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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr P Buss

and

Respondent

Royal Mail Group Limited

Held at Ashford on 5 December 2017

Representation

Claimant:

In Person

Respondent: Mr D Summers, Non-Practicing
Barrister

Employment Judge Kurrein

JUDGMENT

The Claimant's claims are not well founded and are dismissed.

REASONS

- 1 On 5 August 2017 the Claimant presented a claim alleging unfair dismissal and a failure to pay holiday pay. On 14 September 2017 the Respondent presented a Response contesting those claims.
- 2 In the course of the hearing the Claimant accepted that he had been paid all the holiday pay to which he was entitled, so that claim must fail.
- 3 I heard the evidence of Mr K Culverhouse, Delivery Office Manager; and Mrs J Forde, Appeals Manager, for the Respondent. I heard the evidence of the Claimant. I considered the documents I was referred to and the submissions of the parties. I make the following findings of fact.
- 4 The Claimant was born on 17 March 1981 and started his employment with the Respondent at an OPG (Operational Postal Grade) on 20 February 2006.
- 5 The Respondent is a huge employer with 139,000 employees and huge resources. It has numerous written policies that are readily available to staff covering their expected conduct, grievances and disciplinary matters.
- 6 Although I accepted that the Claimant had not received a copy of the Respondent's policy on diversity in late 2013 or 2015, because the Respondent held erroneous details of his address, this was not a matter of which I could have regard because he failed to inform the Respondents of this in the course of their investigations and the disciplinary process.

- 7 I also accepted that he did not receive any training in issues relating to diversity. This was known to the Respondent. It is something the Respondent might well consider appropriate to remedy and record in respect of all its other staff.
- 8 In the event, I concluded that these matters were not such as to call into question the fairness of this dismissal because the standards of conduct expected by the Respondent's policies were no more than what common sense would dictate to a reasonable person.
- 9 On 16 January 2017 one of the Claimant colleagues, a woman of minority ethnic origin I refer to as "SS", made a formal complaint that she had been the subject of racial abuse by the Claimant, who had looked at her as she passed him and said, "bud, bud, ding, ding¹".
- 10 SS also reported that she believed the Claimant to have behaved similarly to her about a week previously but, because she was not sure of what she heard, she had not raised it formally. She had been very upset and crying when she reported this incident to three colleagues contemporaneously.
- 11 The Respondent appointed Ms Walsh to investigate this matter. She interviewed SS, the Claimant and seven of their colleagues. Three of those colleagues confirmed SS's earlier report to them of the previous incident. One colleague reported that the Claimant did mimic Scottish, Welsh, Irish and Asian accents to make "jokes". Another colleague's evidence was that the Claimant had confided in him concerning the latter incident and sought advice. That colleague appeared surprised to learn that the Claimant had not admitted to the conduct complained of.
- 12 The Claimant was sent copies of all the interviews and given the opportunity to comment on them before Ms Walsh finalised her report. Ms Walsh concluded that SS's complaint should be upheld and the Claimant be the subject of disciplinary proceedings for potential gross misconduct.
- 13 The Claimant was invited to a disciplinary hearing. He was provided with copies of all the evidence the Respondent relied on and advised of his right to be accompanied. When he attended that hearing on 5 April 2017, which was conducted by Mr Culverhouse, he chose not to be accompanied.
- 14 In the course of that meeting the Claimant:-
- 14.1 Stated he could not recall either incident, and denied making the alleged remark.
- 14.2 Said he would apologise to SS for prior statements to the effect that he would not work with her, and would like mediation as SS "clearly had a problem" with him.
- 14.3 Admitted that he made comments in a variety of accents which SS might have heard, but they would not have been directed at her.

¹ This is racially offensive slang commonly used to refer to East Asians' supposed lowly status as bus conductors.

- 14.4 Accepted he made racist comments and jokes, but was careful who he made them to.
- 15 Mr Culverhouse adjourned that meeting to consider his decision. He concluded, on the balance of probabilities, that he should accept the evidence of SS. He took the view that the Claimant's behaviour amounted to gross misconduct under the Respondent's policies. He had regard to the Claimant's 11 years of not entirely unblemished service and reached the decision that summary dismissal was the appropriate sanction.
- 16 The decision was communicated to the Claimant at a decision meeting on 8 May 2017, which was the Claimant's effective date of termination. The decision was confirmed in writing and the Claimant was advised of his right of appeal.
- 17 The Claimant exercised that right in writing stating his grounds as the incident not having been witnessed.
- 18 The Claimant was invited to and attended an appeal hearing with Mrs Forde on 30 May 2017. That took place as a full re-hearing. Mrs Forde also carried out further investigations for herself of which the Claimant was informed and invited to comment.
- 19 I accepted Mrs Forde's evidence that in the course of that hearing the Claimant made similar assertions and admissions as he had in the original hearing. She concluded that he had made the comments he was alleged to have made and that this was so serious, even as a first offence, that dismissal was the appropriate sanction. She dismissed the appeal.
- 20 I have had regard to the provisions of S.98 Employment Rights Act 1996 and the following authorities:-
- British Home Stores Ltd v. Burchell [1978] IRLR 379
 - Iceland Frozen Foods v. Jones [1982] IRLR 439
 - Sainsbury's Supermarkets Ltd v. Hitt [2003] IRLR 23
 - Taylor v OCS Group Ltd. [2006] IRLR 163
 - Newbound v. Thames Water Utilities Ltd [2015] IRLR 734
- 21 I was satisfied that Ms Walsh's investigation was entirely reasonable in its nature and extent. No complaint has been made to the contrary.
- 22 The hearing were conducted fairly and reasonably. The ACAS Code of Conduct has been complied with. The Claimant has accepted in evidence that he was given every opportunity to raise matters he wished to in the course of these hearings. He has not complained of the manner in which either was conducted.
- 23 Both Mr Culverhouse and Mrs Forde were patently honest in reaching their respective conclusions that the Claimant had made these remarks. This was not challenged. There were ample grounds for them to do so.
- 24 The sanction of dismissal for conduct of this nature falls squarely within the band of reasonable responses open to an employer in circumstances such as these.

- 25 I did not consider an award of costs to be appropriate. Like EJ Hall-Smith, who refused to hear an application to strike out because the matter depended on the evidence, I do not consider the Claimant's case to have had no reasonable prospect of success. His conduct of it has not been unreasonable.

Employment Judge Kurrein

5 December 2017