



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

AND

RESPONDENT

Mr Patrick Casserley

Jasun Envirocare plc

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: Bristol

On Wednesday, the 18th July 2018

Employment Judge: Mr David Harris (sitting alone)

Representation:

For the Claimant: In person

For the Respondent: Mrs Jane Bentley (Director of the Respondent company)

JUDGMENT

1. **The Claimant's claim of unfair dismissal is dismissed.**

REASONS

Introduction

1. By his Claim Form presented to the Tribunal on the 30th October 2017 the Claimant brought a claim of unfair dismissal against the Respondent.

The Claim

2. The Claimant stated in his Claim Form that he had been employed by the Respondent as a Machine Operator from the 1st April 2008 to the 12th August 2017. He worked a 35-hour week and his normal take-home pay was £240.00 per month. He stated that the background to his claim of unfair dismissal was as follows:

“I complained about the production manager and supervisor bullying and racism against a colleague, this was 5 years ago. The manager Jane Bentley, Production Manager Joe Slater, Supervisors Lisa Symes and Rob Davies have since had it in for me and have been trying to get rid of me by many ways including saying that I was intoxicated at work, that I upset a female member of staff and other members, also I have intimidated the cleaners, I have been accused of wasting time, encouraging a go slow amongst staff. All these allegations are not true and are totally fabricated and I have witnesses to prove it. I have been dismissed through no fault of my own. I have had 3 gross misconducts against me and 8 or more warnings to my recollection but they were never progressed.”

The Respondent's Response to the Claim

3. The Respondent's case is that the Claimant was dismissed for gross misconduct on the 9th June 2017 and the Respondent contends that the dismissal was fair. The reasons given by the Respondent for the dismissal are set out in the dismissal letter that was sent to the Claimant on the 9th June 2017:

“Further to our meeting yesterday, this letter is written confirmation that you have been dismissed from our employment for gross misconduct, as per the Company Handbook section 20.6 Disorderly or indecent conduct, and serious intimidation, harassment and verbal abuse of work colleagues. Present at the meeting was Mrs Jane Bentley, HR Director, and Mr Simon Richards HEPA Manager, and Mr Michael Hill your colleague who accompanied you to the meeting.

You have previously been given warnings for your behaviour on 24th June 2016, suspended on 15th July 2016 with a second warning issued on 1st August 2016, where you were advised that any further incidences would lead to a third and final warning, and possibly dismissal. Throughout your time at Jason Envirocare Plc, you have been moved from the Panel Department because you upset a female member of staff (Lisa), you have then been moved from the metalwork section as you upset another member of staff (Julian), you were then moved to the Grease Department where you upset the Supervisor (Rob) and finally you were moved to the Yeo Panel Section where you have intimidated the cleaners with disgusting behaviour, and which has brought about the final warning and dismissal.

Your behaviour has not improved, and on this occasion, you have once again acted towards another member of staff in a totally inappropriate manner, causing upset and distress. As on both occasions before where warnings have been issued you have lied and blamed the upset party of bullying you and for having “it in for you” and, that the staff were being racist towards you; however, on each occasion the complaints have come from different members of staff, and with varying complaints of your behaviour, and which have all been totally unacceptable. On this last occasion, following an investigation after our initial meeting on 30th May 2017, viewing the CCTV just outside the canteen at Yeo has backed up the statement made by the cleaners, as you can be seen entering the toilets just before they are due to clean and you can be seen detouring into the kitchen on your way out and making a comment to the cleaner you upset, and then turning and smiling at another member of staff. Both cleaners confirm the comment was disgusting. Witness statements from several members of staff also confirmed your actions.

You were given ample opportunity to provide witness statements of your own, however you came with just one witness statement from the colleague who accompanied you to the meeting and who was not anywhere near where the allegations of disgusting behaviour took place. You said in the meeting yesterday that you had obtained that statement that morning, and which is why you had only made three filters during the first hour of work. Your colleague did not leave me with a copy of this statement and I have not had

the opportunity to read it or to take it into account. During the meetings held with you, you have been rude and abusive towards me, and you have made implications about me, which I have found highly offensive and which have made it difficult to keep the meetings on a professional level.

You have been dismissed for Gross Misconduct, which is instant dismissal; however, as you have been employed by the Company for 9 years, I am giving you 9 weeks' notice which you will serve as Garden Leave. You will be paid your normal hourly rate during the leave period. Under the garden leave you are not to enter Company premises for any reason without prior permission from a Manager or Director. You may not contact any member of staff during working hours and then only in a social capacity. If you attempt to intimidate any member of staff outside of work or if you breach these conditions, your notice period will come to an immediate end.

If you wish to appeal against this dismissal, you may do so in writing addressed to Mr Colin Hitch, Director within fourteen days of the date of this letter at the address quoted. I will write to you again at the end of the notice period advising you of any final pay, and P45 etc."

The Evidence

4. In addition to reading and considering a 69-page bundle of documents prepared by the Respondent, the Tribunal heard oral evidence from five witnesses for the Respondent and oral evidence from the Claimant.

5. The Claimant also produced short witness statements from Robert Paul Bird (in the form of an undated text message), Julian Neal (in the form of an email dated the 13th June 2018), Paula Silva (in the form of a letter dated the 16th June 2018) and Tina May (in the form of an email dated the 14th June 2018).

6. The statements from Mr Bird, Mr Neal, Ms Silva and Ms May were read and considered by the Tribunal. They did not give oral evidence at the final hearing. Their evidence consisted of a combination of character evidence in support of the Claimant and an attack upon the bona fides of the Respondent in dismissing the Claimant.

7. The five witnesses who gave evidence for the Respondent were Jane Bentley, Elisha McBride, Rebecca Potter, Nick Hall and Eleanor Bennett.

8. Mrs Bentley's evidence-in-chief was set out in a witness statement at pages 62 to 66 in the Respondent's bundle of documents. She gave background evidence concerning previous incidents of misconduct by the Claimant. She stated that he had received two written warnings in 2016 regarding his conduct. The first warning had been given on the 24th June 2016 and the second warning had been given on the 13th September 2016. The reasons for the second warning were set out in a letter that Mrs Bentley sent to the Claimant on the 13th September 2016:

“Following your disciplinary hearing on 1st August 2016 which was held following a suspension for Gross Insubordination and Gross Misconduct, we have reached the following conclusions.

Throughout the disciplinary hearing you continually lied to cover up your misconduct, and accused others of lying, including me. You continually changed your story about various points raised. You demonstrated your lack of respect to several members of staff. You showed yourself to have an angry and confrontational manner. You demonstrated that you have, in the past interfered with other people's affairs, called members of staff names behind their backs, and that you have deliberately gone out of your way to cause trouble.

You were given a 1st warning for the same reason on 24th June 2016. Your behaviour after this date did not improve, and you were further suspended on 15th July 2016 for the same reason with the disciplinary on 1st August 2016.

As a result of the disciplinary, you are being given a 2nd warning for gross misconduct. Your behaviour must improve. If there are any further incidences where you lie, or cause bad feeling, or interfere with anyone else's business you will be given a final warning which may lead to dismissal.

If you wish to appeal against this warning, you may do so in writing addressed to the Managing Director within fourteen days of the date of this letter to the address quoted.”

9. It was not disputed by the Claimant that he had not appealed against the second warning that he received for his behaviour on the 13th September 2016.

10. Turning to the circumstances that led to the Claimant's dismissal, Mrs Bentley stated that she received a complaint about the Claimant's behaviour from Elisha McBride, a cleaner, on the 30th May 2017. Mrs McBride came to see Mrs Bentley in a distressed state. She informed Mrs Bentley that the Claimant had been harassing her "*by waiting for her to arrive at Yeo Road to clean, and watching to see which gents she cleans first, and then taking a shit in the other gents in full knowledge that she would be going in there in the next few minutes.*" Mrs McBride told Mrs Bentley that the Claimant would then confront her in an intimidatory manner with details about what he had done in the toilet for her to clean up. Mrs McBride told Mrs Bentley that this behaviour had been going on for some time. She said that she found it unbearable and intimidating.

11. In response to the complaint from Mrs McBride, Mrs Bentley called the Claimant to her office. He brought with him a colleague called Mike Hill. His response upon being told about the complaint was to say that Mrs McBride was lying about him. Mrs McBride was then asked by Mrs Bentley to come back into the office and explain in front of the Claimant what she had told Mrs Bentley. Mrs McBride repeated her complaint in the presence of the Claimant and he immediately accused her of lying, of fancying him and of being racist towards him because he is Irish. Mr Hill supported the Claimant by saying that Mrs McBride had fabricated the allegations. During the meeting, the Claimant raised his voice and shouted at Mrs McBride, said that she was lying and then accused her of having a relationship with a fellow worker called Rob Davis. During the meeting Mrs McBride became very upset.

12. Mrs Bentley informed the Claimant that she intended to investigate the allegations further and a further meeting was arranged for the 8th June 2017. In the meantime Mrs Bentley obtained statements from a number of other employees (at pages 38 and 39 in the Respondent's bundle).

13. At the meeting on the 8th June 2017, the Claimant repeated his assertion that Mrs McBride was lying about him. He also said that the authors of the statements that Mrs Bentley had obtained were lying about him. He was told that some CCTV footage had been viewed, which supported Mrs McBride's account of events. The Claimant then became angry and disputed that the

CCTV footage showed anything that undermined his account that Mrs McBride was lying. There was then discussion about the Claimant's use of the toilets and discussion about a statement that Mr Hill had produced that supported the Claimant. Mrs Bentley stated that the Claimant's tone throughout the meeting was mocking. It appeared to her that he was not taking the matter seriously. He laughed at the allegation that he had been harassing Mrs McBride and said that his faeces smelled like everyone else's.

14. The matter then proceeded to a disciplinary hearing. The Claimant repeated his case that people were lying about him and he laughed at the suggestion that his behaviour towards Mrs McBride might be viewed as harassment. Of particular concern to Mrs Bentley was a comment made by the Claimant that he would not forget what Mrs McBride had said about him. Mrs Bentley viewed this as a threat by the Claimant towards Mrs McBride.
15. Following the disciplinary hearing, the decision was taken to dismiss the Claimant for the reasons set out in the dismissal letter quoted above (dated the 9th June 2017). The Claimant subsequently appealed the decision to dismiss him. The appeal was heard by a Sales Director called Mr Hitch and the outcome was dismissal of the appeal.
16. The Claimant's cross-examination of Mrs Bentley was extremely hostile. It was put to Mrs Bentley that she had been trying to get the Claimant out of the company for some time. Mrs Bentley disputed that assertion. She said that when he worked, the Claimant was a capable worker and that she had tried to smooth over issues at work that had arisen because of his behaviour towards others. When questioned about the other matters raised in her witness statement, Mrs Bentley repeated what she had said in her statement about the Claimant's conduct on the 30th May 2017 and at the subsequent meetings. In the face of the hostile cross-examination, she was unwavering in her account of the Claimant's behaviour.

17. The Tribunal then heard evidence from Mrs McBride. Her evidence-in-chief was set out in a witness statement dated the 4th September 2017. For the purposes of clarification, it should be noted that the Claimant was referred to as “Ted” in this statement and in other documents before the Tribunal.

18. Mrs McBride gave evidence about the Claimant’s conduct towards her. In particular, she stated that he would use the toilets in advance of her cleaning them and then approach her and make demeaning comments that she found insulting and upsetting. She told the Claimant that she did not want him to speak to her in that way but he persisted. By the 30th May 2017 she could take no more of it and so she went to speak to Mrs Bentley. She gave evidence that she found the meeting with the Claimant on the 30th May 2017, in which he accused her of lying and of being racist, to be very upsetting. In cross-examination, it was put to Mrs McBride that she had not been truthful in her evidence. Mrs McBride responded that she had told the truth.

19. The next witness for the Respondent was Mrs Potter who was a cleaner that worked alongside Mrs McBride. She said that she had witnessed the Claimant’s behaviour towards Mrs McBride who was several years younger than herself and the Claimant. It appeared to Mrs Potter that the Claimant was targeting the Claimant because he never said anything inappropriate towards her. She was aware that Mrs McBride had become upset about the Claimant’s behaviour towards her and that she, Mrs Potter, had hoped that the Claimant would get bored and stop his behaviour after a while. That, however, had not happened according to Mrs Potter. She stated that the Claimant had continued to say things to Mrs McBride about his toilet habits that were obviously making Mrs McBride upset.

20. After Mrs Potter, the Tribunal heard evidence from Mr Hall. His evidence was of little relevance to the issues before the Tribunal. He spoke about events that had occurred in the period leading up to the imposition of the Claimant’s second warning about his conduct.

21. The last witness for the Respondent was Eleanor Bennett. She was an HR assistant at the time of the Claimant's dismissal. She took the notes at the Claimant's appeal hearing (at pages 52 and 53 in the Respondent's bundle). She stated that the main ground of the appeal was that the Claimant's fellow workers had made up lies about him and that the Respondent had been complicit in the fabrication of allegations of misconduct in order to get rid of him. In cross-examination, Mrs Bennett stated that she had viewed the CCTV footage of the factory floor after Mrs McBride's complaint about the Claimant on the 30th May 2017. She stated that the CCTV footage overwrites itself every 2 weeks, which was the reason why the footage was no longer available.

22. The Claimant then gave his oral evidence to the Tribunal. He confirmed that the contents of the statement that he had emailed to the Tribunal on the 10th July 2018 were true. Though the statement dealt in some detail with the Claimant's view of his history of employment with the Respondent and his criticisms of the Respondent, it did not deal in much detail with the allegations made by Mrs McBride that led to his dismissal. When he reached, in his statement, his account of the relevant allegations his first point was that the Tribunal should be suspicious that the Respondent has not retained the CCTV footage that is alleged to give some support to Mrs McBride's account of events. Thereafter, his central point in respect of the allegations made by Mrs McBride was that the allegations had been made up and that there was no evidence against him.

23. In cross-examination, he stated that the reason why people lied about him in the workplace and before the Tribunal was because of Mrs Bentley's influence upon them. He stated that the allegations made by Mrs McBride were a complete bag of lies. When asked why Mrs Bentley would have it in for him, he replied that it was because she had said he had been aggressive in 2012 when there had been an allegation that he was drunk at work. He said that that was the start of it. From then on, Mrs Bentley wanted to get rid of him. When asked about his aggressive attitude in response to the allegations made by Mrs McBride, his answer was that he is a man who will speak up for himself. He agreed that he had raised his voice to Mrs McBride and had called her a liar. He also agreed that at the disciplinary hearing he had said that was not going to forget about this. He disputed, however, that

he meant it as a threat. He said that Mrs Bentley had been picking on him and victimising him for years.

The Respondent's Closing Submissions

24. Mrs Bentley submitted that the Respondent had accepted Mrs McBride's account of the Claimant's behaviour and that there were reasonable grounds for it to have done so. In the eyes of Mrs Bentley, the Claimant's conduct towards Mrs McBride amounted to sexual harassment. She submitted that the Respondent was bound to investigate the allegations made by Mrs McBride and that it had done so in a reasonable and proportionate manner. The allegations had been put to the Claimant and in response he became defensive and aggressive. His main response to the allegations was that they had been fabricated. Mrs Bentley submitted that there had been a fair process, including the appeal, concerning the Claimant's dismissal. The final straw for Mrs Bentley was the Claimant's comment that he would not forget what Mrs McBride had said against him. She did not think his behaviour was going to improve. She submitted that the Respondent had been fair towards the Claimant by giving him 9 weeks' notice when summary dismissal could have been imposed.

The Claimant's Closing Submissions

25. The Claimant submitted that lies had been told about him. He said that he had not threatened anyone at work and that nothing had happened. He submitted that there was no evidence that he had done anything wrong. He submitted that the investigation was flawed and that the appeal was a sham. He submitted that the Respondent just wanted to get rid of him and had done so since 2012. He submitted that there were no reasonable grounds for a belief that he had been guilty of gross misconduct and that the investigation had been unfair. He submitted that it was wrong to have dismissed him and that the Respondent was trying to tarnish him.

The Tribunal's Findings of Fact

26. The Tribunal accepted the evidence from Mrs Bentley, Mrs McBride, Mrs Potter and Mrs Bennett. They were each subjected to aggressive and hostile cross-examination and each had been steadfast in saying that their evidence-in-chief had been truthful. The Tribunal was impressed with the manner in which they gave their evidence and the fact that they did not become argumentative with the Claimant. The Tribunal was satisfied that their evidence was truthful. The Tribunal rejected the Claimant's central contention, which was that each witness had lied to the Tribunal in their account of his conduct at work.

27. The Tribunal was satisfied that the evidence from the Claimant was not truthful. It was noteworthy that the Claimant, in his witness statement, had not addressed in any detail the allegations made by Mrs McBride on the 30th May 2017 and the events leading up to his dismissal. In his evidence before the Tribunal, it became clear that his case, in respect of those allegations and events, was that lies had been made against him because of a longstanding vendetta by Mrs Bentley towards him. The Tribunal was satisfied that there was no truth in the assertion that the events of May and June 2017 were the culmination of a campaign to get rid of the Claimant that had its origins in 2012. The Tribunal was also satisfied that the Claimant was not truthful in saying that Mrs Bentley and Mrs McBride, in particular, had told lies about him.

28. In light of its acceptance of the evidence from the Respondent's witnesses and its rejection of the Claimant's contention that evidence had been fabricated against him, the Tribunal found that the Claimant, for a considerable period of time prior to the 30th May 2017, had been singling out Mrs McBride to make degrading and insulting comments to her. It was clear to the Tribunal that he had deliberately targeted Mrs McBride, a person in her early 20s, as an object for his inappropriate and insulting comments. He did not speak or behave towards Mrs Potter in the same way. The Tribunal was satisfied that the Claimant's conduct towards Mrs McBride caused her to be upset and wore her down over time. By the 30th May 2017 she had had enough and she went to speak to Mrs Bentley. When the Claimant was informed about the allegations he became aggressive, raised his voice and accused Mrs McBride of lying about him. The reasons he gave

for his accusation that Mrs McBride was lying had the effect of adding insult to injury. He then defiantly maintained his assertion that Mrs McBride and others had lied about him at an investigatory meeting, a disciplinary hearing and an appeal hearing. And in order to bolster his case that he was the victim of lies, he made an accusation, which the Tribunal found to be false, that Mrs Bentley had picked on him and victimised him for years.

The Relevant Legal Principles

29. For the purposes of the unfair dismissal claim, the starting point for the Employment Tribunal is section 98 of the ERA 1996, the relevant parts of which provides as follows:

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-**
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and**
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**
- (2) A reason falls within this subsection if it-**
 - (a) ...**
 - (b) relates to the conduct of the employee,**
 - (ba) ...**
 - (c) is that the employee was redundant, or**
 - (d) ...**
- ...**
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-**
 - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and**
 - (b) shall be determined in accordance with equity and the substantial merits of the case.**

30. The Respondent puts its case on the basis that the reason for the Claimant's dismissal was gross misconduct. It is for the Respondent to discharge the burden of proving the reason for the Claimant's dismissal and that it was a

reason that was capable of being fair for the purposes of section 98(1) and (2).

31. Where there is a dispute as to the reason for the dismissal, it is for the Employment Tribunal to determine the real reason for the dismissal: i.e. the set of facts known to the employer or beliefs held by it that caused it to dismiss the Claimant (*Abernethy v. Molt, Hay and Anderson* [1974] ICR 323).
32. The Claimant bears no burden of proof as to the reason for his dismissal.
33. If the employer is able to demonstrate a potentially fair reason for the dismissal, the Employment Tribunal will consider the question of fairness under section 98(4) of the Employment Rights Act 1996, at which stage the burden is neutral as between the parties.
34. In the case of a conduct dismissal, which is alleged in this case by the Respondent, the Employment Tribunal will be guided by the leading case of *British Home Stores Ltd v. Burchell* [1980] ICR 303, which will require it to consider whether the Respondent had reasonable grounds for its belief in the employee's misconduct, founded upon a reasonable investigation. The test that the Employment Tribunal is to apply at all stages of its determination of the question of fairness for the purposes of section 98(4) is whether the Respondent's decision fell within the band of reasonable responses of the reasonable employer (see *Iceland Frozen Foods Ltd v. Jones* [1982] IRLR 439 and *Sainsbury's Supermarkets Ltd v. Hitt* [2003] IRLR 23).
35. I should add that it is not for the Tribunal to form its own view as to what it might or might not have done in the situation facing the Respondent. The task for the Tribunal is to assess the fairness and reasonableness of the Respondent's actions in light of the legal principles I have summarised above.

The Decision

36. On the evidence that it heard and read, and directing itself on the law as summarised above, the Tribunal concluded that the Respondent had reasonable grounds for its belief in the Claimant's misconduct, which amounted to gross misconduct.

37. The Tribunal was satisfied that the allegations made by Mrs McBride and, most importantly, the Claimant's response to those allegations gave the Respondent reasonable grounds for believing that the Claimant had behaved in an inappropriate manner towards Mrs McBride in circumstances amounting to gross misconduct. The Tribunal was satisfied that there had been a reasonable investigation into the complaint raised by Mrs McBride. The investigation had included interviewing Mrs McBride, interviewing the Claimant in the presence of a work colleague of his choosing and giving the Claimant ample opportunity to comment upon the allegations. In the judgment of the Tribunal, there was nothing unfair or improper in the way that the Respondent went about the investigation and disciplinary process and it was reasonable for the Respondent to have concluded, as a result of the investigation and disciplinary process, that the Claimant was guilty of the gross misconduct alleged against him.

38. The Claimant alleged that the investigation and disciplinary process had been unfair because his supportive evidence from Mr Hill had been ignored by the Respondent. The Tribunal rejected that submission. It was clear to the Tribunal, on the evidence that it heard, that Mr Hill was not in a position to comment upon the factual allegations made by Mrs McBride. He was not an eye witness to events. His support for the Claimant really amounted to character evidence. The Tribunal was not persuaded that the Respondent had failed to take into account relevant evidence from Mr Hill. The Tribunal was satisfied that the Respondent had taken into account the positive aspects of the Claimant's work history, evidenced by Mrs Bentley's closing submissions on his capability as a worker and the support he had been given over the years, when making its decisions regarding the investigatory and disciplinary process instituted against him following Mrs McBride's complaint.

39. The Tribunal also rejected the Claimant's submission that the appeal process was a sham. The Tribunal was satisfied that the appeal consisted of a fair review of the decision to dismiss the Claimant and that the Claimant had been given a fair opportunity to repeat his case at his appeal that Mrs McBride and others had lied about him. In the judgment of the Tribunal there were reasonable grounds to reject the Claimant's case at appeal as there had been at the disciplinary hearing.
40. In the judgment of the Tribunal there was no procedural unfairness arising from the way that the Respondent had dealt with the complaint raised by Mrs McBride. There had been a reasonable investigation, a fair disciplinary hearing and a fair appeal.
41. Lastly, the Tribunal was satisfied that the sanction of dismissal for the misconduct as found by the Respondent was within the band of reasonable responses. Given the previous warnings that the Claimant had received about his behaviour and the seriousness of the gross misconduct that was found to have occurred in May 2017 (consisting, as it did, of the harassment and intimidation of a young female colleague) the Tribunal was bound to conclude, as it did, that the dismissal of the Claimant fell within the band of reasonable responses.
42. Accordingly, the Claimant's claim of unfair dismissal shall be dismissed.

Employment Judge David Harris

Dated the 24th September 2018