



EMPLOYMENT TRIBUNALS

Claimant Ms A Udrica

Respondent: Care Concern Yorkshire Ltd

HELD AT: Leeds

ON: 4 September 2018

BEFORE: Employment Judge Cox

REPRESENTATION:

Claimant: Mr M Rudd of Counsel

Respondent: Mr L Cunningham of Counsel

JUDGMENT

1. The Claim of unfair dismissal fails and is dismissed.
2. The claim for damages for breach of contract succeeds.
3. The Respondent shall pay the Claimant damages of £2,946.24.

REASONS

1. Ms Udrica presented a claim to the Tribunal saying that she had been unfairly dismissed and dismissed in breach of her contractual right to notice of termination by the Respondent Care Concern Yorkshire Ltd. She worked for the company as a housekeeper. She started working on 19 February 2008. She was promoted to the position of housekeeper. Various issues were agreed between the parties. It was agreed that Ms Udrica was dismissed on 23 December 2017 by a letter posted on 21 December 2017 and that she was dismissed without notice. It was also agreed that under her contract and under the statutory provisions on minimum notice periods she was entitled to nine weeks' notice of termination of her employment.

2. Dealing first with her claim of unfair dismissal the parties agreed that the reason for Ms Udrica's dismissal related to her conduct, namely five allegations which were set out at page 56 of the file for the hearing relating to her conduct in the way she treated three particular residents. The sole issue for the Tribunal in relation for the unfair dismissal claim was to decide whether Mrs Bulmer the home manager who made the decision to dismiss Ms Udrica for that conduct had acted reasonably in all the circumstances in doing so.
3. Ms Udrica accepted that if Mrs Bulmer had had reasonable grounds for concluding that she had committed those acts then the decision to dismiss her rather than to impose some lesser disciplinary sanction was within the range of possible reasonable responses of a reasonable employer in these circumstances.
4. Looking at whether or not Mrs Bulmer did have reasonable grounds for concluding that Ms Udrica was guilty of the allegations, I had to apply the guidance in a case in front of the Employment Appeal Tribunal in a case called **British Homes Stores v Burchell**. I needed to decide whether Mrs Bulmer had reasonable grounds after a reasonable investigation to conclude that Ms Udrica had committed the offences.
5. Ms Udrica's main criticism was that the investigation that had been carried was inadequate. She also alleged that Mrs Bulmer had been unduly influenced by the fact that Mr Maddison the area manager who had conducted the investigation had reached a firm conclusion that Ms Udrica had been guilty of the offences and that Mrs Bulmer because she was of lesser seniority than Mr Maddison was felt influenced by that to reach the conclusion that she did.
6. I have already mentioned that I have taken into account evidence given by both sides in response to cross-examination which normally I would have expected to see in witness statements. I have had to assess the evidence on the basis of its credibility.
7. Having heard evidence from Mr Maddison about the way he conducted the investigation and also Mrs Bulmer's evidence on the fact that she re-interviewed the residents after she had conducted the disciplinary meeting I am satisfied that the investigation that the home carried out was reasonable in all the circumstances. Statements were taken from the residents. One was what I take to be the resident's own writing and two were taken by the deputy unit manager Mr Mahachi on the basis of what the residents told him.
8. I accept Mr Maddison's evidence that he spoke to the residents too to check what they were saying was consistent with what was written down in the statements although that wasn't actually spelt out in his investigation report. I don't believe that that undermines his evidence fatally. In particular I accept that it wouldn't have been appropriate for him to have taken notes whilst he was actually interviewing the residents and the fact that he didn't take notes afterwards is understandable when his evidence was that they had simply confirmed that what they said in the statements the company already had was true.
9. I also accept Mr Maddison's evidence that he did check the residents' notes and the day book from around mid-August onwards and that there were no notes of any incidents, but I don't take anything from that. In any event because it is not clear that there would have been any notes if the residents didn't complain to somebody responsible for making notes in the residents' notes or

the day book and I had no evidence to help me with whose responsibility that would have been. I also note and accept Mr Maddison's evidence that although he didn't interview all other members of staff who worked on the unit he knew because he did routine tours of the home that nobody had mentioned any issues to him about Ms Udrica mistreating the residents. He didn't interview the two particular carers who were involved in the allegations made by S but the Tribunal notes that S had made clear that he knew that these two carers had left the home's employment.

10. The Tribunal also takes into account that Mrs Bulmer herself spoke to the residents to satisfy herself that what they were saying was correct. Most importantly the Tribunal accepts Mrs Bulmer's evidence that the statement that Ms Udrica said she gave her at the disciplinary namely pages 101 to 103 in the hearing file was not in fact the piece of paper that Ms Udrica gave to her at that meeting. If that document had been given to Mrs Bulmer then as she accepted in her evidence it raised a lot of detailed issues that would have required extensive further investigation. The only evidence in support of that particular being the one that Ms Udrica gave to Mrs Bulmer at the disciplinary meeting was evidence that a word document had been created and had been last modified a minute before another document was sent by Facebook to Ms Udrica's son-in-law to be printed out. The Tribunal notes that that document had a different file name from the one of which I have seen the properties page and therefore would have needed to have been re-named and sent within a minute. On the other hand I know that Ms Udrica did not mention the content of that statement or even the fact she had given it to Mrs Bulmer in her own witness statement. The text of Ms Udrica's witness statement in fact relates to what she believes the Tribunal needed to know about her good record with the home, the good relationship she had there. Those were very much the issues that Mrs Bulmer said, the sort of issues that Ms Udrica raised in the document that she did give her, matters that were not actually relevant to the allegations that Mrs Bulmer was considering. More fundamentally the Tribunal does not consider it credible that Mrs Bulmer who is a person with 25 years' experience of managing care homes would completely disregard a detailed document putting forward various matters that are directly relevant to whether the employee concerned was guilty of misconduct for no reason.
11. As the Tribunal does not believe that that detailed document was put forward by Ms Udrica at the disciplinary hearing and it is otherwise satisfied that the investigation was reasonable in all the circumstances that ground for the dismissal being unfair the Tribunal does not consider to be well founded.
12. The Tribunal also accepts Mrs Bulmer's evidence that as a person with the length of experience that she had doing a very responsible job she was not likely to be and was not influenced by Mr Maddison's clear view that Ms Udrica was guilty of the offences alleged against her and that she reached her own decision on the evidence in front of her.
13. So for those reasons the claim of unfair dismissal fails.
14. In relation to Ms Udrica's allegation that she was dismissed in breach of her contractual right to notice the onus was on the company to establish that it was released from its obligation to give Ms Udrica notice of dismissal because she was guilty of gross misconduct. Ms Udrica's evidence in relation to this was the statement at pages 101 to 103 of the hearing file and having considered that evidence the Tribunal is satisfied that it does explain Ms Udrica's conduct and

indicates that she was not guilty of gross misconduct in the way she interacted with the residents in relation to the incidents that they raised.

15. The Tribunal accepts Mrs Bulmer's evidence and Mr Maddison's evidence that the residents in front of them have been very upset at the thought of Ms Udrica returning to work but the Tribunal considers it possible that they could have been upset by that without their attitude towards Ms Udrica necessarily being based on gross misconduct on her part particularly as these are vulnerable adults.
16. The Tribunal for obvious reasons has not been able to question the residents on their statements but there are many questions that the Tribunal would have needed to ask to be clear that the statements were reliable evidence for the purposes of a breach of contract claim. For example could S see what was actually happening in K's room. Ms Udrica wanted to put the point in her statement that in fact S could not see into K's room. How did K know that Ms Udrica had looked at his passport given that he appears to say that he wasn't in the room at the time she was guilty of he says rifling through his drawers. The company did not produce any records to show that there had been in fact no report to the managers as Ms Udrica alleged in her statement at pages 101 to 103.
17. For reasons which are completely understandable the home has not been in the position to put evidence to this Tribunal to satisfy it that it is more likely than not that Ms Udrica was in fact guilty of gross misconduct. That means that her claim that she has been dismissed in breach of contract succeeds. Nine weeks net pay has been agreed at £3,984.66. It has also been agreed that her average earnings since her dismissal have been around £115.38. So nine weeks at that rate would be £1,038.42. Deducting that from her net pay during the notice period the Tribunal reaches the figure of £2,946.24 and that is the amount that the Tribunal orders the company to pay Ms Udrica. The Tribunal is not prepared to increase that sum for any failure to comply with the ACAS code of practice because as can be deduced from the findings the Tribunal has already made about the investigation the Tribunal is satisfied that the company did carry out the necessary investigation.

Employment Judge Cox

Date: 4 October 2018

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