



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr L Don

v

Greggs Plc

Heard at: Cambridge

On: 15 December 2017

Before: Employment Judge Bloom

Appearances

For the Claimant: In person and assisted by his mother Mrs M Don.

For the Respondent: Mr R Ryan, Counsel.

JUDGMENT

1. The claimant's claim of unfair dismissal fails and is therefore dismissed.

REASONS

1. The claimant attended the hearing in which he alleged his dismissal was unfair. The claimant represented himself although he was assisted throughout the hearing by his mother, Mrs M Don. The respondent was represented by Mr R Ryan of counsel. I heard detailed evidence from the claimant, and two witnesses called on behalf of the respondent namely Mr John Elderfield who was the dismissing manager and Mrs Karen Walker who conducted the second stage of the respondent's appeal process. I also read their three witness statements and considered all of the relevant documents that were contained in a joint bundle.
2. The claimant was employed by the respondent who are a well known food retailer. The claimant was employed as a warehouse picker at their distribution centre in Kettering. He commenced his employment on 2 February 2007. The effective date of his dismissal was 20 December 2016.

3. The claimant was summarily dismissed by Mr Elderfield on 20 December 2016 following what he concluded was an act of gross misconduct by the claimant, namely pushing his team leader Mr D Moat during the course of the night shift at the distribution centre on 6 December 2016. There was no dispute between the parties that if the claimant had pushed Mr Moat as was alleged that this was anything other than an offense of gross misconduct which would have justified the claimant's dismissal. The claimant's case was that he denied any altercation including pushing Mr Moat. At the commencement of the hearing I explained carefully and fully to the claimant and his mother that it was not for me to decide whether or not he had in fact pushed Mr Moat as was alleged. It was not for me to substitute my view for the respondent. In order to succeed in his claim for unfair dismissal I would have to conclude that the decision taken by respondent to dismiss the claimant fell outside the bands of reasonable responses available to a reasonable employer in the circumstances. In determining such an issue I take into account the well established principles set out in the case of British Homes Stores v Burchell. I have to decide whether or not the respondent believed the claimant had pushed Mr Moat as was alleged; whether or not that was a reasonable belief; and thirdly whether or not they carried out a full and fair investigation prior to taking the decision to dismiss.
4. It is for the respondent to show, on the balance of probabilities, that the reason for the claimant's dismissal was a potentially fair reason. Examples of potentially fair reasons for dismissal are set out in s.98(2) of the Employment Rights Act 1996. S.98(2)(b) of the 1996 Act states that conduct is a potentially fair reason for dismissal. If the respondents are able to show that the dismissal, as they allege in this case was relating to the claimant's conduct then I have to go onto determine whether or not the dismissal was fair or unfair having regard to the criteria set out in the provisions of s.98(4) of the Employment Rights Act 1996.
5. Having heard the evidence and on the balance of probabilities I come to the following findings of fact.

Findings of Fact

6. As I have stated the claimant began his employment in February 2007. He was a hard working employee and enjoyed his work. In fact he told me during the course of evidence that he was "very happy" throughout his time of employment. The claimant is autistic suffering from, in his words, "low level autism". This means on occasions when there are difficulties at work he feels he cannot cope and loses his temper. The respondents were aware of that condition and it was common ground between the parties that they had agreed in the past that when he was feeling either angry or frustrated at work he could take a five minute break to cool off. The claimant accepted during the course of his evidence that that was a reasonable and helpful approach for the respondents take throughout his employment.

7. In October 2016 there had been another incident at work between the claimant and another team leader. The claimant was already prior to that incident on a final written warning. The respondents have a disciplinary procedure which entitles them to impose an alternative sanction in the event of an employee already being subjected to a final written warning. That is known as “action short of dismissal”. As a result of that particular incident that sanction was imposed against the claimant in October 2016.
8. On 6 December 2016 the claimant was working a night shift. Either shortly before or shortly after midnight (the exact time does not matter) Mr Moat alleged that there was an altercation in his office involving the claimant. No one else was present and despite extensive enquiries undertaken by the respondent no witnesses could be found to it. Mr Moat alleged that the claimant became angry after he was instructed to carry out a particular duty and in the course of that altercation he “shoved” Mr Moat backwards. Mr Moat says that he stumbled backwards about one and half metres. That was the extent of the altercation and after it the claimant returned to his duties although he was complaining and moaning about instructions being given to him, and according to witnesses engaged in a number of sarcastic comments about Mr Moat throughout the rest of the shift.
9. Nothing more was said about it that night but the following day on 7 December 2016 Mr Moat made a complaint about the incident. He had previously spoken to a colleague Mr Spittle who said that he should report the incident to management. As a result it was reported.
10. Thereafter I am entirely satisfied that the respondent undertook a fair detailed investigation. I have noted that the claimant himself accepted in evidence that throughout the matter the correct procedures were followed. The claimant was suspended from work pending the investigation. He was told why he was suspended and was given full details of the allegation against him. Throughout the various processes including an investigation meeting, the disciplinary hearing and the appeal hearing he was given and took advantage of his right to be accompanied by a Trade Union representative. Mr Moat himself attended two investigation meetings and gave an account of what he said happened, and throughout those meetings confirmed that the claimant had pushed him backwards. Although no one actually witnessed that incident Mr Spittle who was working the same shift gave evidence to say that shortly after the alleged incident he noted that Mr Moat “looked shook up”. The witnesses who were interviewed by the respondent stated that the claimant did appear angry during the course of the shift and was making various sarcastic comments throughout.
11. The claimant was shown all of the investigatory notes and minutes of the meetings prior to the disciplinary hearing. When questioned about the incident himself, the claimant admitted that he had been “annoyed” at Mr Moat’s request to undertake the addition stock picking that night. He originally denied speaking to Mr Moat, but later admitted that he had done

so and after initially denying that he had been in Mr Moat's office admitted that he had spoken to him in the office that night.

12. By letter dated 15 December 2016 the claimant was invited to a disciplinary hearing which was originally scheduled to take place on 21 December 2016 but was rescheduled and went ahead on 20 December 2016. The letter was correctly constructed and warned the claimant that if the allegation was found proven his dismissal might be a possible sanction. The claimant was accompanied at the disciplinary hearing and was given a full opportunity of giving a detailed account in respect of the incident in question. The claimant does complain that he believes other people who were on the shift in question should have been interviewed, but I am satisfied that those who could assist the investigation from either point of view were interviewed. There was no glaring omission in that regard.
13. Having considered all of the claimant's representations and the evidence before him I conclude that Mr Elderfield who conducted the disciplinary hearing gave the matter proper consideration. He took into account the claimant's past history of employment and the fact that only two months previously he had been placed on an "action short of dismissal". More importantly Mr Elderfield concluded that the allegation against the claimant was, on the balance of probabilities, proven namely that the claimant had pushed Mr Moat. Pushing a team supervisor during the course of employment was Mr Elderfield concluded an offence of gross misconduct. He took the decision therefore to terminate the claimant's employment without notice.
14. It should be noted that the claimant does complain that a contributory reason for Mr Moat, according to his version, making up the story was that Mr Moat was homophobic and did not like gay people. The claimant is gay. However there was no application or claim before the tribunal alleging that the claimant was discriminated against on the ground of his sexual orientation. The only claim was one of unfair dismissal. The respondents in any event deny that that fact was the cause or a contributory cause towards the claimant's dismissal.
15. The claimant was properly offered the right of an appeal against his dismissal. That appeal was heard by a senior manager, Mr David Henderson on 3 February 2017. Again there is no complaint about the way the appeal was conducted by the claimant and I conclude that it was a fairly considered process in which Mr Henderson considered all of the relevant evidence before reaching a decision to reject the claimant's appeal. This respondent permits a second stage appeal by way of a review against the dismissal to see if and against the first appeal decision. That process was conducted by Mrs Walker. She considered quite properly in my judgment all of the relevant evidence and rejected the claimant's final appeal.

16. As I said at the outset of this judgment it is not for me to substitute my view for a reasonable employer. In my judgment the decision taken by the respondent to dismiss the claimant does fall within the bands of reasonable responses available to a reasonable employer. They had a complaint from Mr Moat that he had been pushed by the claimant during the course of the night shift. The team supervisor being pushed by an employee is something that cannot be tolerated within the workplace, and I am satisfied it constitutes an offense of conduct relevant for the purposes of s.98(2) of the 1996 Act. I am satisfied on the balance of probabilities that the respondent has shown that to be a potentially fair reason for the claimant's dismissal. I am equally satisfied that the decision taken to dismiss the claimant was fair in all the circumstances. The respondents believed that the claimant had pushed Mr Moat. They had Mr Moat's version of events which was supported by the fact he was seen to have been "shaken up" by someone else on the same shift. The respondent's belief that the claimant had pushed Mr Moat was in my judgment a reasonable one and it did follow a fair and detailed investigation and disciplinary process. Consequently I find that the decision taken by the respondent to dismiss the claimant falls within the band of reasonable responses and was therefore fair. As a result the claimant's claim of unfair dismissal fails and is dismissed.

Employment Judge Bloom

Date:

Sent to the parties on: ...11/01/2018.....

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For the Tribunal Office