EMPLOYMENT TRIBUNALS

Claimant: Mr M Greenwood

Respondent: William Hill Organisation Limited

HELD AT: Liverpool **ON:** 28 February 2017

BEFORE: Employment Judge Robinson
(sitting alone)

REPRESENTATION:

Claimant: Mr S Pinder, Solicitor
Respondent: Mr A Modgill of Counsel

JUDGMENT

The judgment of the Tribunal is that the claim for unfair dismissal fails and is dismissed.

REASONS

The Issues

1. The only issue before the Tribunal was a claim by Mr Greenwood of unfair dismissal. I give full reasons as this judgment is reserved.

Findings of Fact

2. Many of the facts of the case were agreed. The facts that I find are these.

3. The claimant is a subscriber to Facebook and from time to time there was a particular page on Facebook which was visited by employees of betting offices. The claimant posted comments, mostly of a humorous nature, on the site about the

betting industry. It was a site on which people associated with the betting industry could make comments. It was not a site unique to the respondent.

4. The claimant was ultimately dismissed for breach of the respondent's social media policy. He was dismissed summarily. The claimant had worked for the respondent for 11 years, latterly as a Betting Shop Manager. He was also a member of the respondent's Colleague Forum ("CFP") which was a body of employees from the entire United Kingdom, and a means by which the respondent liaised and consulted with its employees in its retail business.

5. The claimant's effective date of termination was 1 August 2016. He appealed the decision to dismiss him.

6. The comment that was posted on the site on 22 July 2016 was as follows:-

> "Ok – I have been walking a tightrope here – media policy – we have had the odd mention of strikes joining unions etc – I suggest smash an FOBT (Fixed Odds Betting Terminal) – most of us have four, why not smash two of them all – a large size hammer should do the trick – touch screen is probably the best to damage – Luddites unite!!!"

7. The claimant had also commented on other posts in this forum:-

> "888 might not be interested in slavery and put the restructure on hold and bring back Ralph! He gave us our birthdays off and was against single manning."

8. The respondent having seen those posts concluded, after an investigation, that the claimant had breached the social media policy which could cause serious damage to the respondent organisation and/or colleagues.

9. The social media policy amongst other things asks the employees of William Hill to act responsibly when using social media for personal use; the profile must not contain the company name or logo; when discussing work on social media sites the employee must make it clear that it is a personal opinion and not that of the company; serious breaches of the policy could constitute gross misconduct and could lead to dismissal. The policy goes on to say, again amongst other things, that when work is discussed on social media the employee must make sure that he or she makes it clear that it is their opinion and not that of the company, steer clear of arguments about work and "not say anything on social media that you wouldn't say directly at work".

10. The employee handbook states that:-

> "We will not tolerate wilful misuse of social media and will continue to take a tough stance on this. We must guard against the risk of reputational damage or malicious behaviour driven by misuse of social media channels."

11. The claimant went through a fair process including a full investigatory process together with a disciplinary hearing before the dismissing officer, Michael Taylor. He was offered and accepted the right to appeal the decision to dismiss. He was offered the right to be accompanied and he was told what the allegations were, which were:-

> "Breaches of the company social media policy on Friday 22 July and Sunday 24 July 2016 which bring the company into disrepute."

12. The claimant was warned that this may constitute gross misconduct.

13. The claimant had a live final written warning on his file but Mr Taylor did not take that into consideration when dismissing. He felt that the misdemeanours of July 2016 of which the claimant was accused were sufficient for him to decide to dismiss for gross misconduct.

14. On 3 August 2016, after a full hearing, the claimant was sent a letter by Mr Taylor setting out, in full, the reasons for his dismissal, which were that he had breached the company social media policy on two occasions and that "more specifically you have on a public forum specifically aimed at betting shop staff (I no longer fear hell), suggesting people smash gaming machines and accuse the company of being interested in slavery via the proposed restructure".

15. Mr Taylor accepted that although the claimant was not wholly confirming his status as a William Hill employee the post strongly suggested that that was the case because he displayed intimate knowledge of people and policies relating to William Hill. Those comments would then be in the domain of the general public.

16. Mr Taylor concluded that the claimant did know the social media policy because the claimant himself said, "I've been walking on a tightrope here – media policy". Mr Taylor accepted that even if the claimant was unaware of the fine detail of the social media policy, that particular quote he found was telling in that the claimant at the time recognised he was walking a tightrope. Mr Taylor felt that the claimant knew that he should not have been making such comments but still chose to do so.

17. With regard to the comment about slavery, Mr Taylor concluded that it related to the proposed restructure. He concluded that the claimant was suggesting that William Hill was interested in slavery and the claimant wanted to put another betting organisation's (888's) view, if they had an interest in William Hill, so that the restructure might be put on hold. Mr Taylor thought that even if the claimant had meant all the comments in jest it was in very bad taste and offensive to those who "freely enjoy employment at William Hill".

18. Mr Taylor referred to the claimant being a colleague forum representative only to put in context his surprise that the claimant would go on such a site, which is known as an incendiary and lively group, during the impending restructure of William Hill. This was especially worrying to Mr Taylor because other employees would be going to the claimant for advice.

19. Having concluded as above the claimant was dismissed. He appealed and in his appeal letter he says this:-

> "I apologise for the comments I made on social media and realise how unwise they were. I feel the present unsettling time at William Hill, due to restructuring, prompted me to react in this manner. The comments I made were a very bad joke. There was no intention for them to become a reality."

20. During the course of the disciplinary process generally the claimant accepted that sometimes he had no time to think through his replies to the investigating and disciplinary officers but that he did not think his comments would be taken seriously. I find that throughout the process Mr Greenwood was able to get his point across in order to defend himself.

21. The claimant accepted that the reasons for the dismissal were explained to him. He accepted that at the appeal all his grounds of appeal were discussed, including the fact that he had 11 years' service.

22. The claimant accepted at his appeal the thrust of his defence was that it was the sanction which was too severe. During the course of the hearing before me the claimant accepted the posts were in breach of the respondent's social media policy.

The Law

23. The principles I applied in coming to my conclusion were that I must not substitute my views for the views of the dismissing officer.

24. The burden is upon the respondent to establish the reason for the dismissal under the provisions of section 98 of the Employment Rights Act 1996. I have to consider whether the reason for dismissal was one of the potentially fair ones set out in section 98(2) which includes the conduct of the employee. I have to consider whether the dismissal was procedurally fair, and where the employer has fulfilled the requirements of subsection (1) of section 98 the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer):-

> "Depend on whether in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case."

25. Finally I have to decide whether the dismissal was within the band of reasonable responses, accepting that the band is a wide one.

Conclusions

26. Applying those principles of the facts of the case I concluded as follows.

27. It is worth setting out the respective positions of the parties in this matter.

28. As far as the claimant was concerned, the posts by him were jests, that he was anxious that his human rights were being breached because he felt that he should have the right to free speech; that he was just being honest but he did not believe that his comments had harmed or could harm the respondent. He believed that his statements were so ridiculous that what he was suggesting was never going to happen. Ultimately, at the appeal he however did accept that it was the sanction which was too severe and that the posts were in breach of the social media policy.

29. The respondent's position was that they accepted that lively debate is part and parcel of life, but that Mr Greenwood had crossed a line because in effect he was inciting people to violence, and although he may have thought it was a jest someone reading it may not have done and may have acted upon the comment.

30. The respondent accepted that it was a sensitive time for all employees because of the restructure and therefore it was imperative that employees should be careful what they say on social media.

31. Although Mr Taylor noted that the claimant was a member of the Colleague Forum he made it clear that he was not dismissing for that reason. He was dismissing for conduct on the basis that the claimant had been in breach of the social media policy, and that ultimately what the claimant did, especially as a manager of a betting shop with FOBTs in situ, was a serious breach of his obligations such that dismissal without notice was a sanction open to him.

32. Mr Taylor did consider other sanctions, including demotion, but felt that demotion was more appropriate when, say, a manager was struggling to cope with looking after a betting shop. Here Mr Taylor felt the breach of the social media policy was so serious that dismissal was the appropriate sanction.

33. Mr Taylor did not take into account the final written warning of the claimant.

34. It was suggested that the claimant could simply have been taken off the colleague forum committee but Mr Taylor, at this hearing, said that he was not sure whether he had the power to do that.

35. Taking those positions into account and the facts of this case I concluded that Mr Taylor did have a genuine belief on reasonable grounds after a reasonable investigation that the claimant had been guilty of gross misconduct.

36. The claimant accepted that he was in breach of the social media policy. Breach of such a policy can amount to gross misconduct. The claimant accepted in his appeal letter that he was unwise to have made the comments. When the claimant was cross examined on the point he was unconvincing when he said that he only made that comment about being unwise because it was the way the respondent took the post rather than his own personal view. I find that the claimant accepted, when drafting his appeal letter, that it had been unwise of him to post on Facebook what he posted.

37. Mr Taylor established that Mr Greenwood knew about the social media policy. He knew that a breach of it could lead to dismissal. Mr Taylor believed Mr Greenwood had been guilty of the misconduct. At the time that he decided these things he had in mind reasonable grounds upon which to sustain that belief and at the stage at which the belief was formed on those grounds he had carried out, or the respondent had carried out, as much investigation into the matter as was reasonable in the circumstances. Indeed there was little debate at this hearing about the facts of the case.

38. The real battleground, therefore, with regard to this case was whether the sanction was too draconian and that, as Mr Pinder put it, there is a balance to be

made between an employee's right to free speech and the respondent's right not to have the reputation of the company impugned.

39. However, I cannot substitute my views for the views of the dismissing officer. Mr Taylor had a situation where the claimant knew the policy had been breached, knew that that could be very serious for him if such posts came to the his employers notice and that it was a sensitive time commercially for the respondents. The band of reasonable responses is very wide.

40. In those circumstances I cannot interfere with Mr Taylor's decision for the above reasons, and consequently I find that the claimant's dismissal in all the circumstances of the case, was fair.

28-03-17

Employment Judge Robinson

JUDGMENT AND REASONS
SENT TO THE PARTIES ON

30 March 2017

FOR THE TRIBUNAL OFFICE