

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104872/17

5

Held in Glasgow on 5 and 6 February 2018

**Employment Judge: Iain F Attack
Members: Mr S F Evans
Mr J R Terry**

10

Mr Connor Lynch

**Claimant
In Person**

15

HMRC

**Respondents
Represented by:
Miss A Hunter -
Solicitor**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25 The judgment of the Employment Tribunal is that the claimant was not unfairly dismissed in terms of Section 98 of the Employment Rights Act 1996 and that his claim is dismissed.

30

REASONS

Introduction

35

1. In this case the claimant alleges he has been unfairly dismissed. The respondent admits dismissing the claimant alleging that the dismissal was for a potentially fair reason, namely conduct, and was fair in all the circumstances.

2. The Tribunal heard evidence for the respondent from Charmane McRobb, an operations manager for the respondent; Catherine Bell the deputy senior

E.T. Z4 (WR)

5 delivery manager for the respondent at their Bathgate contact centre; Paul Moffat who was the Decision Manager and from Paplu Dey, a senior delivery manager who was the Appeal Manager. It heard evidence for the claimant from the claimant himself; from Ms Alison Brodie, an executive officer with the respondent based at Bathgate; Ms Ashley Lynch, an executive officer based in the Tax Academy of the respondent and from Mrs. Hilary Singh an operations manager based at the respondent's Bathgate contact centre.

- 10 3. The parties produced a joint bundle of documents comprising 67 documents and extending to 412 pages. At the hearing the claimant produced further documents, comprising a schedule of loss, copy wage slips and a contract of employment from First Group. References to documents will be to the page number.
- 15 4. From the evidence which it heard and the documents to which it was referred the employment Tribunal found the following material facts to be admitted or proved.

Facts

- 20 5. The claimant was employed by the respondent from 27 April 2015 until 13 June 2017 when his employment was terminated.
- 25 6. At the time of his dismissal the claimant was employed as a front line manager in the respondent's corporate treasury department based at Cumbernauld. Prior to obtaining that appointment he had been based at the respondent's contact centre at Bathgate.
- 30 7. When employees of the respondent apply for internal vacancies they submit an online application which includes submitting a number of competency based examples of what they have done to demonstrate a particular competency.

8. When applying for a vacancy applicants must comply with the Civil Service Code, page 113.
9. That Code provides that civil servants are appointed on merit on the basis of fair and open competition and are expected to carry out their roles with dedication and commitment to the Civil Service and its core values which are honesty, objectivity and impartiality, page 95.
10. From February 2016 the claimant applied for a number of vacancies within the respondent's organisation. In April 2016 he was successful in being appointed to a temporary promotion as a Trainer to the Tax Academy.
11. From 27 June 2016 until 6 July 2016 the claimant delivered training at the respondent's premises at Peterlee.
12. On 30 June 2016 the claimant applied for a job as a Learning and Development Training officer, pages 150-156. In that application he gave an example under the Leading and Communicating competency section of how he dealt with an adviser with mental health issues and how he had improved a team's performance, page 154.
13. The claimant submitted an application for the post of Corporate Treasury Continuous Improvement Advocate on 1 September 2016. The example he gave to demonstrate his competency under the heading of Leading and Communicating was the same as in the submission dated 30 June 2016, page 161.
14. On 9 September 2016 the claimant submitted an application for the post of Project Delivery Manager. He used the same example of demonstrating his competency under the heading of Managing a Quality Service as he had used in the previous applications under the heading of Leading and Communicating, page 167.

15. On 5 September 2016 the claimant submitted an application for an Operational Safety Training Officer. Under the heading Leading and Communicating he again used the same example to demonstrate his competency as he had used in the previous applications, page 173.
- 5
16. On 13 September 2016 the claimant submitted an application for the vacant post of Higher Officer Caseworker. Again under the heading Leading and Communicating he used the same example to demonstrate his competency as in the previous applications, page 179.
- 10
17. On 3 November 2016 the claimant applied for the vacant role of Customer Service Team leader. In his example to demonstrate his competency under the heading of Leading and Communicating he changed the gender of the adviser with mental health issues, to whom he was referring, to male and removed the reference to improving the performance of a team that he had managed, page 184-5.
- 15
18. On 16 January 2017 the claimant applied for a vacancy within the respondent in its BT Operations. He gave an example of how he could demonstrate his competency under the heading of Leading and Communicating which is contained at page 190.
- 20
19. The claimant of subsequently applied for a post in Corporate Treasury based at Cumbernauld, and was advised on 2 February 2017 that he had been successful in that post. At that time the application for the post in BT operations was still open.
- 25
20. The application forms for internal vacant posts contain a declaration that the information given on the form is true. There is a box which is to be completed confirming the applicant accepts that declaration, before the claim can be submitted. The claimant completed the forms accepting the declaration that the information given by him was true.
- 30

21. Towards the end of February 2017 Charmane McRobb received a phone call advising there was an issue over two applications for the BT operations job. She was told that two applications appeared to be identical. The applications which appeared to be identical were that of the claimant and another employee of the respondent, Allan Harper.
22. Ms McRobb held an informal meeting the claimant to talk about the competency he had prepared for the BT Operations job. The explanation which the claimant gave satisfied Ms McRobb.
23. She reported her findings to her line manager Catherine Bell. At that time Ms Bell accepted that the competency prepared by the claimant was his.
24. On 23 February 2017 she sent an email to the claimant confirming the matter had been resolved, page 285.
25. Approximately one week after meeting the claimant Ms McRobb had a meeting with Allan Harper. Mr Harper accepted the example he had used in the competency was not his and that he had lied. He said he was given the example by Hilary Singh and had simply used it as his own.
26. As a result of Mr Harper's admission to Mrs McRobb the matter was referred to the respondent's Internal Governance.
27. Helen Hinchcliffe, a Higher Investigation Officer within the respondent's Internal Governance Civil Investigations Department, was instructed to carry out an investigation.
28. On 28 March 2017 Paul Moffat, who had been appointed Decision Manager, wrote to the claimant advising him of Helen Hinchcliffe's appointment to investigate an allegation that he had potentially breached the Department's conduct policy by submitting job applications which contained competency statements which did not belong to him. The claimant was warned this amounted to potential gross misconduct, pages 73-4.

29. Helen Hinchcliffe invited the claimant to attend an interview on 21 April 2017. He was advised of his right to be accompanied, pages 75 – 76.
- 5 30. Thereafter Helen Hinchcliffe undertook her investigation and produced a report which, with appendices, is produced at pages77-285.
31. By letter of 22 May 2017 Paul Moffat invited the claimant to attend a formal meeting on 5 June 2017 under the respondent's disciplinary procedure, pages286-7.
- 10
32. The claimant was advised that the allegation made against him was that during the period 30 June 2016 to 16 January 2017 he had knowingly submitted job applications which contained a plagiarised competency statement. The claimant was sent a full copy of Helen Hinchcliffe's report and advised of his right to be accompanied at the meeting.
- 15
33. At the disciplinary hearing Mr Moffat confirmed to the claimant that the allegation was for plagiarising a competency in several job applications. The notes of the disciplinary hearing are contained at pages 288 – 293.
- 20
34. Following the meeting Mr Moffat considered all that the claimant had stated at the meeting and prepared a deliberations document, pages 303 – 307.
- 25 35. Mr Moffat found the allegations made against the claimant to be proven and wrote to him advising him of that finding on 14 June 27, pages 308- 310. He also sent a copy of his deliberations document.
36. The claimant was dismissed for gross misconduct without notice or pay in lieu of notice. He was advised of his right of appeal.
- 30
37. Mr Moffat found that the claimant had copied a submission given to him by Mrs. Singh and that out of 250 words in the submission there were approximately 180 which matched Mrs Singh's example. He found the

structure and grammatical errors also matched Mrs Singh's example. The claimant accepted at that meeting that he had copied the wording of Mrs Singh's competency.

5 38. He also accepted that in respect of the application dated 30 June 2016 he could not have achieved the outcome specified by him as his training was still ongoing.

10 39. Mr Moffat concluded that the claimant had breached the level of trust expected between the respondent and its employees contrary to policies HR22003 Conduct and Behaviours at Work and HR220007 Policy and Impartiality HR Guidance.

15 40. Mr Moffat considered a lesser penalty than dismissal but did not consider such was appropriate in the circumstances.

41. The claimant appealed against Mr Moffat's decision. He set out his grounds of appeal in a letter dated 28 June 2017, pages 314 – 319.

20 42. The appeal was heard by Mr Dey on 19 July 2017.

25 43. At the appeal Mr Dey went through each of the grounds of the claimant's appeal. The notes of the appeal meeting are at pages 327-334. There was no new evidence submitted by the claimant at the appeal hearing but he submitted statements from character witnesses.

30 44. Mr Dey considered the points which had been made to him and set out his deliberations in a document entitled Appeal Managers Deliberation Template contained at pages 338 – 343. His decision was to refuse the appeal and uphold the penalty.

45. Mr Dey advised the claimant that the appeal had not been successful in a letter to him dated 26 July 2017, page 344. He also sent the claimant a copy of the Appeal Manager's deliberation document.
- 5 46. Mr Dey formed the opinion that the claimant had been guilty of the misconduct alleged against him and that it amounted to gross misconduct. He considered that the penalty of dismissal without notice was proportionate and appropriate.
- 10 47. Since being dismissed by the respondent the claimant has applied for various jobs. He obtained employment with Bedlam Events Management where he earned the net sums of £138.95 in July and £30.97 in October making a total of £169.92 net. He also had employment with Capita from September to November 2017 earning a gross figure of £4,737.57 and has employment
15 with First Group as a bus driver earning, since November a gross sum of £1,671.81.

Submissions

20 **Claimant**

48. Mr Lynch submitted that the respondent should have spoken to Mr Harper before allowing him to go to the new post at Cumbernauld. He said that by allowing him to go to that new post they were setting him up to fail as there
25 was no financial gain from the competency submissions he had made until he obtained the new post.
49. He said it was unfair that there was no transcript of any of the conversations which the respondent's witnesses claimed to have had with HR and there
30 was no evidence to confirm what might have been said.
50. Having received the email from Catherine Bell he felt he was entitled to the view that everything had been resolved in his favour.

51. He submitted that no one from Internal Governance had given evidence to speak to their various documents and policies.

5 52. Any mistake which had been made by him was not for financial gain and no malice had been intended in completing the competencies in applying for jobs.

53. He felt that the penalty of dismissal was disproportionate and a lesser penalty
10 could have been imposed which would have allowed him to remain in place.

Respondent

54. For the respondent Miss Hunter referred us to the following cases:-
15

British Home Stores v Burchell [1980] ICR 303

Shreshta v Genesis Housing Association Ltd [2015] IRLR 399

Iceland Frozen Foods Ltd. v Jones [1983] ICR 17

British Leyland (UK) Ltd v Swift [1981] IRLR 91

20 **Neary v Dean of Westminster [1999] IRLR 288**

Adesokan v Sainsbury's Supermarkets Ltd [2017] ICR 590

55. She set out the law as contained in Section 98 of the **Employment Rights Act 1996** and submitted that the respondent had dismissed the claimant by
25 reason of conduct which is a potentially fair reason and that no other reason had been put forward by the claimant. The conduct in question was plagiarism. The dismissal of the claimant by reason of that conduct was fair in all circumstances.

30 56. The respondent had a genuine belief that the claimant was guilty of the misconduct alleged, namely the plagiarism. They genuinely believed that the claimant had copied Mrs Singh's competency statement and submitted it as his own as part of the application for internal vacancies. The respondent's

belief was based upon reasonable grounds. The claimant had admitted both at the investigation meeting and at disciplinary hearing that he had copied and pasted Mrs Singh's competency.

5 57. The respondent had carried out a reasonable investigation and spoken to all the witnesses who could contribute. Those statements were considered by Mr Moffat. Mr Moffat did not speak to Ashley Lynch, who had been present at the training with the claimant in Peterlee, because he did not think she would be able to add anything to the actual allegations against the claimant.

10

58. The claimant had admitted that he could not have achieved the outcome in the competencies by 30 June 2016 and could not have done the work referred to in the competency in the application. What was important was the reasonableness of the investigation as a whole and in Miss Hunter's submission a reasonable investigation had been carried out in all the
15 circumstances of the case especially given the claimant's admissions at the disciplinary hearing.

59. It was her submission that the decision to dismiss was within the band of
20 reasonable responses and she reminded the Tribunal that it must not substitute its decision of what was the right course of action to adopt in place of the employer's.

60. It was submitted that the respondent acted reasonably in treating the conduct
25 as gross misconduct and the penalty fell well within the range of reasonable responses.

61. In the respondent's business honesty is everything and that is a key to the
business. Honesty is integral in the civil service and that can be seen from the Civil Service Code. In Miss Hunter's submission, plagiarising someone
30 else's work and passing it off as your own is an act of dishonesty and that is what the respondents had concluded in this case.

62. The respondent had considered alternatives to dismissal and were entitled to the view that a sanction short of dismissal would not be appropriate in the circumstances. Similar sanctions had been applied in similar cases and accordingly dismissing the claimant was consistent with the outcome of other cases.

63. Miss Hunter also submitted that there was no reason why the claimant should have been suspended and nothing should be drawn from the fact that he was not suspended whilst the disciplinary enquiries were continuing.

64. Finally Miss Hunter submitted that if the claimant was successful there should be a reduction of 100% for his contributory conduct. He had accepted he had copied Mrs. Singh's competency and submitted that in several job applications for promotion. Further, in her submission there had been a fair procedure carried out and the claimant had only taken one procedural issue, namely that he had not been suspended whilst the investigation was being carried out. If the Tribunals should find the dismissal was procedurally unfair it was submitted that the claimant would have been dismissed in any event if a fair procedure had been followed and accordingly any compensation should be reduced to nil.

Discussion and Decision

65. In reaching its decision the Tribunal began by considering the terms of Section 98(1) of the **Employment Rights Act 1996** (ERA) which makes it clear that it is for the employer to show the reason for dismissal which should be one of the potentially fair reasons set out in Section 98. If an employer can show that the reason for the dismissal is one falling within the scope of section 98 the Tribunal must then go on to consider whether the dismissal is fair or unfair. This will depend on whether in the circumstances (including the size and administrative resources of the undertaking) the employer acted reasonably or unreasonably in treating the reason as a sufficient reason for

dismissing the employee and is to be determined in accordance with equity and the substantial merits of the case.

5 66. The Tribunal throughout was mindful of the fact that it must not substitute its own decision for that of the employer. Rather, it must decide whether the employer's response fell within the range or band of reasonable responses open to a reasonable employer in the circumstances of the case (**Iceland Frozen Foods v Jones** above). The Tribunal bore in mind throughout what this test means in practice. In a given set of circumstances one employer may
10 decide that dismissal is the appropriate response while another employer may decide in the same circumstances that a lesser penalty is appropriate. Both of these decisions may be responses which fall within the band of reasonable responses in the circumstances of the case.

15 67. The Tribunal also bore in mind the test set out by the EAT in **British Home Stores Ltd v Burchell** (above) with regard to the approach to be taken in considering the terms of what is now Section 98(4) ERA:

20 **“What the Tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he
25 formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in the circumstances of the case. It is the employer who manages to**

30

5 discharge the onus of demonstrating those three matters, we think, who must not be examined further. It is not relevant, as we think, that the Tribunal would themselves have shared that view in those circumstances. It is not relevant, as we think, for the Tribunal to examine the quality of the material which the employer's had before them, for instance to see whether it was sort material, objectively considered, which would lead to a certain conclusion on the balance of probabilities, or whether it was the sort of material which would lead to the same conclusion only on the basis of being "sure", as it is now said more normally in a criminal context, or, to use a more old-fashioned term, such as to put the matter "beyond reasonable doubt." The test, and the test all the way through, is reasonableness; and certainly, as it seems to us, a conclusion on the balance of probabilities will in any surmisable circumstance be a reasonable conclusion."

10

15

68. In this case we were satisfied that the reason for the dismissal of the claimant by the respondent was conduct. That conduct was the plagiarising by the claimant of another employee's competency for jobs within the respondent's organisation. It was the fact that the claimant had copied Mrs Singh's competency that caused concern to the respondent.

20

69. We were satisfied that it was indeed a core value for the civil service that their employees acted with honesty and integrity and the various policies produced to us made reference to honesty and impartiality as being important. Those policies were not challenged.

25

70. Every application completed by the claimant for an internal appointment had attached to it a declaration that the information contained within it was true. An example is shown at page 126. The claimant had ticked the relevant box on each application indicating that the information contained within his application was indeed correct.

30

71. It was not suggested to us that there was any other reason for the dismissal of the claimant and accordingly we find that the reason for the claimant's dismissal was conduct in that he had plagiarised the work of another employee and endeavoured to pass it off as his own.

5

72. That is a potentially fair reason for dismissal in terms of Section 98(4) ERA. We were satisfied that the respondent did believe that the claimant was guilty of the alleged misconduct and that they had formed that view on reasonable grounds having carried out as much investigation as was reasonable.

10

73. We did not consider that there was anything wrong in Mrs Bell in informing the claimant that the matter had been resolved. At the time when she sent that email to the claimant she was of the view that he had done nothing wrong. That was after Charmane McRobb had spoken informally to the claimant. It was only when Mr Harper was interviewed, after the email been sent to the claimant, that alarm bells rang and an investigation was instructed to be carried out against the claimant.

15

74. That investigation by Helen Hinchcliffe was, in our opinion, thorough. The investigation considered the various policies which the respondent has in place, and the applications made by the claimant and extended to over 200 pages. It concluded that it appeared the claimant was guilty of the alleged misconduct. After considering the report Mr Moffat invited the claimant to a disciplinary hearing.

20

25

75. At the disciplinary hearing the claimant was given every opportunity to answer the allegations against him. He was represented by his trade union official. As a result of the claimant's answers Mr Moffat formed the belief that the claimant was guilty of the alleged misconduct. We considered that there were reasonable grounds for Mr Moffat to sustain that belief namely the investigation report and the claimant's responses at the disciplinary hearing. We did not consider that there were any further reasonable investigations which could be carried out.

30

76. We did not consider that there would have been any point in Mr Moffat interviewing Ashley Lynch as she, at best, could only speak to what had happened at Peterlee and was not involved in the disciplinary process or in the submission by the claimant of his competencies in his various job applications. Whilst she might have been able to give evidence of what work the claimant had done that is, in this situation, not the point. The point here is whether the claimant plagiarised the work of another; not whether he had himself completed sufficient tasks to be able to apply the jobs for which he was applying. That was not the focus of the respondent's concern.

77. In cases of this nature the employment Tribunal is not concerned with whether the employee was guilty or innocent of the offences charged but whether that the employers had reasonable grounds for believing that he had committed the offences when they dismissed him.

78. We should say that there was no suggestion that the dismissal was procedurally unfair other than the claimant's suggestion in evidence, that if the respondent regarded the matter so seriously he should have been suspended whilst enquiries were being carried out.

79. As it happens the claimant having been cleared by Mrs. Bell, was able to take up his new post in Cumbernauld. The respondent could have suspended the claimant whilst investigations were being carried out but there is no legal requirement for them to do so. The fact is that the claimant had moved from the contact centre in Bathgate to his new job in Cumbernauld and therefore enquiries at Bathgate could continue without his being present. There was no need in this particular case for the claimant to be suspended and nothing can be drawn from the fact that he was not suspended.

80. Having reached the conclusion that the respondent's had satisfied all three limbs of the **Burchell** test we now have to consider whether the penalty of

dismissal was within the range of reasonable responses open to a reasonable employer.

5 81. We were satisfied from the various policy documents to which we were referred that in the case of this particular respondent honesty and integrity are indeed core values. It is not relevant whether the employment Tribunal would or would not have dismissed in these circumstances and we are not entitled to substitute our own view for that of the employer, as Miss Hunter reminded us. In our opinion the decision to dismiss the claimant for the
10 misconduct of which he had been found guilty was well within the range of reasonable responses open to a reasonable employer. We could not say that no reasonable employer acting reasonably would not have dismissed the claimant. We considered the dismissal fell within the band of reasonable responses and accordingly the dismissal is fair. The claimant's claim is
15 dismissed.

20 **Employment Judge: I F Atack**
Date of Judgment: 22 February 2018
Entered in register: 21 March 2018
And copied to parties

25

30

35

