



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE MARTIN sitting alone

**BETWEEN:** Mr D Flewers Claimant

AND

Royal Mail Plc Respondent

**ON:** 06 March 2019

**APPEARANCES:**

**For the Claimant:** did not attend

**For the Respondent:** Ms L Roberts – Legal Executive

## **JUDGMENT**

The judgment of the Tribunal is that the claim for unfair dismissal fails and is dismissed.

## **REASONS**

1. By a Claim Form lodged at the Tribunal on 25 September 2018 the Claimant contends that he was unfairly dismissed. The Respondent defended the claim on the basis that the Claimant was fairly dismissed for gross misconduct. The Claimant contacted the Tribunal on 5 March 2019 at 10.53 am requesting a postponement of the hearing on the basis that he had not been able to get representation. That request was refused and communicated to the Claimant. The Claimant did not attend the hearing, however his witness did who told the Tribunal that he had been in contact with the Claimant the previous morning and had agreed to meet him at the Tribunal at 9 am before the hearing. He was not told that the Claimant would not be coming.
2. I had read the witness statements from Ms Alison Ray (Delivery Office

Manager) who was the dismissing officer and Ms Anna Walsh (Independent Case Worker) who heard the appeal. I also read the relevant documents in the bundle prior to the hearing starting. Both witnesses took the oath and confirmed that their evidence was true to the best of their knowledge and belief. I asked some supplementary questions of Ms Walsh to cover the points raised by the Claimant in his ET1. She told me that a suspension of 6 months was on the long side but no unheard of with some suspensions lasting longer. She confirmed the Claimant was paid during his suspension. She told me that the length of the suspension did not affect the process as there had been an investigation very close to the incident in question. The Claimant suggested in his claim form that other employees had not been dismissed in similar circumstances. Ms Walsh, who had conducted over 400 appeals, told me that she had heard appeals of matters which were similar, and that dismissal had been the sanction.

3. The Claimant was employed as a postman with the Respondent between 1 July 1991 until his dismissal for gross misconduct on 26 May 2018. The Claimant had no previous disciplinary offences on record.
4. It is for the Respondent to show that there was a potentially fair reason for dismissal. In this case the Respondent asserts that it was for a conduct reason. Once that reason is established, I have to consider section 98(4) of the Employment Rights Act 1996 to consider whether in all the circumstances of the case the Respondent acted reasonably or unreasonably in treating conduct as a sufficient reason for dismissing the employee whilst considering the equity and the substantial merits of the case.
5. I remind myself that it is not for me to substitute my own view for that of the Respondent but only to consider whether or not the processes and the decision to dismiss fell within a band of reasonable responses. In conduct cases I am to be guided by the case of ***British Home Stores v Burchell [1980] ICR 303***, and that I need to consider whether the Respondent held a genuine belief in the Claimant's misconduct on reasonable grounds following a reasonable investigation.
6. On date he participated in a WhatsApp group conversation during which he made offensive comments about Polish workers and later that he stood by this message. This was brought to the attention of LS who is Polish and other Polish staff. The Respondent initiated its procedures under its Bullying and Harassment Policy and investigated, putting the Claimant on suspension whilst this was undertaken. The Respondent found that the Claimant should be disciplined under its disciplinary policy and a disciplinary investigation was started. The outcome was that the Claimant was summarily dismissed for gross misconduct. He was on suspension for the period of the bullying and harassment procedures and the disciplinary procedures for about six months. The Claimant was notified of the allegations and admitted to making the comment in question. The initial investigation was very soon after the message was communicated. The Claimant was given the opportunity to be accompanied at all hearings and

was told the possible sanctions that my result if he was found guilty.

7. I conclude that the Respondent has demonstrated that the Claimant was dismissed for a conduct reason. The procedures carried out within the final disciplinary process was in accordance with the disciplinary policy and within ACAS guidelines. The Claimant was given every opportunity to defend himself against the allegations and did so at length. I am satisfied that the investigation was reasonable and that following on from that investigation and the hearing there were genuine grounds upon which the Respondent held its belief that the Claimant was guilty of gross misconduct.
8. I am satisfied that the decision to dismiss fell within a band of reasonable responses in the same way that I am satisfied that the process was reasonable. The Respondent considered the matter carefully considering the Claimant's long length of service and previously clean disciplinary record. I am satisfied that the Bullying and Harassment Policy and Disciplinary Policy was followed and that the sanction fell within the parameters of those policies. The Claimant was given the opportunity to be accompanied at all hearings.
9. Accordingly, I dismiss the claim for unfair dismissal.

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Employment Judge Martin  
Date: 06 March 2019