



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Brazier

Respondent: Age UK Trading CIC

Heard at: Manchester

On: 20 December 2018

Before: Employment Judge Sherratt

REPRESENTATION:

Claimant: In person

Respondent: Ms D Marshall, Head of People Operations

JUDGMENT having been sent to the parties on 21 December 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. Age UK Trading Community Interest Company is the trading arm of Age UK. The claimant was one of two paid members of staff in the respondent's charity shop in Chorley. She was the Assistant Manager and worked with the Manager. As is normal in this sector, there were many volunteers who were staffing the shop under the supervision of the Manager and the claimant.
2. The claimant had an unblemished record with the organisation, so far as I am aware. She was a loyal employee from September 2007, fully supporting the aims and objectives of the charity and giving more than she was paid for in terms of her support for the charity.
3. The claimant was aware, from perusal of the relevant policy, that she was entitled to apply to benefit from the respondent's career break scheme. The scheme provides that all employees with more than one year's service are eligible and it is for a block of leave, unpaid, for a minimum of six weeks and a maximum of one year. According to the terms and conditions, the organisation may at its discretion allow employees to take a career break which can be used for a variety of purposes, for example to enable overseas travel and for the purposes of visiting family. Age UK, it is stated, will give fair consideration to all requests, and it is at the discretion of the

Head of Services in conjunction with the Head of People Operations as to whether or not such leave will be granted.

4. The policy does state clearly that “employees should not commit themselves to any plans before their request has been confirmed in writing”.

5. Having booked tickets to travel to Australia the claimant made her request in writing for leave from 5 February until 28 March 2018. She asked for a career break to travel to Australia to visit family and friends. She pointed out that as she worked three days a week having 21 days of holiday would be over a period of seven weeks. She made the application in July 2017 in advance of travel in February 2018, thereby giving more than sufficient notice under the scheme.

6. The application went to Shirley Cooper, Divisional Sales Manager, and on 14 August 2017 Shirley Cooper turned down the request. She considered the impact of the request on the business over the seven-week period and unfortunately concluded that the impact on the Chorley shop over the period would outweigh the charity’s ability to approve the request. She set out various matters in her letter of refusal but she did not think proper cover could be found. The claimant was given the right to appeal against that decision.

7. On 22 August 2017 the claimant appealed to Stephen Waldrige, Head of Retail and Operations against the decision to refuse her request. He too refused the request, supporting the reasons given earlier dealing with undue strain on the remaining member of management and the performance and continuity of the business. It was also said to have a knock-on effect on surrounding shops if employee cover was taken from them. That decision was, in theory, final but the claimant wrote asking if it could be reconsidered, and she was allowed to write to the Director of People and Performance to consider the request once more. There would be no doubt that that person’s decision would be the final one.

8. On 13 September 2017 the claimant wrote to the Director of People and Performance and there was a reply on 25 September 2017. The outcome was again the declining of the request. The Director of People and Performance was satisfied that the request had been given due consideration and she echoed the comments made by the two previous managers as to the reasons given for turning down the request. It was confirmed that there were no further routes of appeal for the claimant to take.

9. On 12 October 2017 an Employee Relations Consultant wrote to the claimant to say that that was it, the appeal outcome had been concluded and there was no point in discussing the matter further.

10. The claimant understandably was interested to know what might happen to her should she go to Australia, and her Area Sales Manager on 26 January 2018 wrote to the claimant to say:

“As you will be more than aware, this holiday has not been authorised and as such if you do choose to take this holiday the absence will be treated as unauthorised. I must make you aware that unauthorised absence from work is

a serious matter and therefore may be treated as an act of gross misconduct and will be dealt with on your return.”

She encouraged the claimant to think carefully before taking the decision to go on with her unauthorised holiday.

11. The claimant took the holiday. Before she left she asked if they could be straight with her as to whether she was facing dismissal on her return and the response was:

“We cannot tell you what the outcome of a disciplinary would be prior to the investigation and hearing. As such, I will reiterate that an outcome of gross misconduct may include up to dismissal depending on the circumstances of the case and any mitigation.”

12. Having gone on holiday the claimant returned and worked briefly before she was made the subject of a disciplinary investigation. The first investigation meeting took place on 5 April 2018 and the second on 12 April 2018. The claimant was asked to explain why she had gone notwithstanding the lack of permission.

13. Having investigated the matter a report was prepared by Gill Hall, the Investigating Manager. A copy of that report was used in disciplinary proceedings that were brought against the claimant.

14. The claimant was invited to a disciplinary meeting in a letter dated 24 April 2018. There were three allegations:

- (1) Failure to attend work for a seven week period following refusal of a time off work request which constitutes unauthorised absence;
- (2) Gross insubordination of a management decision provided on three separate occasions by three senior managers; and
- (3) Serious breach in trust and confidence as a result of the above allegations.

The hearing was to take place on 3 May 2018 before Ms Angelene Darbyshire, an Area Sales Manager from another area, who had no previous contact with the matters in dispute.

15. The disciplinary hearing duly took place. The claimant had hoped to be accompanied by her shop manager who was also a friend. That lady's husband unfortunately had died and also around this time the claimant's husband's aunt in Australia had died so the claimant was perhaps not in as good a place as she might have been, but the respondent arranged for the manager of another shop to attend as the claimant's companion. That person did not really involve himself in the hearing but the claimant confirmed she was happy to continue with that person accompanying her.

16. The claimant suggests that she was bullied and not allowed to answer the questions in the disciplinary hearing. Looking at the transcript, the claimant appeared to want to answer the question in her own way rather than answering the question

put to her, and so Ms Darbyshire may on occasion have tried to get the claimant back on what she considered the track to be rather than wanting to listen to the claimant telling her what she wanted to say. The claimant accepted that she had taken the holiday.

17. The decision was that the claimant should be dismissed. It was given orally at the end of the disciplinary meeting and it was confirmed in writing in a letter dated 4 May 2018:

“To confirm the outcome, taking all of the above into account and listening to your answers from today and the evidence collated, I believed and you confirmed that you had no regret at all for ignoring Age UK’s management decision and continuing to take seven weeks’ unauthorised leave from work. I therefore explained that as all three allegations are upheld, which I believe constitute gross misconduct, I made a decision to summarily dismiss you with immediate effect from your post as Assistant Manager with Age UK. You will be paid any annual leave that you have accrued but not taken up to 3 May and the P45 will follow shortly.”

The letter went on to give the claimant the right of appeal.

18. The claimant exercised the right of appeal in a letter sent on 8 May 2018, and the respondent wrote to acknowledge receipt of that appeal and to set out what it believed the claimant's grounds of appeal to be:

- Personal circumstances were not taken into account at disciplinary hearing.
- Shop manager should have been the person accompanying the claimant but was unable to attend and as such another shop manager attended instead which was not the claimant's first choice.
- The decision to not allow you to take the time off was a personal vendetta against.
- Subjected to bullying at the hearing by the questioning.

19. The appeal was scheduled for 24 May 2018 and would be heard by Thomas Wiggins, an Area Sales Manager. This time the claimant was accompanied by her chosen companion. The claimant felt that at the appeal hearing she had been given the opportunity to say all that she wanted to say. She was perhaps over the matters that got to her at the time of the original hearing, but she did accept that she had needed to go; she knew that she had not been given permission and within the transcript she is recorded as saying “ok, I have broken the rules. I still went ahead. It’s gross insubordination, but at the end of the day I am sure I explained myself well and presumably you will take everything into consideration of the last 11 years”, referring there obviously to the claimant's good and solid work with the respondent over the previous 11 years.

20. Having gone through the claimant's four appeal points in some detail the decision was that the appeal manager would go away to give consideration to that which he had heard.

21. On 6 June 2018 a letter was written in relation to the appeal held on 3 June 2018. The appeal manager set out the grounds of appeal. He went through the four grounds in order and at the end he concluded that the appeal should not be allowed.

22. The claimant brought her claim for unfair dismissal. The respondent called Ms Darbyshire and Mr Wiggins. The claimant gave evidence on her own behalf and produced some statements in support of her claim.

The Law

23. The law in respect of unfair dismissal is to be found in section 98 of the Employment Rights Act 1996. It is for the employer to show the reason for the dismissal and that it is a potentially fair reason, and then the burden of proof in section 98(4) is a neutral one that deals with whether the dismissal is in all the circumstances fair or unfair.

24. Here the respondent submits that the reason for the dismissal was one related to the claimant's conduct.

Conclusion

25. I find that the dismissal was for a reason related to the claimant's conduct and that is a potentially fair reason, so I have to move on to consider: was the dismissal fair under section 98(4)?

26. The facts that I take into account when reaching the conclusion are these.

27. The respondent's policy on the availability of career breaks had been read by the claimant at the outset before she made her application for leave. The tickets had been booked notwithstanding the claimant's awareness of the policy which provided that an employee should not book holidays before permission was granted, and that it would be a matter of discretion not a right for an employee to take an extended holiday or career break. I note that in terms of internal process the claimant's request was considered at three levels and refused three times. The decisions were commercial ones made in what the managers believed were the interests of the respondent's business, and it does not seem to me that I, sitting in the Employment Tribunal, have any right to interfere with those decisions.

28. The claimant was aware of the potential consequences of going without permission. This was made clear to her in writing before she went. Notwithstanding the claimant's awareness that on return she might face disciplinary proceedings that might lead to dismissal, she went. Unsurprisingly on return she was investigated in two meetings, a report was prepared and the claimant was provided with a copy of it when she was invited to attend a disciplinary meeting. If the disciplinary meeting the claimant attended was to some extent unsatisfactory from the claimant's perspective, those matters seemed to have been cured at the appeal where the claimant had her chosen companion and where the claimant was able to say all that she wanted to say.

29. I have to consider whether in all the circumstances it was within the range of reasonable responses for the respondent to dismiss the claimant in respect of her admitted misconduct, and it seems to me that this was within the band of reasonable responses. A different employer might have acted differently, they might have taken into account the 11 years' service in a different way and felt the claimant had provided them with much more than effectively they had given her, but for this respondent to decide as it did seems to me to be within the band of reasonable responses. This makes the dismissal fair and so the claim fails.

Employment Judge Sherratt

14 January 2019

REASONS SENT TO THE PARTIES ON

16 January 2019

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