RM

EMPLOYMENT TRIBUNALS

Claimant: **Mr Geoff Keily**

Respondent: **Virgin Media Limited**

Heard at: **East London Hearing Centre**

On: **15 February 2018**

Before: **Employment Judge R Barrowclough**

Representation

Claimant: In person

Respondent: Miss G Roberts (Counsel)

JUDGMENT

The judgment of the Tribunal is that the Claimant was not unfairly dismissed by the Respondent. Accordingly, his claim of unfair dismissal fails and is itself dismissed.

REASONS

1 This is a claim of unfair dismissal. The Claimant, Mr Geoff Keily, was employed by the Respondent, Virgin Media Limited, as a field sales adviser from 23 July 2012 until 12 May 2017 when, as is accepted, he was summarily dismissed. The Respondent asserts that its reason for dismissing the Claimant was misconduct, and that it acted fairly in treating that as a sufficient reason for dismissal. I heard evidence from the Claimant, who represented himself at trial, and from Mr Keith Hall, the Respondent's direct sales manager for its midlands region, who conducted the Claimant's disciplinary hearing and who took the decision to dismiss him, and Mr Paul Main, a regional sales manager, who heard and dismissed the Claimant's appeal, on behalf of the Respondent, which was represented by Miss Roberts of Counsel.

2 The Respondent is a company which provides fixed and mobile telephone, television, and broadband internet services to businesses and consumers throughout the United Kingdom. The Claimant's role as a field sales adviser was within the Respondent's

direct sales team for their North London region. That team operates from premises in North London, which include a first-floor staff office. Prior to the events giving rise to his dismissal, the Claimant had a clean disciplinary record.

3 On 26 April 2017 at about 7.30pm there was incident in the North London region's staff office, in which the Claimant was involved. Also in the room at that time were three of his colleagues, a woman called Georgiana and two men named Qassim and Tyrone. The incident arose because Qassim was talking to Georgiana and trying to persuade to her to do him a deal, in letting him have some SIM cards at very advantageous rates. The Claimant apparently believed that Qassim was being overly pressing in his demands, and putting Georgiana under unfair pressure to accommodate him, and came to her aid, telling Qassim in allegedly robust language that he shouldn't be asking for such favourable treatment. Qassim reacted by telling the Claimant not to interfere and that it was none of his business, and, as the Claimant subsequently accepted, there was a heated altercation between him and Qassim, during which the Claimant suggested that he and Qassim 'go outside' to settle or finish matters. Qassim did not accept that invitation, leaving the office for the day shortly thereafter; but on the following day he submitted a complaint to the store manager Mr Dessan, claiming that he had been threatened and intimidated whilst at work by the Claimant. All four individuals who had been present in the office on the evening of 26 April were subsequently interviewed by Mr Dessan, and the Claimant was thereafter suspended from work on full pay. A disciplinary investigation was then undertaken by Mr Ali Aboubakr, the local regional manager, who once again interviewed the four employees concerned. Following that investigation, the Respondent wrote to the Claimant on 8 May, inviting him to attend a disciplinary hearing on 11 May charged with 'aggressive behaviour and using abusive language in the office', which he was warned could lead to his summary dismissal if proved. The Claimant was also told of his right to be accompanied at the disciplinary hearing, and provided with a copy of the investigation report and its various attachments.

4 The disciplinary hearing was chaired by Mr Hall, a manager from a different region who had had no previous contact with any of those involved in the relevant events. At the outset of the hearing on 11 May 2017, it is agreed that the Claimant said that he had had less than the 48 hours' notice of the hearing, which is the minimum provided for in the Respondent's disciplinary procedure. Nevertheless, the hearing went ahead on 11 May, and at its conclusion Mr Hall adjourned to consider his decision. He telephoned the Claimant on the following day and informed him that he was being summarily dismissed for gross misconduct. Mr Hall subsequently sent the Claimant a comprehensive letter, confirming the decision to dismiss him and the reasons why he had reached that decision. As was his right, the Claimant appealed against that decision, and his appeal was heard by Mr Paul Main, once again an unconnected manager from a different region. He took time to consider his decision following the appeal hearing, which took place on 14 June 2017; that ultimately was to uphold Mr Hall's decision and to dismiss the Claimant's appeal.

5 At the outset of this full merits hearing I explained the relevant legal principles and issues to be determined to the Claimant, and I now turn to address them.

6 First of all, I am satisfied that the Respondent's reason for dismissing the Claimant was in fact misconduct. The overwhelming majority of the evidence I heard from Messrs Hall and Main and read in the agreed trial bundle points to that being the Respondent's

sole reason for dismissing him, and that evidence was not challenged. It is correct to say that a suggestion was put by the Claimant during his cross-examination of Mr Hall as to whether the Respondent was then looking to remove the role that the Claimant then undertook; but that was denied by Mr Hall, and subsequently not pursued by the Claimant, who provided no evidence to support or confirm any such theory, which had not been raised by him at any stage in the disciplinary process. Overall, I find that conduct has been proved to be the reason for dismissal, applying a balance of probabilities.

7 Accordingly, the principles in the well-known case of *British Homes Stores v Burchell [1980] ICR 303* apply. Did the employer genuinely believe, on reasonable grounds and following an appropriate investigation, that the employee was guilty of misconduct? If the answer to all three parts of that question is in the affirmative, then the Tribunal should go on to consider whether the Respondent applied a reasonably fair disciplinary process, and whether in all the circumstances dismissal falls within the range of responses open to a reasonable employer.

8 For essentially the reasons already outlined, I accept that the Respondent genuinely believed that the Claimant was guilty of misconduct. I also agree with Ms Roberts' submission that the investigation which the Respondent undertook, first by the store manager interviewing all the individuals concerned (as was accepted by the Claimant), and then all of them being re-interviewed by the manager conducting the disciplinary investigation, goes a very long way to establishing that the Respondent's belief was held on reasonable grounds. What emerged from those series of interviews was that the Claimant accepted that there had been an angry altercation between himself and Qassim, at the conclusion of which the Claimant stood up and suggested to Qassim that they go outside to finish their argument. All four witnesses (including the Claimant) said that the argument was heated, and that the Claimant may very well have sworn at Qassim while they were arguing, calling him either a robbing or a thieving bastard. Whilst the Claimant says that in fact his intention had been to have a quiet word with Qassim outside in the absence of witnesses, as he says he had done on an unrelated earlier occasion, it was clearly perfectly reasonable, and permissible in my judgment, for Mr Hall to decide, as he did, that in fact what was being suggested was that Qassim come outside for a fight. Overall, there were reasonable grounds for the Respondent to conclude that the Claimant was threatening Qassim with violence. Finally, the disciplinary investigation undertaken by the Respondent was not challenged by the Claimant; rightly in my view, since it plainly falls into the category of what was reasonable and appropriate in all the circumstances. Accordingly, the three limbs of the *Burchell* 'test' have been met.

9 The next question is whether the Respondent followed a fair disciplinary procedure. There are really two points or issues in relation to that question. The first is that, as is accepted, the disciplinary hearing was held within 48 hours of the invitation to attend being received by the Claimant, together with at least some of the relevant statements or documentation, that being the minimum period of notice stipulated in the Respondent's procedure.

10 The Respondent says that this point was raised by the Claimant at the outset of the hearing with Mr Hall, but that, when asked whether he wanted a postponement, the Claimant repeatedly stated that he was prepared to go ahead with the hearing there and then, on the basis of the documentation which he said he had seen and read, albeit belatedly. The Claimant on the other hand stated that he had asked twice for the

disciplinary hearing to be postponed or adjourned due to the lack of notice, but that he was in essence bullied or forced into going ahead with it on 11 May. I prefer the Respondent's account for essentially the following reasons. It is accepted that the Claimant was provided with copies of the disciplinary hearing minutes after the event, which notes support what Mr Hall says happened, and in which there is no mention of the Claimant's alleged objections or request for an adjournment. At no point did the Claimant or anyone on his behalf suggest that those notes were wrong, inaccurate or false. Secondly, whilst in his grounds of appeal to Mr Main the Claimant correctly states that he received less than 48 hours notice of the disciplinary meeting, that issue and his alleged repeated requests for a postponement were not raised at the appeal itself. That is certain, since the appeal minutes were agreed both by the Claimant and by his union representative who was then in attendance as being accurate; and there is no mention of those matters in them. Had there been any such exchange at the beginning of the disciplinary hearing, then I am sure it would have been raised and relied upon on appeal.

11 The second issue is that Mr Main, who chaired the appeal, confirmed that he did not know, and that he made no enquiries about, either the Claimant's length of service or about the existence of any disciplinary record on the Claimant's part. I have to say that I found that to have been both surprising and disturbing, particularly since one of the Claimant's grounds of appeal was that the outcome of the disciplinary hearing, namely his summary dismissal, was very extreme. How was Mr Main to determine properly whether or not that was the case, unless he had made enquiries and/or had the relevant information about the Claimant's employment history with the Respondent? However, I have come to the conclusion that the main (if not the only) purpose of a disciplinary appeal in an unfair dismissal case such as this is to 'cure', if that is possible, any errors or mistakes that may have arisen at the disciplinary hearing stage; and since it was not challenged or contested that Mr Hall, who chaired the disciplinary hearing and took the decision to dismiss the Claimant, was aware of both his length of service and his clean disciplinary record, and that he considered alternatives to dismissal albeit rejecting them, no such error to be 'cured' arises in this case. Accordingly, for these reasons and not without considerable reservations, I conclude that the Respondent adopted a reasonably fair disciplinary procedure.

12 The final question is whether in all the circumstances dismissal of the Claimant was within the range of responses open to a reasonable employer. In my judgment, the answer has to be that it was. The disciplinary procedure itself makes plain that using intimidatory language, or bullying or discriminatory behaviour is an example of gross misconduct, which is likely to result in summary dismissal. The Claimant's conduct falls into that category, in my view. Secondly, the Respondent's harassment policy makes plain that any such conduct will be subjected to disciplinary procedures, up to and including dismissal of the perpetrator for gross misconduct. Thirdly, as the Claimant accepts, he was aware at the time of the Respondent's zero tolerance approach to harassment, which had been set out in the CEO's email to all the Respondent's employees of 25 February 2016, a copy of which is at page 30 in the bundle. Whilst this was a first offence by the Respondent, and dismissal could therefore be viewed as harsh, it cannot in my judgment be said to fall outside the range of reasonable responses.

13 For the avoidance of doubt, I address two final matters. First, there was no complaint advanced by the Claimant of a failure to pay monies in lieu of notice to which he claimed to be entitled; and there is therefore no need to determine whether the Claimant

was actually guilty of gross misconduct. Secondly, whilst in his ET1 claim form the Claimant sought to draw a distinction between the Respondent's treatment of him on the one hand, and of Qassim in relation to other and different disciplinary issues (for example allegations of taking sales 'leads' from other colleagues, and of offering drugs to others in the office) on the other hand, that issue was not raised and pursued in evidence or in submissions before me, and the Claimant's case before the Tribunal was not based upon an allegedly unfair inconsistency of treatment of its employees by the Respondent.

14 For these reasons the Claimant's unfair dismissal complaint fails and is dismissed.

Employment Judge Barrowclough

12 March 2018