



EMPLOYMENT TRIBUNALS

BETWEEN
AND

Claimant
Mr S Houghton

Respondent
Alliance
Automotive LV UK
Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Newcastle-under-Lyme ON 30 & 31 July 2018

EMPLOYMENT JUDGE GASKELL

Representation

For the Claimant: In Person
For Respondent: Mr J Gidney (Counsel)

JUDGMENT (Issued 31 July 2018)

The judgment of the tribunal is that:

- 1 The claimant's claim for a redundancy payment is dismissed upon being withdrawn by the claimant.
- 2 The claimant was fairly dismissed by the respondent; his claim for unfair dismissal is not well-founded and is dismissed.

REASONS

Introduction

1 The claimant in this case is Mr Scott Houghton who was employed by the respondent, Alliance Automotive UK LV Limited as a Branch Manager from 4 January 2000 until 31 August 2017 when he was dismissed. The reason given by the respondent at the time of the claimant's dismissal was gross misconduct.

2 By a claim form presented to the tribunal on 28 December 2017, the claimant claims that his dismissal was unfair and that he is entitled to a redundancy payment. At the commencement of this hearing, on 30 July 2018, the claimant confirmed that the claim for a redundancy payment had been entered in error and was not pursued. That claim was withdrawn and is accordingly dismissed.

3 In its response to the claim, the respondent admits that the claimant was dismissed but maintains that he was dismissed for a reason relating to his conduct and that the dismissal was fair.

The Evidence

4 The respondent presented its case first and called oral evidence from four witnesses: -

- (a) Mr Darren Ford - Area Manager: he investigated concerns regarding the claimant's conduct.
- (b) Mr Scott Binch - Regional Manager: he conducted the disciplinary hearing and made the decision to dismiss the claimant.
- (c) Mr Lewis Selby - Managing Director: he considered the claimant's appeal.
- (d) Miss Natalie Reeder - HR Advisor: she provided HR support to managers at each stage of the process.

5 The claimant gave oral evidence on his own account; he did not call any additional witnesses.

6 I was provided with an agreed trial bundle running to more than 340 pages. I have considered those documents from within the bundle to which I was referred by the parties during the hearing.

7 I found Mr Ford; Mr Binch; Mr Selby; and Miss Reeder to be compelling and consistent witnesses upon whose evidence I find I can rely for truth and accuracy. Although the claimant had the opportunity to cross-examine these witnesses, and I endeavoured to assist him to ask pertinent questions, the reality is that their evidence was hardly challenged.

8 The claimant was a less satisfactory witness: his witness statement simply did not address the issues relating to the conduct alleged against him; he chose instead simply to bemoan the fact that over the years the company had changed; and its relationship with both staff and customers had deteriorated; he suggested that he was being scapegoated but could not really explain why. He suggested that allegations against him had been concocted: but, on the evidence available to the tribunal, there was not the slightest justification for such an allegation.

9 Accordingly, where there exists a factual discrepancy between the evidence given by the respondent's witnesses and that given by the claimant, I prefer the evidence of the respondent's witnesses and I have made factual findings on this basis.

The Facts

10 On 3 January 2000, the claimant commenced employment with Cargo Motor Factors (CMF). By 2012, the claimant had been promoted to the role of Branch Manager at CMF's branch in Porthill, Staffordshire. On 13 March 2017, the respondent acquired CMF and the claimant's employment was transferred to the respondent pursuant to the **Transfer of Undertakings (Protection of Employment) Regulations 2006**.

11 Following the transfer, there were inevitable changes to accounting; warehousing; and cash handling procedures. The claimant claims that he was given inadequate training regarding these changes: but Mr Ford is satisfied that the training was adequate and comparable to that given to other Branch Managers in similar circumstances. Further, Mr Ford spent a considerable and arguably disproportionate amount of time at the Porthill branch to provide the claimant with support.

12 Between 13 April and 4 June 2017, the claimant was absent from work due to ill-health.

13 In July 2017, another Branch Manager, Mr Oliver Rawlings, (formally the claimant's Assistant Branch Manager) raised with Mr Ford concerns which he had regarding a vehicle battery which had been credited by the claimant the previous day as having been returned by a customer. However, Mr Rawlings could not find the battery and complained that he could get no sensible answer from the claimant regarding the transaction.

14 The whole transaction was questionable because the original sale to the customer was made on a credit/debit card; but the credit issued the previous day was in cash rather than by credit to the original card. Mr Ford wanted to identify the customer and therefore viewed the CCTV which was aligned to the till and could identify when the till printer produced receipts or credit notes. The credit for the battery had been issued at 16:40 hours; but the CCTV footage showed no customers were in the shop at that time; and the claimant was alone when raising the credit.

15 In the light of these concerns Mr Ford asked the claimant to attend an investigatory meeting and asked him about the refund of the battery; he told him of the concerns arising from the CCTV. Mr Ford did not feel that the claimant could offer any form of satisfactory explanation: he states that the claimant became agitated; and kept changing his version of events. Given this, Mr Ford felt it appropriate to suspend the claimant on full pay pending further investigation.

16 During the claimant's suspension, employees came forward and informed Mr Ford of concerns they had regarding the way in which the branch was being operated: -

- (a) The accounts department complained of occasions where they contacted customers seeking payment of outstanding accounts only to be told by the customers that they had paid cash to the claimant - often being specifically requested to take the cash to the claimant's private residence.
- (b) It emerged that the cash sums being credited to the bank account did not correspond to the cash being taken and recorded at the tills. The discrepancy over a measured period 6 June - 28 July 2017 was £2857.
- (c) On 31 July 2017, the branch received a parcel containing printer cartridges to the value of £78.44. The cartridges would not fit any of the printers used in the branch. On investigation it appeared to Mr Ford that the claimant had ordered them for private use.
- (d) On the morning of 2 August 2017, Mr Ford was called to the front counter of the shop: a customer had returned a tow-bar and was insisting on a cash refund. The tow-bar supplied was incorrect; and the claimant had asked the customer to pay £110 cash to him at his home address. No invoice appeared to have been raised in respect of the purchase; CCTV showed the claimant handing the tow-bar to the customer on the car park of the branch.

17 During the course of his investigation, Mr Ford conducted investigation meetings with the claimant and with six of his fellow employees; he also received a written statement from a seventh. Mr Ford concluded that the evidence indicated serious financial irregularities which he formulated into six disciplinary charges. He reported to Mr Binch accordingly.

18 Mr Binch concluded that a disciplinary hearing was appropriate; and, on 9 August 2017, a letter was sent to the claimant setting out the allegations and inviting him to a disciplinary meeting on 15 August 2017. Evidence in support of the allegations was included with the letter - eventually the disciplinary hearing took place on 21 August 2017. The claimant had been advised of his right to be accompanied at the meeting but chose to attend unaccompanied. The meeting was conducted by Mr Binch in the presence of Mr Tim Mitchell - Head of HR.

19 I have had the opportunity to read the notes of the meeting: it appears to me that the claimant was given a fair opportunity to answer the allegations. At the end of the meeting, Mr Binch indicated that he would take time to consider the position.

20 On 29 August 2017, Mr Binch wrote to the claimant advising of his decision: Mr Binch was satisfied that misconduct was established in respect of five of the six allegations; he concluded that there was no misconduct in respect of the printer cartridges as there were occasions when the claimant used his home printer for work purposes. Mr Binch stopped short of concluding that the claimant was dishonest; or that his actions amounted to theft. But Mr Binch's

conclusion was that, at best, the claimant had displayed a cavalier attitude towards financial management - taking cash payments; failing to issue receipts; failing even to record orders in a proper manner; and failing to ensure that all banking was done and up-to-date. Mr Binch concluded that this amounted to serious misconduct and that the appropriate sanction was summary dismissal. Mr Binch told me, and I accept, that he would have considered a lesser sanction if the claimant had demonstrated some understanding of the shortcomings and shown contrition. In such circumstances, Mr Binch may have concluded that the conduct would not be repeated – however, the claimant gave him no such confidence. The claimant was dismissed with immediate effect and advised of his right to appeal.

21 On 4 September 2017, the claimant gave a written indication of his intention to appeal; and, on the 5 September 2017, he submitted his grounds. The appeal hearing was scheduled for 13 October 2017 and was conducted by Mr Selby; the claimant attended unaccompanied; a notetaker was present. At the outset of the hearing the claimant submitted a lengthy document in support of his appeal which was carefully considered by Mr Selby. The claimant's principal complaint was his claimed lack of training in the respondent's financial procedures.

22 Mr Selby considered the position: but concluded the training could not explain the conduct found against the claimant. For example, he must have known that it was fundamentally unacceptable to require customers to pay cash to his home address whilst not providing either the customer nor the business with any documentary record of such a transaction. On 23 October 2017, Mr Selby wrote to the claimant advising that his appeal was dismissed.

The Law

23 Employment Rights Act 1996 (ERA)

Section 94: The right [not to be unfairly dismissed]

(1) An employee has the right not to be unfairly dismissed by his employer.

Section 98: General Fairness

(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) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
 - (b) relates to the conduct of the employee,
 - (c) is that the employee was redundant, or
 - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (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.

24 **Cases on Unfair dismissal**

British Homes Stores v Burchell [1978] IRLR 379 (EAT)

In a case where an employee is dismissed because the employer suspects or believes that he or she has committed an act of misconduct, in determining whether that dismissal is unfair an employment tribunal has to decide whether the employer who discharged the employee on the ground of the misconduct in question entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. This involves three elements. First, there must be established by the employer the fact of that belief. Second, it must be shown that the employer had in his mind reasonable grounds upon which to sustain that belief. And third, the employer at the stage at which he formed that belief on those grounds, must have carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

Iceland Frozen Foods v Jones [1982] IRLR 439 (EAT)

Post Office –v- Foley & HSBC Bank plc –v- Madden [2000] IRLR 827 (CA)

It is not for the tribunal to substitute its own view but to consider whether the respondent's decision came within a range of reasonable responses by a reasonable employer acting reasonably.

Sainsbury's Supermarkets Limited –v- Hitt [2003] IRLR 23 (CA)

The objective standards of the reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed.

25 **The ACAS Code**

I considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").

Discussion & Conclusions

The Reason for the Dismissal

26 I am satisfied that the sole reason for the claimant's dismissal was a reason relating to his conduct this is a potentially fair reason for the purposes of Section 98(1) and (2) ERA.

27 The conduct found against the claimant by the respondent amounted to serious financial mismanagement - amounting to an utterly cavalier attitude towards cash handling and financial procedures. I note that the respondent expressly did not find the claimant guilty of dishonesty or theft.

General Fairness

Genuine Belief

28 The relevant decision makers (Mr Binch and Mr Selby) genuinely believed that the claimant was guilty of the misconduct found against him. It was only because of this misconduct that they acted as they did.

Reasonable Belief

29 There was ample evidence to justify the respondent's belief. Indeed, the claimant did not question the basic facts; he sought to blame others; attributing his failure to a lack of adequate training.

Investigation

30 I am satisfied that the investigation conducted by Mr Flood was perfectly adequate in the circumstances. Indeed, in my judgement, the investigation was very thorough.

Procedural Fairness

31 The respondent followed a fair procedure; which, in my judgement, fully complied with the ACAS Code.

Sanction

32 The claimant had many years of good service with CMF; and these incidents arose within a few months of the takeover by the respondent. It is arguable that the respondent's decision to dismiss the claimant in the circumstances was a harsh decision; especially as they found that he had not acted dishonestly. But whether the decision was harsh is not the test which I must apply. For this conduct, in these circumstances, some employers may have elected to impose a sanction lower than dismissal; but, in my judgement, it cannot be said that the sanction of dismissal was outside the range of reasonable responses.

33 Accordingly, and for these reasons, I find that the claimant was fairly dismissed by the respondent. The claim for unfair dismissal is not well-founded and is dismissed.

Employment Judge Gaskell
22 November 2018

Judgment sent to Parties on:

26 November 2018