did not appreciate the seriousness of his behaviour as he had made further direct threats against Paul Bullen and his family on 13th May 2016.
49. In considering the appropriate sanction Mr Dyke stated he considered the Claimant's length of service and his previously disciplinary record

but concluded that due to the Claimant repeating his behaviour there had been a complete breakdown of trust and confidence in him as an employee. He had offered no acceptable mitigation for his behaviour and Mr Dyke could not feel confident that the Claimant would not behave in the same way again.

50. Mr Dyke stated that he considered the fact the Claimant had reported that he was stressed at the time but concluded that this did not excuse such extreme behaviour. The decision relating to his pay query had been communicated to him in an appropriate way and whether the decision was right or wrong it did not warrant making threats against the Managers concerned. The Claimant had then repeated the threatening behaviour nearly a month later and therefore it could not be considered a heat of the moment reaction to the decision. As a result, Mr Dyke decided that dismissal was the only option. When giving evidence he confirmed to the Judge that the second incident in the reception completely influenced his final decision. The Claimant did not initially think he had done anything wrong. Mr Dyke was forced to the conclusion the Claimant did not know how he was presenting to others, what he was saying and how his body language came across.
51. With regard to the Claimant's witness statement now produce in these proceedings Mr Dyke stated that he had never seen that sort of detail before from the Claimant in connection with what he alleged was going on within the Respondent. It was not before him at the time that he took his decision to dismiss.

Appeal

52. The Claimant submitted an appeal to Ian Smith in a hand written letter appearing in the bundle at page 71 but not dated. Mr Smith in his witness statement said he believed that the Claimant had not yet received his formal letter confirming his dismissal when he sent the letter to him and he therefore replied to the Claimant on 26th May stating that he thought this was slightly premature. Mr Smith's evidence is also that he informed the Claimant's trade union representative that if the Claimant wanted to formally appeal he would need to send a letter setting out the grounds of his appeal.
53. The Claimant submitted a further undated letter to Mr Smith confirming that he had received the dismissal letter and wished to appeal on the following grounds: -
- 53.1 It is my belief that the extent of this stress contributing to my actions was not properly considered at the disciplinary hearing.
- 53.2 It is my belief that my previous thirteen and a half years' clean record has not been properly considered.
- 53.3 He was seeking reinstatement.

54. By letter of 1st June 2016 Ian Smith confirmed to the Claimant that he proposed the 9th June for an appeal hearing. The Claimant sent a further undated letter to Mr Smith saying that “I cannot be sorry enough for everything that I have said towards Paul”. He stressed the pressure he had been under and that “I should never of [sic] allowed this to happen to me and let this matter get this far”. He knew he had let a lot of people down including the Respondent and “I am really, really sorry what has happened. And this will never ever happen again. None of what I said I meant”.

Appeal Hearing

55. Neil Dyke prepared short notes of the meeting as he attended to present the Management case. The Claimant was accompanied by Steve Minns and Nathan Hollis (Deputy Father of the Chapel). The Claimant added little to the two appeal letters he had already submitted, merely stating he wished to have the appeal considered based on the amount of stress he was under. He was sorry for what he had said and had not meant anything by the comments. It should have been dealt with at line manager level. He emphasised his length of service and that he had hardly been off sick and had been a good and hard worker. He confirmed he had never reported any grievance or issues. Mr Mimms suggested the matter had been blown out of all proportion and should have been “nipped in the bud”.
56. By letter of 13th June 2016 Mr Smith communicated his decision to the Claimant, namely that the appeal had been unsuccessful. He acknowledged it had been a hard decision for him to make and this had not been made any easier due to the Claimant’s continued good employment record with the Respondent. He stated that the Claimant had put them in an impossible position by the actions he had demonstrated when he returned to the reception to drop his sick notes off. Whether the Claimant had meant the words he came out with or not, the people it affected could not help how it had made them feel. Mr Smith had been put in a position where he had to involve the Police due to the threatening behaviour of the Claimant and no employee should feel they cannot leave their family at home while they are at work to a point where they have to go and move them out of their house. He emphasised to the Claimant that that was the outcome of the Claimant’s actions. The Claimant had to understand that people react and feel threatened by aggressive and threatening behaviour as they did not know whether the Claimant meant what was said or carry out what he had said. Mr Smith recognised it had been a difficult time for the Claimant but he hoped that he would realise that he would have to change his approach to people in the future and hoped he would have a healthy career elsewhere.
57. Mr Smith emphasised in his evidence that had the second incident in the reception not happened then he believed they would have looked

into assisting the Claimant back to work. Once the second incident had happened and so much anxiety had been caused to the employees involved that was just not possible.

Submissions

For The Respondent

58. It was suggested that there were issues of credibility so far as the Claimant's evidence was concerned. He had been somewhat evasive. What he said about the comments that he had made did not seem credible in the light of the investigatory evidence. The Tribunal should consider at the outset what the Claimant actually said. The evidence clearly points to him saying what has been alleged. The Claimant's denials need to be carefully considered.
59. In the Respondent's submissions all aspects of the *Burchell* test were satisfied. This was clearly a dismissal for gross misconduct in making threatening comments on two occasions. It was not whether individually they amounted to gross misconduct but the totality of the misconduct.
60. Mr Russell handed up an EAT decision in the case of *The Governing Body of Beardwood Humanities College v Ham* UKEAT/0379/13 as authority for the proposition that it is the totality of the conduct that must be considered.
61. The Claimant had made serious comments threatening other members of staff on 14th April. He hoped people would die, he talked about killing people and children getting cancer. Two witnesses gave consistent evidence of that. Nothing has been put forward as to why they would not give consistent evidence. Some of the people spoken to honestly said they did not hear anything. The Claimant admits he was in a state and that he could not recall what was said but now says he did not say what was alleged. The Respondent had a reasonable belief on reasonable grounds that he did make the alleged comments.
62. The comments were not throwaway remarks made in the heat of the moment. There was a long running issue over pay. This was not simply swearing. The effect on the staff concerned has to be taken into account. If it was in the heat of the moment, then what must be considered is it is repeated approximately a month later. It was questioned how that could be in the heat of the moment. It was said to a different colleague and the Claimant had not been provoked in any way. It could be said that was not so threatening, however, there are three important points to note: -
 - 62.1 What was said on the second occasion needs to be seen in the context of the threats on 14th April. The Respondent genuinely

believed that those had been made but there was a different perspective with the second comments as well.

- 62.2 The nature of the Claimant's body language. Gill Nobbs said that the Claimant was very keyed up and trembling with anger. She was very upset and distressed for Paul Bullen. It was not on the factory floor involving those in the earlier incident. Nothing has been put forward as to why Gill Nobbs would make up those comments.
- 62.3 The employer and the Tribunal must take into account the impact on Paul Bullen. Mr Smith had to take that into account. Mr Bullen had felt the necessity to move his family out and the matter had been reported to the Police. There is the repetitive nature of the Claimant's comments and the fact that he repeated them a month apart.
63. It is not credible for the Claimant to say that he just did not wish Paul Bullen well.
64. This was clearly gross misconduct. It was threatening and intimidating and there was a general concern for colleagues. It went to the heart of the contract of employment.
65. With regard to the procedure it is acknowledged by the Respondent that some aspects could have been followed through more fully. However, the Claimant understood the serious nature of the matter and the hearing he was going into. He was made aware through the investigation that one outcome could be termination. He had trade union representative representation throughout.
66. It is accepted that the trade union representative had access at least to the notes of the investigatory meeting and made representations on the Claimant's behalf. The Claimant understood the purpose of the hearing. Even if there were some aspects of the process where the paperwork could have been provided to the Claimant, the Claimant knew and understood what was occurring. It made no material difference to how the Claimant was able to represent himself.
67. The Claimant understood and knew the allegations against him. The 13th May incident was discussed and there was an adjournment for the trade union representative to consider it. They had the statements and could make representations.
68. With regard to a query from the Judge with regard to the fact that Neil Dyke was both the investigator and dealt with the disciplinary it was acknowledged on behalf of the Respondent that it was better to have a separate manager but that does not undermine the fairness of the process in this case. This was a normal process for the Respondent and the trade union representative seemed entirely comfortable about

that. There was no representation made about it and no suggestion that the trade union representatives had objected to Neil Dyke chairing the disciplinary hearing.

69. The process was still fair it was submitted and that does not undermine fairness. The Claimant had not taken an issue.
70. It was submitted that with regard to the anonymous evidence it was difficult to see what weight could be attached to that. Further it was given after the exchange of witness statements and should not be taken into account.
71. The sanction was appropriate. It may have only been two verbal comments but they were extremely serious. The stress the Claimant had been under did not excuse the extreme behaviour on his behalf.
72. Ian Smith was very honest how he found it difficult and considered the Claimant's long service, his good conduct and even moving the Claimant. He acknowledges the Claimant's remorse, however, the further threatening behaviour on 13th May had to be taken into account and that undermined the genuineness of the remorse.
73. With regard to consistency of treatment the Claimant did not raise that at the disciplinary hearing or the hearing. That was despite the fact that he was represented. It is not possible for the Respondent to consider matters that were not raised at the time. The incidents were not reported at the time and did not come to the attention of management. Had they then appropriate action would be taken. There is no evidence of similar behaviour where the Claimant was treated more seriously. The matters of concern appear to be of a different nature. They are not comparable to the circumstances here.
74. With regard to the wages claim, the basis for the claim is now clear. There is clear evidence from the Respondent with regard to how the pay was calculated in Ian Smith's witness statement and evidence. There is no evidence of any obligation on the Respondent to pay an additional rate. The evidence suggests the opposite. The Claimant was treated consistently. He may be unhappy with that but they were all treated in the same way.
75. In the Claimant's written contract of employment, it states he will get double day rate and changing shift premiums. All the Claimant has produced are a couple of payslips where it appears that he may have had a different rate. It is not clear what happened, it may have been a mistake.

For The Claimant

76. The Claimant stated he was not fighting for himself but for all the other flexi workers. On the night shift and some on double days, all the

Managers could see where he was coming from. It was grossly unfair. If he loses this case, then the Respondent will keep on doing what they have done to all the other flexi workers and that is why the Claimant dropped it years ago. He has lost his job unnecessarily and did not know what else to say.

Relevant Law

77. It is for the Respondent to satisfy the Tribunal that it had a potentially fair reason for dismissal falling within section 98 of the Employment Rights Act 1996 (ERA). The Respondent relies on conduct. The Tribunal must therefore consider the three-fold test set out in *British Home Stores v Burchell* [1978] IRLR 379. There must be established by the Respondent, the fact of their belief in the misconduct, that it had in its mind reasonable grounds upon which to sustain that belief and at the stage at which is formed that belief on those grounds the employer must have carried out as much investigation into the matter as was reasonable in all of the circumstances of the case.
78. If the Respondent satisfies the Tribunal as to the reason for dismissal, then the Tribunal must consider within section 98(4) whether in all of the circumstances of the case the Respondent acted fairly in treating that reason as a reason to dismiss the Claimant. The Tribunal must not substitute its view for that of that of the employer but determine whether the sanction of dismissal was within the band of “reasonable responses”.

Conclusions

79. The Respondent has satisfied the Tribunal that the reason for the Claimant’s dismissal was by reason of conduct, a potentially fair reason falling within section 98 of the Employment Rights Act. At the time that Mr Dyke formed that view he had carried out a reasonable investigation and had reasonable grounds for that belief. He had spoken to all of the relevant colleagues of the Claimant and two, at least, had confirmed the words that the Claimant had used. He had reasonable grounds for believing that the Claimant had stated that he ‘hoped they died’, that he might have to kill them and hoped that Paul Bullen and Ian Smith’s children got cancer and died. Approximately one month later further threats were made against Paul Bullen to Gill Nobbs. These were extremely threatening and a cause of concern.
80. Mr Dyke conducted the disciplinary hearing which was not ideal, as he had also conducted the investigation. However, the Claimant was represented by experienced trade union officials and no point was taken about this at the time.
81. The Tribunal is satisfied that the Respondent acted fairly in determining that this was reason to dismiss the Claimant. There were two separate incidents of extreme verbal threats being made. The Claimant could

no longer say that this was a one off incident in the heat of the moment when he returned to reception a month later and made similar threats. The fact that he may not, he says after the event, have ever intended to carry out the threats is of no consolation to the employees at the time that they were made against. Mr Bullen felt the need to move his family out of his own home. The Respondent had an obligation to its other workers as well as to the Claimant and in all of the circumstances dismissal was within the band of reasonable responses.

82. The Claimant has not established that he is due any further sums in respect of holiday pay. From the evidence heard the tribunal is satisfied that he has been paid holiday pay in accordance with his contract and the local agreement entered into with the union. The notes of the meeting on the 19 February 2016 at which two union representatives were present record that they both considered that the Claimant had been paid correctly.
83. The tribunal wishes to also record that had the Claimant been successful in his unfair dismissal claim there are no circumstances in which he would have recovered the amounts sought by him in his schedule of loss, in particular the £12,000 loss of redundancy payment and £30,000 for stress and harassment.

Employment Judge Laidler, Bury St Edmunds

JUDGMENT & REASONS SENT TO THE PARTIES ON

.13 February 2017.....

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FOR THE SECRETARY TO THE TRIBUNALS