



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs S Carson

**v Stephenson Academy (Stephenson
(MK) Trust)**

Heard at: Cambridge

On: 25 & 26 April 2018

Before: Employment Judge LB James

Appearances

For the Claimant: Mr N Palk, Lay Representative.

For the Respondent: Mr M Humphreys, Counsel.

JUDGMENT

1. The claimant's claim is dismissed.

REASONS

1. This is a claim coming before the Cambridge Employment Tribunal. The claimant claims unfair dismissal and wrongful dismissal.
2. During the course of the proceedings the basis upon which the claimant pursues her claim has been narrowed to two elements. First that she has been treated more harshly than in comparable cases handled by the respondent, second that the delay in hearing her appeal prejudiced her to the extent that her dismissal was unfair. The wrongful dismissal claim stands or falls with the unfair dismissal claim.
3. The relevant law is found at s.98 of the Employment Rights Act 1996.
4. I have received evidence from Dr Neil John Barrett and John O'Donnell for the respondent, and from the claimant, Terri Parish and Sandra Campbell on her behalf. I've also seen a statement from Jane Peppard which I have read and given appropriate weight in her absence. There was a further anonymised statement from a person unwilling to attend the tribunal. In

the circumstances I was not prepared to give the statement any weight and returned it to the claimant unread. I have also had the benefit of a bundle of documents comprising 190 pages which I have taken fully into account.

5. I found the following relevant facts. The dismissal and the effective date of termination was on 20 July 2017. The claimant raises no issue with the process that was undertaken or the outcome beyond asserting that her dismissal was a more stringent sanction than had been meted out in comparable cases. As a result, there is no need to consider any procedural aspects of her dismissal save in relation to her appeal against dismissal.
6. The claimant's dismissal arose out of a classroom incident on 14 June 2017 when the claimant was involved in a physical intervention. I have seen the CCTV footage of that incident. Much could be said about the incident and regrettably none of it would be complimentary to the claimant or Mrs Campbell. A pupil was involved. It was his first day at the school. He must have had behavioural problems to have been sent to the school but it appears that neither the claimant nor Mrs Campbell had learned the pupil's precise behavioural issues. That may not be their fault but their lack of knowledge compounds their misconduct.
7. I am satisfied that the incident was provoked by the claimant and also by Mrs Campbell who stood by and took no action to prevent an escalation of the issue. I am satisfied that the physical intervention could have been avoided. I am satisfied that neither the claimant nor Mrs Campbell took steps to de-escalate the issue. The claim from Mrs Campbell that she removed the pupil using proper techniques ignores the fact that she was complicit in provoking the situation whereby physical intervention ensued.
8. The claimant suggests that intervention was necessary to protect the pupil, other pupils, herself, Mrs Campbell or property. This totally ignores the point previously made that the claimant and Mrs Campbell were responsible for creating that situation. It has been said that another pupil claimed he had been frightened, and I am sure the incident would have been frightening to another vulnerable child, but again this was the fault of the claimant and Mrs Campbell. It has been claimed that the pupil was offering violence to the claimant and/or Mrs Campbell, I disagree, his actions were re-active and not pro-active. In short, the claimant's actions were a clear example of gross misconduct.
9. Following her dismissal the claimant appealed the decision to dismiss her. It took seventy days to hear the appeal because of difficulties in arranging for an appeal panel. Those difficulties derived principally from the fact that the respondent wanted to have a full appeal panel and governors were not available due to the intervention of the school holidays. The respondent called the appeal meeting as soon as possible in the circumstances.

10. I have reached the following decision in relation to the facts. I have considered the claims that in similar cases lesser sanctions than dismissal have been imposed. The claimant only provided sketchy information about these incidents when exchanging her witness statement. She sought to adduce greater detail before me, but it was only the fact that she was not professionally represented that caused me to allow her to adduce further evidence. I am mindful of the relevant case law. If a single vital thread can be drawn from those cases it is that the incidents must be comparable. In this case they are not for several reasons, but the most significant and determinative is that it is only in this incident before me that it can be clearly stated that the cause was the claimant's provocation and misconduct. That fact alone is sufficient to conclude that the remaining cases referred to by the claimant are not comparable. The claimant has claimed that the other cases show more severe treatment of pupils. Again that is simply to be in denial of the fact that this incident would not have taken place but for the claimant's provocation. Accordingly, I find there is no merit in the assertion that she was treated less favourably than in other cases.
11. Turning to the appeal process, the argument before me is that it took 70 days to call the appeal hearing when the target is 28 days. I use the term 'target' as the timeline is not fixed and the word 'normally' prefixes the 28 day metric. I have noted the difficulty in getting a full appeal panel together and the delay was caused in part by the intervention of the school holidays. That in itself should not have prejudiced the claimant, but in this case the respondent did take reasonable steps to keep the claimant informed of the delays. The claimant has not challenged the assertion that the outcome of her appeal would have been the same regardless of when it was heard. She has claimed that the delay restricted her ability to obtain alternative employment. During the disciplinary process criminal proceedings were being considered or pursued. They would have had a more significant bar to her obtaining alternative employment. As a result, while there was delay in hearing the appeal it was not so egregious as to make the dismissal unfair.
12. Finally, if confirmation was needed to demonstrate that the respondent's characterisation of the claimant's conduct was gross misconduct, I have noted that the claimant, then called Sharon Benton, and Mrs Campbell were convicted of assault by beating before Milton Keynes Magistrates on 7 March 2018.

Respondent's application for costs

13. There has been an application for costs against the claimant on the basis of rule 76(1)(b) that the claim had no reasonable prospect of success. While costs do not follow the event, I must agree that once the claimant has been convicted of assault by beating she had no reasonable prospect of success. Accordingly, I may consider making a costs order in this matter. I am informed that the respondent has insurance cover for the costs with an excess of £500.

14. I have noted that on two occasions the respondent warned the claimant that they would be seeking costs and while such letters are frequently used to pressurise claimants, in this case the letters have been fully reasoned and gave the claimant the opportunity to walk away from her claim without any liability. I am satisfied that the claimant was properly put on notice regarding the costs and as a result of a short adjournment has had a proper opportunity to make representations in accordance with rule 77.
15. I am mindful of and do take into account the provisions of rule 84 and the ability of the claimant to pay. She has been able to provide me with a very detailed analysis of her income and outgoings coupled with those of her partner. She is clearly not well off. She has very limited income and resources upon which to pay day to day living expenses as set out in the schedule below. She has been able to provide detailed figures by reference to her on line banking application on her mobile phone. There has been no cross examination on these figures. I find that she has no realistic ability to pay and in those circumstances, I make no costs order in this matter.

Schedule

Net income		£2076.94 net per month
Rent is	£645.00	
Council tax	£147.00	
Utilities	£136.66	
Communications	£201.00	
Insurances – cars and home	£134.00	
Car tax	£ 16.84	
Partner education fees	£168.00	
Fuel	£240.00	
Support for autistic grandchild	£100.00	
Credit card interest	£ 48.23	
Fine	£ 20.00	
Total		£1856.73
Balance of monthly income for claimant And partner for food, clothing etc		£ 220.21
Savings less than £10		
Credit cards debts	£1541.49	

Employment Judge LB James

Date: 25 / 5 / 32018

Sent to the parties on:

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For the Tribunal Office