Case No: 1808685/2018

EMPLOYMENT TRIBUNALS

Claimant: **Mr T Dzierzanowski**

Respondent: **Cranswick Country Foods Plc**

Heard at: **Hull** **On: 19 and 20 February 2019**

Before: **Employment Judge Maidment**
Members: **Mr N Pearse**
Mr D Bright

Representation
Claimant: **Mr S Dzierzanowski, the Claimant's brother**
Respondent: **Mr D Flood, Counsel**

JUDGMENT having been sent to the parties on 22 February 2019 and written reasons having been requested by the Respondent in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The Issues

1. The Claimant brought a complaint of unfair dismissal. The Respondent maintained that his employment was terminated for a reason relating to conduct, namely a breach of health and safety in failing to isolate a dehairing machine in its abattoir. At a preliminary hearing on 24 September 2018 the Claimant had identified some specific challenges he would make to the fairness of his dismissal. He contended that training given to him on the dehairing machine had not been provided by a qualified person. The training had not been adjusted to take into account the Claimant's lack of understanding of English. Whilst the Claimant had had sight of the Respondent's policy regarding locking machines off, he had not understood what the policy said and had been authorised to use the machinery despite not having received electrical awareness training. Any breach of procedure had not been deliberate but arose out of a lack of understanding which was the fault of the Respondent. The Claimant did not receive an update of the Respondent's lock off policy in 2016 where the wording was changed to make requirements more prescriptive than advisory. Finally, the Claimant

maintained that he had been treated inconsistently to other employees. In particular, Mr Leighfield was guilty of a health and safety breach arising out of the same incident, yet had not been subjected to disciplinary action.

2. The Claimant also brought a complaint of direct discrimination because of race. The Claimant is a Polish national. In particular, he maintained that his dismissal was an act of less favourable treatment citing Mr Leighfield, a British national, as a comparator. He also separately had sought to allege that Mr Leighfield had treated him less favourably because of his nationality in raising the Claimant's conduct as a disciplinary issue. This complaint regarding Mr Leighfield's actions in escalating the matter was not, however, pursued as a complaint as was clarified by the Claimant during the hearing and again in the final submissions made on his behalf.

The evidence

3. The Claimant was ably assisted throughout by the Tribunal appointed interpreter, Ms M Sarvjahani. The Tribunal had before it an agreed bundle of documents. The Tribunal, having identified the issues with the parties, took some time to privately read into relevant documentation and the witness statements exchanged between the parties. This meant that when each witness came to give evidence, he could do so by confirming the contents of his witness statement and, subject to brief supplementary questions, then be open to be cross-examined. The Claimant had exchanged one witness statement of a witness who would not be present to give live evidence, but in any event the Claimant confirmed that he no longer wished to rely on this evidence – it was therefore not considered by the Tribunal. The Tribunal heard firstly from Mr Mick Leighfield, nightshift engineering supervisor and then also on behalf the Respondent from Mr Mark Lundgren, engineering manager and Mr Simon Shore, chief engineer. The Tribunal then heard, on behalf of the Claimant, from the Claimant's brother who had worked with him at the Respondent, Mr Sylwester Dzierzanowski, and then from the Claimant himself. Mr Shore was on the second day of the hearing briefly recalled to explain what a number of newly disclosed (but agreed) photographs of the dehairer and the area around it in the Respondent's abattoir showed.

4. Having considered all of the relevant evidence, the Tribunal makes the following findings of fact.

The facts

5. The Claimant worked from around 2013 in the Respondent's abattoir and meat processing plant outside Hull. He is of Polish nationality and his English, verbal and written, is limited.

6. He had previously worked in the butchery department as a stringer which involved the use of relatively small machines to tie string around the meat produced. He then carried out routine maintenance tasks on the machines

between production runs. This would involve the disassembling of serviceable parts and then their reassembly.

7. The evidence suggests that the Claimant had at times struggled to conform to the Respondent's rules and standards. In 2015 he had been dismissed for breaching the Respondent's rules as to smoking, for breaching its health and safety policy and for failing to complete the shift handover. However, on appeal, that dismissal was viewed by Mr Simon Shore to be too harsh and was substituted by him with a final written warning.

8. An issue subsequently arose regarding the Claimant's failure to work his shift on 25 December 2015. Mark Lundgren undertook a disciplinary hearing but decided to take no further action as there appeared to have been some confusion with the Claimant at the situation he found himself in. Mr Lundgren appreciated that a further disciplinary sanction might trigger the Claimant's dismissal.

9. In 2017 the Claimant was transferred to the Respondent's adjoining abattoir as an engineering assistant. By then the Claimant's brother, who had worked in relative proximity to him and helped him out, including in terms of communication, had left the Respondent. The Claimant was moved to the abattoir because the Respondent perceived that he was struggling in his existing role and costing the Respondent too much money by simply taking the more expensive option of replacing rather than rectifying the component parts of the stringers. For the first 3 – 4 weeks in his new role he worked alongside a fully skilled engineer of Polish nationality, Daniel Krsuczeka, so that he could be trained in the planned preventative maintenance ('PPM') tasks which had to be periodically carried out in that department. This included the greasing of chains and bearings and checking bolts and beaters to see if they were loose or damaged and, if so, tightening or replacing them.

10. In December 2013 the Claimant had been issued with the Respondent's policy regarding locking off machinery, including the need to isolate any electric current flowing into them before they were worked upon. The Claimant's case is that he was effectively presented with that policy and asked to sign it off regardless that there was no specific training on it and that his understanding of written and indeed verbal English was poor. Mr Leighfield had no recollection of this nor of him being asked by the Claimant's brother, who at that time also worked at the Respondent, to provide the Claimant with training in this procedure. Nor did he recollect the Claimant's brother refusing to provide the training due to his lack of capability to do so. On the balance of evidence, the Claimant's account must be accepted.

11. Mr Leighfield's view was that the policy was given to staff to read and for them to confirm their understanding of it. If they had any difficulties or areas

which required clarification, then they could raise these, but there was otherwise no actual training necessary.

12. The Claimant signed for the policy which was issued in late 2013 but a further, albeit similar (and certainly not materially different), version was issued in 2016. Clearly the policy related to a range of different types of machinery with different means of isolating them. Some of the operations required specialist electrical knowledge which it is agreed the Claimant did not have. Nor was he ever trained on the policy by a qualified electrician. However, he never worked on machines which required more specialist electrical knowledge. The Tribunal notes that when the Claimant signed for receipt of the 2013 policy he was operating compact electrical machinery (the stringers) with no need for their independent isolation beyond the mains electrical switch. No further training was given when he moved to the abattoir.

13. Work orders were automatically generated for PPM to be carried out and sheets were completed by the engineer responsible as the tasks were completed. Some of these work orders related to specific tasks to be undertaken on the dehairing machines in the abattoir. These were large machines into which pig carcasses were placed for the forcible removal of their skin and hair prior to them being moved into the butchery department. For some of the tasks on the work orders, including on the dehairing machines, there was an explicit direction as follows: *"Ensure the machine/equipment is isolated, locked off and any stored energy has been dissipated prior to carrying out any repairs."* A separate work order sheet for the inspection of beaters on the dehairing machines did not contain such a direction. The Respondent has confirmed to the Tribunal that this was an administrative oversight on the document template which has been rectified since the Claimant's dismissal.

14. The assistant engineer role in the abattoir was routine and involved quite straightforward tasks which the Claimant was capable of. However, the Respondent considered that to ensure that the Claimant did what he had to do in a systematic and verifiable way they should ask Daniel Krsuczeka to break down the tasks into their individual component parts and, from the list he produced and the Respondent's own knowledge of the tasks to carry out, individual work order sheets for each individual PPM were devised for the Claimant to follow.

15. The Claimant went through each task with Mr Krsuczeka during an effective induction into the abattoir albeit no training records were signed off by the Claimant and retained. The Claimant made his own notes in a notebook he carried round with him.

16. On 22 April 2018 at around 11:45pm Mr Leighfield came across the Claimant standing on the gantry of a dehairing machine with the doors to

that machine open. Mr Leighfield went up the ladder to the top of the dehairer to check on a particular part of the machinery and saw that three isolation switches were still in the 'on' position – they were 'live'. To isolate those switches, a lever had to be pulled down and a padlock placed through the holes which then aligned. The Claimant indeed had his own set of padlocks and keys for that very purpose. The padlocks and keys were unique to him. Mr Leighfield considered that each of the three isolators ought to have been padlocked so that they could not be inadvertently moved upwards which would then have potentially allowed someone to switch on the machine.

17. Ms Leighfield pointed out to the Claimant that he had not isolated the machine. He explained what might happen if the machine was restarted with him at work inside it. He also explained the serious implications for someone else switching the machine on, not knowing that someone was working. He went into the plant room a short distance away from the dehairer behind a door and found that the circuits were switched 'on' at the master electrical panel. He returned to advise the Claimant of that and took the Claimant the few steps to the plant room to explain the potential repercussions in terms of the Claimant's safety. At that point, the Claimant got out his *'lock off'* padlocks. Mr Leighfield reported the incident to Mark Lundgren, engineering manager, by email of 01:15am on 23 April stating: *"Going forward I hope he has taken it on board*". Mr Leighfield explained to the Tribunal that, as a supervisor, the limit of his role and responsibilities was to report the incident. It was for Mr Lundgren to decide what further action ought to be taken.

18. Mr Lundgren, on receiving the report, accessed documentary evidence regarding the Claimant's training record, the lock off procedure itself and the relevant work orders allocated to the Claimant for the task in question. He did not appreciate that the particular work order produced for the task that the Claimant was carrying out at the time of the incident did not include the aforementioned locking off safety direction. On reviewing these he believed that there was a case of potential gross misconduct to be answered. He wrote to the Claimant by letter of 26 April 2018 suspending him from work pending a disciplinary hearing. The documentary evidence was enclosed with this, including Mr Leighfield's statement, the procedural documentation as well as the Respondent's disciplinary policy.

19. The Claimant was subsequently invited to a disciplinary hearing by letter of 30 April which enclosed again the relevant documentation. The Claimant was told that if the matter was found to fall within gross misconduct an outcome could be his summary dismissal. He was told of his right to be accompanied by a work colleague or union official.

20. The disciplinary hearing was duly conducted on 2 May 2018. The Claimant was accompanied by a colleague, Mr Olkiewicz, who was able to assist in translation. The Claimant recounted that he was inside the dehairer counting how many beaters he needed to replace and that he was going to

start work when Mr Leighfield told him not to do it. He said that he didn't put the locks on the isolation switches as he was coming back to do the job later. The Claimant had put his tools aside and was looking inside the dehairer. He had checked the master panel in the plant room and knew it was off. Mr Krsuczeka and himself were the only engineers at work in the vicinity at that point and he understood that Mr Krsuczeka had switched the electric off at the master control panel. When asked specifically if he was inside the dehairer, he said he was only looking. He confirmed that the doors, however, were open.

21. The Claimant was asked whether he locked off the isolators on the machinery every night and confirmed that he did do so. When asked why he had not done so that Sunday he said that he had started checking the job and opened the door to check how many pieces were broken. He said that Mr Leighfield had told him that he must lock off first and had shown him that the power was in fact by that point switched back on at the control panel in the plant room. This was at odds with the Claimant's understanding – if the power at the control panel had been switched off earlier, it had been switched back on later unbeknown to the Claimant.

22. The Claimant said that he understood why the Respondent had a policy regarding the locking off of machinery and understood the consequences of not doing so. He confirmed that he had signed to confirm that he had been trained and understood the lock off procedure. He said that he understood and had signed the job description which stated he should always work safely. He agreed that he had padlocks to shut down the isolators, but said that he had checked the control panel. He again said that if he had started the job, he would have put the padlocks on later after his break.

23. The Claimant then referred to Mr Leighfield in the past shouting at him to sign the lock off procedure but that nobody showed him it. He described Mr Leighfield as aggressive towards him. He then criticised Mr Leighfield. He had seen that the power was in fact on at the control panel and he should have switched it off, not gone over to get the Claimant and take him back to the plant room to show him that it was on at the control panel. The Claimant appeared to misunderstand the level of qualification required for someone to access the control panel, which did not go so far as including the Claimant himself.

24. Mr Lundgren adjourned the meeting to consider the outcome. He considered that the Claimant was still failing to understand the significant risk and danger that Mr Krsuczeka could have at any point returned and re-engaged the machine without any knowledge that the Claimant was working on it. The Claimant would not have survived had the machine been turned on with him inside but the Claimant appeared not to grasp the seriousness of the situation. He concluded this was despite the training and guidance he had received. He considered that the Claimant's failure was so serious as to warrant his immediate dismissal.

25. Mr Lundgren reconvening the meeting to inform the Claimant of his decision. He then confirmed the Claimant's dismissal by letter of 3 May 2018 which repeated the Claimant's right of appeal. The letter recounted that the Claimant had admitted that he had the doors of the dehairer open and was assessing the work that needed to be carried out. The Claimant had said that the power had been switched off in the plant room when he checked at 9:30pm and that, before he started work on the machine, he intended to lock it off. Mr Lundgren expressed his concern at the Claimant not isolating the machine before opening the doors and that he had asked if the Claimant understood the lock off procedure, which the Claimant had said that he did. Mr Lundgren also referred to reminding the Claimant that he should not open the panel in the plant room to switch the power off as he was not trained to do so.

26. The Claimant appealed the decision to terminate his employment which resulted in him being invited to attend an appeal hearing before Mr Simon Shore on 18 May 2018. His basis of appeal was that the lock off procedure had been amended since he had signed it and he was preparing, not starting, a job. The Claimant was not accompanied but arrangements were made by the Respondent for another member of staff to be present to translate for him during the meeting.

27. At the hearing, the Claimant said that he didn't breach procedure as he had not started to work on the machine. He just opened the door to see what needed doing. He said that he had opened the doors and looked inside but didn't put his hands inside. When suggested that this could have killed him, he said that the machine hadn't started.

28. The Claimant referred then to only having opened the door, without looking in, for two minutes and that on that Sunday shift he had been very busy.

29. The Claimant queried, if the task was so safety critical, why it was allocated to him as a semi-skilled engineering assistant. Mr Shore said that the Claimant was trained and signed off as competent to complete the task.

30. Mr Shore noted that the Claimant was not saying that his acceptance of the lock off procedures was in any way out of date. Whilst the further version came into use in 2016, he did not consider there to be any material differences. Fundamentally, the Claimant did not seem to him to grasp the significant risk of danger to him. He considered, based on the Claimant's demeanour at the appeal hearing, that the Claimant had a worryingly lax attitude to this critical health and safety procedure. The Claimant failed to understand that he would have stood no chance of survival had the machine inadvertently been switched back on with him inside or pulled inside. Mr Shore felt compelled to conclude that the Claimant's dismissal ought to be upheld.

31. Having adjourned the meeting, he wrote to the Claimant with his decision dated 4 June 2018. Within that he said that the Respondent's procedure was that under no circumstances would anyone be asked or expected to carry out maintenance/repairs on a live system without isolation regardless of the impact on the business. Mr Shore reiterated that the Claimant's actions were a serious risk to health and safety. The Claimant, it was concluded, had opened the door and decided to look inside and doing so placed his safety at serious risk. The Claimant was in possession of his own padlocks and had taken the decision to open the door of the machine before isolating the power. The Claimant was told that Mr Shore's decision at this stage was final.

32. There is evidence before the Tribunal that the Respondent's workforce comprises 55% Polish nationals and that a number of Polish nationals work within the engineering department including at a high level of competency. The Tribunal has also seen evidence of non-Polish employees, who had previously been dismissed for health and safety breaches. The Claimant did not seek to challenge such evidence.

Applicable law

33. The Claimant complains of direct race discrimination in his dismissal. In the Equality Act 2010 direct discrimination is defined in Section 13(1) which provides: *"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

34. Section 23 provides that on a comparison of cases for the purpose of Section 13 *"there must be no material difference between the circumstances relating to each case".*

35. The Act deals with the burden of proof at Section 136(2) as follows:-

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the court must hold that the contravention occurred.*
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provisions".*

36. In **Igen v Wong [2005] ICR 935** guidance was given on the operation of the burden of proof provisions in the preceding discrimination legislation (particularly on the Tribunal's scope for inferring discrimination) albeit with the caveat that this is not a substitute for the statutory language. The Tribunal also takes note of the case of **Madarassy v Nomura International Plc [2007] ICR 867**.

37. It is permissible for the Tribunal to consider the explanations of the Respondent at the stage of deciding whether a prima facie case is made out (see also **Laing v Manchester CC IRLR 748**). Langstaff J in **Birmingham CC v Millwood 2012 EqLR 910** commented that unaccepted explanations may be sufficient to cause the shifting of the burden of proof. At this second stage the employer must show on the balance of probabilities that the treatment of the Claimant was in no sense whatsoever because of the protected characteristic. At this stage the Tribunal is simply concerned with the reason the employer acted as it did.

38. The Tribunal refers to the case of **Shamoon v The Chief Constable of the Royal Ulster Constabulary [2003] ICR 337** for guidance as to how the Tribunal should apply what is effectively a two stage test. The Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37** also made clear that it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

39. In a claim of unfair dismissal it is for the employer to show the reason for dismissal and that it was a potentially fair reason. One such potentially fair reason for dismissal is a reason related to conduct under Section 98(2)(b) of the Employment Rights Act 1996 ("ERA"). This is the reason relied upon by the Respondent.

40. If the Respondent shows a potentially fair reason for dismissal, the Tribunal shall determine whether dismissal was fair or unfair in accordance with Section 98(4) of the ERA, which provides:-

> *" [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 upon 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".*

41. Classically in cases of misconduct a Tribunal will determine whether the employer genuinely believed in the employee's guilt of misconduct and whether it had reasonable grounds after reasonable investigation for such belief. The burden of proof is neutral in this regard.

42. The Tribunal must not substitute its own view as to what sanction it would have imposed in particular circumstances. The Tribunal has to determine

whether the employer's decision to dismiss the employee fell within a band of reasonable responses that a reasonable employer in these circumstances might have adopted. It is recognised that this test applies both to the decision to dismiss and to the procedure by which that decision is reached.

43. A dismissal may be unfair if there has been a breach of procedure which the Tribunal considers as sufficient to render the decision to dismiss unreasonable. The Tribunal must have regard to the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

44. If there is such a defect sufficient to render dismissal unfair, the Tribunal must then, pursuant to the case of **Polkey v A E Dayton Services Ltd [1998] ICR 142** determine whether and, if so, to want degree of likelihood the employee would still have dismissed in any event had a proper procedure been followed. If there was a 100% chance that the employee would have been dismissed fairly in any event had a fair procedure been followed then such reduction may be made to any compensatory award. The principle established in the case of **Polkey** applies widely and beyond purely procedural defects.

45. In addition, the Tribunal shall reduce any compensation to the extent it is just and equitable to do so with reference to any blameworthy conduct of the claimant and its contribution to his dismissal – ERA Section 123(6).

46. Under Section 122(2) of the ERA any basic award may also be reduced when it is just and equitable to do so on the ground of any kind conduct on the employee's part that occurred prior to the dismissal.

47. Applying the legal principles to the facts found by the Tribunal, the Tribunal reaches the conclusions set out below.

Conclusions

48. The Tribunal is assessing the Respondent's actions on the basis of what it knew or ought reasonably to have known at the time of its decision. A number of arguments have been raised and challenges made before the Tribunal which were not before the decision makers in this case, Mr Lundgren or Mr Shore.

49. The Claimant was dismissed for a reason related to his conduct. The Respondent genuinely believed that the Claimant was guilty of a serious breach of health and safety and had lost confidence in the Claimant's ability to work with due regard to health and safety. There is no evidence which would suggest the Respondent using the events of 22 April 2018 as a pretext for dismissal. The Tribunal is mindful that the Claimant was previously dismissed for various breaches of policy but reinstated on

appeal. It was also subsequently decided not to impose any form of disciplinary sanction when the Claimant did not attend work on 25 December 2015 when he was scheduled to do so. This was in circumstances where he was subject still to a final written warning. Indeed, the two decision makers in this case were the decision makers who allowed the Claimant to remain in the Respondent's employment previously.

50. The Claimant was not dismissed because of his Polish nationality. Again, the background does not suggest that the Respondent wished to dismiss the Claimant at all. It is obvious that the Respondent is reliant on a predominantly Polish workforce. The Claimant was reluctant indeed to address the allegation of less favourable treatment head on with Mr Lundgren and Mr Shore.

51. The suggestion was made that the Claimant was treated less favourably than Mr Leighfield and that the reason for that treatment was related to the Claimant's nationality. The Claimant's difficulty in that assertion is that Mr Leighfield's circumstances were not at all similar to his own. The Claimant had been discovered in the process of maintaining a machine without having isolated the power switches. There was no such discovery of Mr Leighfield working in a similar or comparable manner. Mr Leighfield had pointed out the Claimant's breach of safety. He left the Claimant next to the dehairer, unisolated, but in circumstances where it was crystal clear to the Claimant that he should not perform any tasks on or near it. Mr Leighfield was absent for a matter of seconds walking a short distance to the plant room to see if the electricity was isolated at the control panel. He then returned to speak to the Claimant and took the Claimant to the plant room to show him that the electricity was live. The machine was left unattended for a few seconds, but where the Claimant and Mr Leighfield were in its vicinity and Mr Leighfield was able to assess that no one else was or could come into the area in this brief period of time. There can be no less favourable treatment when the circumstances of the Claimant's actions were so different from those of Mr Leighfield. Certainly, the difference in treatment is not evidence from which the Tribunal could reasonably infer that the Claimant has been dismissed for a reason relating to race. Indeed, the Claimant has failed to pursue a positive case in this regard and there is no evidence before the Tribunal whatsoever from which such an interference could be drawn.

52. It is noted that the Claimant has confirmed to the Tribunal that he no longer pursues any complaint that allegations of misconduct were elevated by Mr Leighfield to management because of his nationality. There are no facts from which this could be inferred and indeed it is clear that Mr Leighfield was not prejudging the matter nor suggesting dismissal as an outcome.

53. The Claimant's complaints of race discrimination must fail and are dismissed.

54. Turning back to the complaint of unfair dismissal, did then the Respondent have reasonable grounds for believing that the Claimant was guilty of misconduct after reasonable investigation? All of the evidence, including the Claimant's own admissions, was that he had failed to isolate the power switches on the dehairer machine. That was clearly in breach of the Respondent's locking off policy. It was also clearly a risk to safety to be working on a machine or liable to access a machine when it could have been turned on by someone not realising that an engineer was at risk. Before the Tribunal, the Claimant has referred to a lack of training and to him having followed the steps Daniel Krsuczeka had demonstrated to him. However, these points were not raised in the disciplinary or appeal hearings. The Claimant has pointed to no further steps the Respondent ought to have taken in investigating the charges against him. Before the Claimant was dismissed, a statement had been produced by Mr Leighfield who had discovered the Claimant at the machine without having isolated it and all relevant documentation was considered and indeed disclosed to the Claimant in advance.

55. There were no breaches of the ACAS Code on Disciplinary Procedures or otherwise any flaws in the disciplinary or appeal process. The Claimant was aware of the allegations against him and able to make whatever representations he wished. The allegations against him were clear and were properly explored at both the disciplinary and appeal stage, where the Claimant had the right to be accompanied. At each stage an employee was present to translate for the Claimant. The disciplinary and appeal decisions were confirmed in writing again with a proper explanation of the decision arrived at.

56. Was then dismissal within a range of reasonable responses? It is not for the Tribunal to determine whether it would have dismissed the Claimant but whether a reasonable employer in the circumstances might have had that option reasonably open to it.

57. There are legitimate criticisms made of the training given to the Claimant and how it has been documented. The lock off policy was not translated for the Claimant and he was asked to sign it without the Respondent ensuring that it was fully understood. The training which the Claimant received when he moved over to the abattoir was not signed off and evidenced. The PPM work orders produced were defective in that not every order which related to a piece of electrical machinery highlighted the need to isolate the machinery. Mr Lundgren did not appreciate that this defect applied to the work order for the task the Claimant was completing on 22 April. On the other hand, the Claimant never suggested that he had not locked off the switches because of that omission or otherwise thought that the omission of a specific written direction made such step unnecessary.

58. The Tribunal is satisfied, on the evidence, that the Claimant did undergo a period of induction training from Mr Krsuczeka on the tasks to complete in the abattoir which would have and did include the need to and methods of isolating machinery. The Claimant clearly did know, as indeed he confirmed at the internal hearings, that the machinery was to be isolated before it was worked upon. He had his own unique set of padlocks for this purpose and knew exactly why these had been provided and how to use them. He did not at the disciplinary or appeal stages suggest that he did not have that knowledge, that his training was deficient or that he had been provided with an out of date or irrelevant policy. The Respondent was entitled to proceed with its decision-making on the basis that the Claimant was aware of the health and safety risk of not isolating machinery. The Claimant was not merely contemplating working on the dehairer but on the evidence before the Respondent had its doors open and was reviewing the work which needed to be done which would involve a proximity to moving parts which could have been fatal to him had the machine been switched on.

59. It does not appear to the Tribunal that the Respondent reached its decision as a knee-jerk reaction to an obvious health and safety breach. Mr Lundgren clearly went into the disciplinary hearing with an open mind as to sanction and was influenced by the Claimant's apparent lack of appreciation of the seriousness of his omission and the potential consequences. That reinforced in his mind that not only had the Claimant failed to follow health and safety procedures putting himself at risk of injury and even death, but that he could no longer have any continued trust in the Claimant to effectively learn his lesson and operate safely in what was a hazardous workplace.

60. There is no evidence of an inconsistency of treatment. The evidence is of other employees being dismissed for safety breaches.

61. Compliance with health and safety rules within the Respondent was a fundamental requirement and for good reason. The Claimant was in serious breach of those rules without justification or excuse. The Respondent's disciplinary policies classified such behaviour as potential gross misconduct. In the circumstances of this employment, the decision to dismiss was certainly within the band of reasonable responses. The Claimant's complaint of unfair dismissal must therefore fail.

Employment Judge Maidment

22 March 2019
Date