

EMPLOYMENT TRIBUNALS

Claimant: Miss P Vencatasamy

Respondent: Santander UK PLC

Heard at: London South **On:** 4 December 2017

Before: Employment Judge Cheetham

Representation

Claimant: Mr Jacques Tombyapan (solicitor)

Respondent: Mr Peter Thompson (solicitor)

JUDGMENT

The judgment of the Tribunal is that:-

1. The Claimant's claim for unfair dismissal is dismissed.

REASONS

1. This is a claim brought by the Claimant, Miss P Vencatasamy, in which she claimed that she was unfairly dismissed. The Respondent admitted the dismissal, which they stated was by reason of the Claimant's gross misconduct.
2. The Tribunal heard evidence from the Claimant and from Mr Mark Homans (Senior Relationships Director and dismissing officer) and Mr Andy Briggs (Managing Director, Portfolio Department, and appeals officer).

The issues

3. This is a conduct dismissal, so the Tribunal must ask itself whether, in all the circumstances, there was a reasonable investigation and whether there was an honest belief in the Claimant's culpability based upon reasonably held grounds. It must also consider whether dismissal was a reasonable sanction and, generally, whether a fair procedure was followed.

The Law

4. The relevant definitions under the **Employment Rights Act 1996** are as follows:

98.— General.

(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—

*...
(b) relates to the conduct of the employee,*

*...
(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.

Findings of fact

5. The Tribunal made the following findings of fact on the balance of probabilities. The Claimant was employed as a Personal Banker by the Respondent for over 12 years. Her day-to-day work involved opening bank accounts and savings accounts, arranging loans and credit cards and so on. She was one of four employees doing broadly the same sort of work, although only one of the other employees was doing exactly the same sort of work.
6. Owing to ongoing suspicions of fraud, the Respondent started a covert investigation into the Claimant's activities. CCTV cameras were installed and online checks carried out.
7. As a result of an incident on 18 March 2016 at the Respondent's Brixton branch, involving the issuing of credit cards that were then used for substantial cash withdrawals, the Claimant was arrested on 18 May 2016 on suspicion of fraud. She was interviewed by the police under caution and the Respondent's Special Investigation Unit participated in the interview. The Claimant provided "no comment" answers.
8. This led to an investigation report that found that there was a disciplinary case to answer in respect of 6 allegations of fraud and breaches of the Respondent's policies, with one generic allegation of breach of trust. The Claimant was not interviewed again as part of that investigation.

9. On 2 June 2016, the Claimant was invited to a Stage 3 Disciplinary Hearing, to be heard on 22 June. She faced those 7 allegations. The Claimant did not attend, nor did she advise the Respondent that she did not plan on attending.
10. The hearing was postponed and the Claimant invited to attend a re-arranged hearing on 2 July. Again, the Claimant did not attend and it was re-scheduled for 7 July, but this time the hearing proceeded in her absence. It was chaired by Mr Homans.
11. Before 7 July, Mr Homans had been contacted by the Claimant's trade union representative, who told him that the Claimant would provide "no comment" replies, so there was no point in her attending a hearing. Although questions were put to Mr Homans in cross-examination that he should have realised that the Claimant had been advised by her representative that she should not risk incriminating herself given the criminal investigation, this was never suggested to him at the time. The Tribunal found that it was not reasonable to expect him to guess what advice she had received and that it was also reasonable for him to decide to proceed with the hearing in the Claimant's absence.
12. At the disciplinary hearing, Mr Homans considered the investigation report prepared by the Respondent's Special Investigation Unit and its appendices. The management case was presented and the minutes show that Mr Homans asked a number of questions to test the evidence. He considered the report reliable, accepted the management case and concluded that the Claimant was guilty of gross misconduct. He told the Tribunal that he was convinced by the weight of evidence against the Claimant.
13. He then decided that the appropriate sanction was unfair dismissal. He took into account the Claimant's clean disciplinary record and the fact that there was no evidence of gain, but felt that the charges were so serious that dismissal was appropriate. He sent a letter with the outcome on 14 July 2016 and the effective date of termination was 15 July.
14. The Claimant brought an appeal on 16 August, by which time the criminal investigation had ended without any charges being brought. At the Claimant's request, the appeal hearing was conducted by phone. With regard to the allegations, the Claimant's response was follows:
 - (i) She could not remember anything about the first two allegations (an incident involving unknown third parties leading to a customer being defrauded and transacting a bank account without validating ID documents).
 - (ii) She admitted the next four allegations (all serious policy breaches), but provided excuses why she acted in that way.
15. The Claimant's case (as at this hearing) was that everyone did the same as her and/or her managers told her to do things in a particular way. However, she did not challenge the culpability of what she had done, nor was there evidence before the appeals officer of anyone else's conduct. Importantly, the Claimant did not provide adequate explanations for what she had done, as opposed to excuses for doing it.

16. The appeal was dismissed. It was raised in cross-examination and in submissions that the Claimant is dyslexic and that this should have been taken into account, but the Claimant never raised this at the time. Nor did she mention that she had been diagnosed with depression. It is not reasonable to expect an employer to take into account matters that are not within its knowledge or which it could not reasonably have known.

Conclusions

17. Based upon these findings of fact the Tribunal drew the following conclusions. There was a very thorough investigation and the report clearly showed a case to answer. Given the detail of the initial interview with the Claimant, there was no need for a further interview. Mr Homans as the dismissing officer reasonably relied on that report in reaching the conclusion that the Claimant's conduct amounted to gross misconduct and he held a genuine belief to that effect. In the circumstances, summary dismissal was a reasonable sanction.
18. The criticisms made at this hearing are largely of the procedure followed. As found above, it was clearly reasonable for Mr Homans, at the third attempt, to proceed with the disciplinary hearing in the Claimant's absence. Also as found above, the Tribunal does not accept the argument that he should reasonably have guessed what advice the Claimant was being given and delayed the hearing until after the criminal investigation was completed. Had it been explained to him, it would have been open to him decide whether to do so or not, but it was not.
19. However, given the appeal hearing, it is very hard to see what difference that would have made. These were very serious allegations and the Claimant admitted four and could not remember (and therefore could not dispute) two. She did not provide explanations for what she did, but tended to blame others. If that was her case at the highest, then it is difficult to see how those responses would have led Mr Homans to any different conclusion.
20. At this hearing, it was said on her behalf that she had made an error of judgment. That may well be the case, but as the Tribunal was at pains to point out, it cannot substitute its own decision, but only look at the reasonableness of the employer's decision and process. In this case, overwhelmingly, there was a fair dismissal and the claim is dismissed.

Employment Judge Cheetham
Date 19 December 2017