



EMPLOYMENT TRIBUNALS

Claimant: Robert Buckley

Respondent: R.A.G.S. (UK) Ltd

Heard at: Birmingham

On: 27th April 2017

Before: Employment Judge Pitt

Representation

Claimant: Mr. Price (Solicitor)

Respondent: Mr. G Haynes (Managing Director)

JUDGMENT

1. The claimant was unfairly dismissed
2. The claimant contributed to his dismissal and his award will be reduced by 50%
3. There will be a basic award of £720
4. There will be a compensatory award as follows: £1582
5. The respondent shall pay to the claimant the sum of £2302
6. This is not an award to which the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 apply.

REASONS

1. This is a claim by Mr. Robert Buckley, whose date of birth is 12th September 1979, was employed by the respondent from 22nd May 2014 until his dismissal on 16th November 2016. At the effective date of termination he was 37 years of age and had 2 years complete service. He makes a claim for unfair dismissal. I had before a bundle of documents me incorporating the contract of employment some notes of meetings and letter of dismissal.
2. I heard evidence from Mr. Graham Haynes Managing director; Judi Richardson, Office Manager; Luke Haynes, and Robert Jordan; warehouse assistant. I also read a witness statement from Steven O'Connell, Financial Director; this witness statement was provided at my request via email as the respondent had produced no evidence

concerning the appeal hearing. I refused an application to allow live evidence on the point. The claimant give evidence on his own behalf.

3.1 The agreed facts are: The respondent is a small company selling bespoke furniture; it operates on an online only basis. The respondent relies on a good product and good service to maintain its reputation and obtain future orders. It employs 35 employees; of these 10 are drivers; 10 in the warehouse on a shift system; and a small number of administrators of whom Mrs. Richardson and Mr. O'Connell are two. Mr. Buckley was employed in the warehouse his primary role was to organize the loading of local courier vans on a daily basis; this entailed selecting items from the warehouse and packaging them ready to load. This latter task was carried at the front of the warehouse and required the claimant to cut cardboard to pack around the product. Prior to the events which led to dismissal the claimant had been spoken to by Graham Haynes concerning his attitude, including an incident where the claimant walked across furniture

3.2 During the week commencing 7th November the respondent wished to operate a new shift system. Graham Haynes spoke to the claimant and offered him the choice of shifts which were to start the following week. The claimant agreed to this.

3.3 The events surrounding the door: This refers to a rolling shutter door; there were two such doors giving access to the warehouse. Some two or three weeks prior to the claimant's dismissal the respondent decided it wished to use the second door. There were discussions with the claimant regarding his 'workstation' which obstructed the door. The door needed repairing. Once it was repaired it was opened and the claimant accepts that he did close it. The claimant in his evidence accepted that he had a problem taking instructions from Luke Haynes.

3.4 The events surrounding the loading of the lorry for Scotland, The Scotland Pick. On the morning of 15th November Luke Haynes discovered that the lorry delivering in Scotland and not been loaded. The lorry was scheduled to leave the warehouse at 8am in order to make deliveries on time. It was scheduled to be away for three days. Both Messrs. Haynes drove to the warehouse to ensure the lorry was loaded. Luke Haynes telephoned and spoke to the claimant advising him that the lorry needed to be loaded. Upon arrival at the warehouse Mr. Jordan was working on loading; the claimant was carrying cardboard to a recycling bin. Luke Haynes demanded to know the whereabouts of the claimant by shouting, 'Where the fuck is Buckley' the claimant heard this and as a result when he was spoken to by Luke Haynes immediately thereafter he ignored him. The claimant then joined Mr. Jordan and Messrs. Haynes in loading the Scotland lorry.

3.5 Approximately 5 minutes before the end of his shift the claimant was handed a letter (page 19) by Mrs. Richardson inviting him to a disciplinary meeting the following day at 10am. The claimant attended with his father; Graham and Luke Haynes and Mrs. Richardson were present on behalf of the respondent. The claimant was dismissed following this meeting. The claimant appealed (page 27) the appeal was heard by Mr. O'Connell on 23rd November. Prior to the meeting Mr. O'Connell had

spoken to Graham Haynes and Robert Jordan. No notes of these conversations were supplied to the claimant. The result of the appeal was that the dismissal was upheld.

The Law

4.1 Section 98 Employment Rights Act 1996 sets out the principles in relation to dismissal; it is for the employer to show the reason for the dismissal and for the purposes of this case conduct may found a fair dismissal. If the employer establishes that the claimant was dismissed for conduct the Tribunal then has to go on and consider whether the dismissal is fair or unfair and whether the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the claimant. The Tribunal must take account of the size of the respondent company.

4.2 The Tribunal must consider the ACAS Code of Practice regarding Disciplinary and Grievance procedures which in brief are; establish the facts; notify the employee in writing; hold a meeting; allow the employee to be accompanied and provide for an appeal.

4.3 Guidance may be found in *British Home Stores v Burchell* 1978 [UKEAT] 108 on how a Tribunal should approach a conduct dismissal; Employer must show it believed the employee guilty of misconduct It had in mind reasonable grounds upon which to sustain that belief At the stage at which that belief was formed it had carried out as much investigation as was reasonable.

4.4 In a case of insubordination the Tribunal must look at the following factors was the order given legitimate? Was the order reasonable? The reasonableness of the employee refusal.

Discussion and Conclusions

5.1 I first looked at the facts to establish what had occurred I concluded the following; I am satisfied despite the claimant's assertion to the contrary he knew not only that Luke Hayes was Graham Haynes son but that he held a position of authority in the company. Further The claimant had been asked to move his workstation in order that the second shutter could be used although it was not made clear to the claimant that the door was to remain open at all times. It is unclear from the evidence which particular order the claimant is said to have refused to follow In particular which order he was dismissed for. The evidence I heard seemed to concentrate on the moving of the workstation which the claimant failed to do but the issue for the respondent seemed to be the opening/closing of the door. Whilst I am satisfied that the claimant did not move his workstation and did close the door on one occasion he was dismissed for ignoring requests, plural, there was only evidence of one occasion.

5.2 The claimant was asked to assist in the pick for the Scotland lorry. Prior to the arrival of Messrs. Haynes his only involvement was to assist with a triple wardrobe. After the arrival of the Haynes he did assist. The intervening time was a period of approximately 15-20 minutes. I concluded that the claimant did not assist in the pick save for one short period until the

Haynes arrived. The respondent did not have evidence that any of the goods were delayed in particular complaints from customers. Nor did they have any evidence about the impact on the journey for the driver, in particular they were unable to even say when the lorry left or how late it was.

5.3 The Procedure; It is clear that the initial procedure was flawed in the following ways: the claimant was given insufficient time to prepare by respondent for the hearing; although he was aware of the issue surrounding the Scotland pick he was not given details as to the failure to respond to various requests from Luke and Graham Haynes; and indeed it is unclear which 'order' he has refused or ignored.

5.3.1 The hearing itself was carried out in an adhoc manner; there was no investigation into the facts of either of the instructions; whilst in a small company this may not be strictly necessary where there is a refusal of a managers order. The situation regarding the door is unclear in particular which order was disobeyed and the events prior to the Haynes arriving on 15th were not established and a short investigation was merited. In particular the taking of a witness statement from Mr. Jordan. The hearing was carried out in an unorthodox manner; rather than the respondent putting its case and the claimant responding here both the Haynes questioned the claimant about the events and. The hearing could have been dealt with by Mrs. Richardson or Mr. O'Connell so that there was an appearance that the outcome had not been pre-determined. It is clear that the decision was not made by Graham Haynes alone but in consultation with his son Luke and Mrs. Richardson.

5.3.2 The reason for the dismissal was stated to be (page 26) ignoring a request to focus on the loading of a van as a matter of priority; repeated requests to use the second shutter door; climbing over wardrobes. Graham Haynes in his evidence asserted that the final reason in the letter was not an operational factor in his decision however having listened to his evidence it was clear to me that in effect the Scotland Pick was a final straw. Whilst Graham Hayes went to great lengths in his evidence to point out the importance of the van leaving on time and the potential impact of delay there was no evidence to this effect. I concluded therefore that whilst Graham Haynes genuinely held the view that the claimant had not obeyed instructions; there was no investigation and the belief was predetermined

5.3.3 I considered whether the appeal hearing remedied the flaws of the earlier hearing. Mr. O'Connell spoke to Mr. Jordan and both Messer Haynes but the outcome of the latter conversations were not revealed to the claimant before the hearing on 23rd Nov and in fact the claimant only received a statement from Mr. Jordan to comment on after the events. He was never shown or told about the contents of conversation with the Haynes in order to comment upon them. In these circumstances I concluded that the appeal did not remedy the earlier flaws. The dismissal is therefore unfair.

6.1 I went on to look at whether, if a fair procedure had been followed the claimant would still have been dismissed. The asserted reason for dismissal, in evidence, are the two incidents referred to above. However the letter of dismissal refers to other occasions; it is clear that Graham Haynes had in mind the previous history of the claimant in his working relationships with others when dismissing him.

6.2 The circumstances surrounding the door are such that it is unclear exactly why the claimant was disciplined; was it the refusal to move the workstation or the closing of the door and if so on how many occasions? I concluded that the respondent had not identified precisely which order the claimant had refused. If this had been remedied I asked myself would a reasonable employer dismiss for these acts of petty defiance particularly in light of the claimants helpful attitude towards the new shift system. I concluded that he would not be dismissed

6.3 As to the Scotland Pick; whilst I accept Mr. Haynes assertions of the possible impact of delay; there was no evidence of delay or a detrimental impact on the drivers; no complaints of customers. The noncompliance of the claimant lasted for a period of 15 -20 minutes. When Graham Haynes arrived the claimant did assist in the loading. I asked myself would a reasonable employer dismiss for this single short term noncompliance with a lawful order. I concluded not.

6.4 Neither of the acts were of themselves so grossly insubordinate as to merit instant dismissal. I then looked at the cumulative effect of the refusal of the two orders. Again I concluded that a reasonable employer would not dismiss for these two acts

7.1 Having concluded that a fair procedure would not remedy the situation I looked whether the claimant contributed to his dismissal. I examined whether the claimant's behavior was culpable and blameworthy and contributed to his dismissal. In relation to the Scotland pick I'm satisfied that the claimant did not comply with Luke Haynes instruction. In relation to the door whilst I am unsure of the specific instruction the claimant disobey I am satisfied that he was being obstructive in relation to the use of the door and the moving of his workstation. Having had the opportunity to observe the claimant's demeanor it is clear that when asked to carryout task by Luke Haynes he was obstructive. I have to assess the level of contribution and I do so as reducing an award by 50%.

8.1 I am obliged to look at the breaches of the ACAS code. There wasn't a complete disregard of the procedures rather a misunderstanding of their application and so I assess the uplift at 10%

9 There will be an award as follows

Basic Award	£720
Compensatory award	
Loss of earnings to 24th January	£3058
Loss of earnings to 6 th February	£107
Loss of statutory rights	£350

Total loss	£3515
10% uplift for failure to follow procedure	£351.5 (3164)
Less 50% contribution	£1582 (1582)
Total Compensatory Award	£1582
Total Award	£2302

Employment Judge Pitt

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

05 May 2017

Letisha Cowan

FOR THE TRIBUNAL OFFICE