



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4121998/2018

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Held in Edinburgh on 21 and 22 February 2019

Employment Judge: Michelle Sutherland (sitting alone)

10 **Dillon Rhind**

**Claimant
Represented by
Ms D Flanigan,
Solicitor**

15 **Noble Foods Limited**

**Respondent
Represented by
Mr M Clayton,
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the Claimant was not unfairly dismissed by the Respondent.

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REASONS

Introduction

1. The Claimant presented a complaint of unfair dismissal. The Respondent admitted that the Claimant was dismissed but denied that his dismissal was unfair.
- 30 2. A final hearing was held on 21 and 22 February 2019.
3. The parties lodged a joint set of productions.
4. For the respondent, evidence was led from John Daly, Regional Manager (Dismissing Officer) and Bob Lilliman, Regional Manager (Appeal Officer).
The Claimant gave evidence on his own behalf.

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Initials	Name	Title
BL	Bob Lilliman	Regional Manager (Appeal Officer)
JD	John Daly	Regional Manager (Dismissing Officer)
MS	Maciej Slezak	Farm Manager
NH	Naomi Hannah	Supervisor
RC	Robert Christie	Site Manager

5. The Claimant confirmed that he was not seeking compensation only (and not re-instatement or re-engagement with the Respondent).
6. Both parties made closing submissions.

5 *Issues*

7. The issues to be determined by the Tribunal at this final hearing were confirmed with the parties at the start of the hearing to be as follows –
 - a. What was the reason (or, if more than one reason, the principal reason) for the Claimant’s dismissal?
 - 10 b. Was the reason for dismissal potentially fair within the meaning of Section 98 (1) or (2) of the Employment Rights Act 1996?
 - c. Was the dismissal fair having regard to Section 98(4) of the Employment Rights Act 1996 including whether in the circumstances the Respondent acted reasonably in treating it as a sufficient reason for dismissing the employee? Did the decision to dismiss (and the procedure adopted) fall within the ‘range of reasonable responses’ open to a reasonable employer? Iceland Frozen Foods Ltd v Jones 1983 ICR 17
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 - d. If the reason for dismissal relates to the conduct of the Claimant –
 - 20 i. Did the Respondent have a genuine belief in the Claimant’s guilt?
 - ii. Did the Respondent have reasonable grounds for that belief?
 - iii. Had the Respondent conducted a reasonable investigation into that misconduct?

British Home Stores Ltd v Burchell [1978] IRLR 379, [1980] ICR 303

- e. Did the Respondent comply with their own disciplinary procedure and/or the ACAS Code of Practice on Disciplinary and Grievance Procedures? Was there any unreasonable failure to comply with the ACAS Code?
- f. If the Respondent did not adopt a reasonable procedure, was there a chance the Claimant would have been dismissed in any event? Polkey v AE Dayton Services Ltd 1987 3 All ER 974.
- g. To what basic award is the Claimant entitled? Did the Claimant engage in conduct which would justify a reduction to the basic award?
- h. What loss has the claimant suffered in consequence of the dismissal? What compensatory award would be just and equitable? Did the Claimant contribute to his dismissal? Has the Claimant taken reasonable steps to mitigate his losses?

8. The following initials are used by way of abbreviations in the findings of fact—

Initials	Name	Title
BL	Bob Lilliman	Regional Manager (Appeal Officer)
JD	John Daly	Regional Manager (Dismissing Officer)
MS	Maciej Slezak	Farm Manager
NH	Naomi Hannah	Supervisor
RC	Robert Christie	Site Manager

Findings of Fact

- 9. The tribunal makes the following findings of fact –
- 10. The Respondent is a leading national supplier of fresh eggs to major retailers. The Respondent has around 2000 staff nationally and about 20 staff at its Millview site in Fife. At its Millview site there are 4 sheds ('houses') each containing chickens kept in enhanced cages.
- 11. The Claimant worked for the Respondent as a store operative (or 'housekeeper') at its Millview site from 10 March 2015 until 13 June 2018. His

gross annual salary was £22,373 and his average net weekly salary was £357. The Claimant's duty, amongst others, was to ensure that the caged chickens in his house had sufficient water. There were around 120,000 chickens in his house arranged into about 20 colonies.

- 5 12. The Claimant had received training on the importance of bird welfare and the relevant welfare checks. The Claimant was advised of the fundamental importance of ready access to fresh water and that the chickens "easily succumb to dehydration". The training stressed the importance of a full walk of the colonies to enable visual checks. The training manual stated that "each
- 10 water line is linked to an alarm panel and if for any reason the water on that line goes below minimum level, this will trigger the alarm and alert colleagues to potential problems". The training manual also noted that "An alarm system is in place at Millview site to ensure that the welfare of the birds is covered outwith normal working hours. This is tested and recorded on a daily basis."
- 15 The Claimant was advised that any issues must be reported to management as soon as possible. A "T-card" is used by staff to report a near miss or hazard and this includes as a matter of practice problems with equipment.
13. The Claimant had also received training on water checks. The training again stressed the importance of ready access to fresh water. The Claimant was
- 20 advised that "water levels and water alarms are checked numerous times throughout day by all colleagues". There are separate waterlines for each row within in a colony and at the end of that line is a T/siphon. There are about 70 T/siphons in each shed. The training explained that each row has "a
- 25 T/siphon with a red ball which acts as a level indicator which lets you visually see that we have water present in each line. If the water level falls, so will the red ball, when it reaches the alarm sensor, this will light up the appropriate line on the water alarm". The training stressed the importance of checking the T/siphons for the red ball and the alarm panel. The Claimant also received on
- 30 the job training which demonstrated the importance of checking the T/siphons and the alarm panel.
14. The Claimant was aware that management regarded the visual check of the T/siphon as the only reliable method of ensuring the chickens had water and

that the alarm system was for management use out of hours. There was a difference between the approach advocated in the training manual and the approach advocated by management.

- 5 15. On 22nd September 2017 the Claimant was issued with a final written warning by JD on behalf of the Respondent for using his mobile phone during working hours and for making inappropriate comments towards colleagues. The final written warning remained live for a year.
- 10 16. On 5 June 2018 the Claimant noticed a high mortality rate in level 3 colony 7 downstairs and colony 3 upstairs and radioed his line manager NH. The Claimant had a good relationship with NH. They established that there was no red ball in the T/siphon and no water in the relevant line. The Claimant then turned the water valve and water started to come through.
- 15 17. On 7 June 2018 around 65 dead chickens were removed from that line and around 80 on 8 June 2018. This was a very high mortality rate compared with the weekly average of 50-80 chickens per house. It may take a couple of days following dehydration for the chickens to die. It was inferred from this that there had been no water in the line for a number of days. Throughout that time the alarm did not indicate that there was problem either via sounding the alarm or via the lights on the alarm panel and it was subsequently established that the alarm was broken. The Claimant had been the only shed operative tasked with undertaking the water checks in that shed. The Claimant had completed and signed morning and afternoon house checks confirming that he had undertaken the relevant water checks over that period.
- 20 18. On 5 June 2018 the Claimant was suspended on full pay by JD and was advised that the allegation under investigation was "Allowing drinker lines to run empty resulting in birds being without water for a number of days. Daily forms had been signed to say that they have been checked."
- 25 19. After his suspension the Claimant feared losing his job and began to look for alternative employment. The Claimant had a young child and credit card debts and therefore required a regular income. On or about 6 or 7 June 2018 the Claimant registered on a recruitment website and applied for about 65 jobs.
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20. The Respondent's the Disciplinary Procedure applies to employees who fail to achieve the required standards of conduct or work performance. It's examples of gross misconduct include cruelty to livestock; fraud; persistent or a serious refusal to comply with a lawful request or order; and negligence which could/does cause serious damage to company property. It states that negligence or lack of attention should be dealt with under the disciplinary procedure.
21. A statement was provided by NH on 6 June 2018. She stated that "I asked him if he had checked the water, to which he replied no." On 7 June 2018 RC conducted an investigation interview with the Claimant. The Claimant explained that he had understood NH was asking whether he had checked the water at that point in time rather than whether he had undertaken the earlier house checks.
22. During the investigation the Claimant advised that some of the siphons were dirty making the red balls hard to see and that some of the red balls were missing. (Only a minority of siphons were so affected, and the Claimant did not specifically assert that the siphon in relevant waterline was so affected.) The Claimant did not advise that he was no longer checking the T/siphons because of the state of them. The Claimant advised that the water check entailed checking the siphons and the alarm. He explained that if he didn't see a red ball, he does not infer that there is a problem with the waterline requiring reporting. Instead he checked and relied upon the alarm panel. If the alarm panel indicated that there was a problem then he reports this. The Claimant was asked if he recalled a previous conversation with JD and MS where MS explained the importance of checking the T/siphon. The Claimant did recall that conversation but noted that he had also moaned about the state of the siphons.
23. On 7 June 2018 the Claimant received notification of a disciplinary hearing. He was advised that the allegations against him were "Failure to check that water was available in all water lines. Falsely signing on house checks record that water has been checked since Saturday 2 June 2018". The Claimant was provided with copies of the investigation notes; training records; the

house checks form; and the witness statement from NH. The Claimant was advised of his right to be accompanied, to call witnesses and the risk of dismissal.

24. Prior to the disciplinary hearing JD confirmed with NH and David Walker the correct process for completing the water checks. This conversation was not minuted but reflected the process narrated in the investigation report.

25. A disciplinary hearing was conducted by JD on 13 June 2018. He was accompanied by Leanne Sanderman who took notes. The Claimant was accompanied by Susan Robertson as his union rep. The disciplinary hearing lasted just over half an hour. JD regarded the Claimant as aggressive and a disruptive influence. JD had apparent bias against the Claimant.

26. Following the disciplinary hearing JD believed that the Claimant had not checked the T/siphon either properly or at all; that the Claimant had admitted to NH that he had failed to check the water; that by completing and signing the House Check form he was falsely indicating that he had properly checked the T/siphon; that if the T/siphon was dirty the Claimant ought to have cleaned it; that if the red ball was missing from the T/siphon the Claimant ought to have reported this; if he was unsure from the T/siphon he could undertake a physical check by manipulating a nipple on the waterline to see if water emerged; and that the Claimant ought not to rely upon the alarm system which was there for the benefit of management out of hours. JD regarded the Claimant's conduct as negligent rather than deliberate cruelty. JD found the allegations proven and summarily dismissed the Claimant for gross misconduct. JD did not regard the live final written warning as relevant because it did not pertain to bird welfare. In his disciplinary outcome letter JD stated that the disciplinary hearing had been "regarding birds being starved of water for a number of days causing a major bird welfare issues and an increased mortality" and specifically "failure to ensure all water lines to hens were working correctly; signing a document to state that you had ensured all lines were operating properly". The focus of the allegations was not on the Claimant's general practice regarding water checks but rather on his specific

failure to ensure that water was in the drinker line which caused the increased bird mortality.

27. In mid-June 2018 the Claimant was advised that he had secured alternative employment with Tesco. The Claimant worked for Tesco from 15 June 2018 until 6 January 2019. His average net weekly salary during that period was £286.
28. On 26 June 2018 the Claimant submitted grounds of appeal that: JD had made up his mind he was going to dismiss the Claimant prior to the disciplinary hearing; JD did not listen to what he had to say at the hearing; NH's witness statement was false in parts; the Claimant undertook the checks how he had always done it and how he had been trained; and the waterline alarm failed to go off.
29. BL was appointed to hear the Claimant's appeal. BL met with NH and RC before the appeal hearing to discuss the witness statement and investigation report. These meetings were not recorded.
30. The appeal hearing was conducted by BL on 3 July 2018. He was accompanied by Leanne Sanderman who took notes. The Claimant was accompanied by Susan Robertson as his union rep. The disciplinary hearing lasted just under an hour. BL was concerned about the fairness of the original hearing conducted by JD. BL elected to rehear the disciplinary interview rather than restrict the appeal to a review of the grounds of appeal. BL had an open mind and was not biased against the Claimant. BL did not work with the Claimant and was based at a different site. BL listened properly to the Claimant's explanation and took cognisance of it.
31. During the appeal hearing the Claimant stated that he checked the siphons for red balls and also the alarm. He explained that some siphons are too dirty to see the red balls and some red balls are missing. The Claimant did not put in a T-Card regarding these issues because he'd either forgotten or was too busy. The alarm did not sound and the alarm panel did not indicate a problem on the waterline (because a sensor on the alarm was broken).

32. Following the appeal hearing BL believed that the Claimant had not checked the T/siphon either properly or at all; that his response to NH was irrelevant and was discounted as an alleged admission; that by completing and signing the House Check form he was falsely indicating that he had properly checked the T/siphon; that if the T/siphon was too dirty to see the Claimant ought to have cleaned it; that if the red ball was missing from the T/siphon the Claimant ought to have reported this immediately; that the Claimant was relying upon the alarm system; that the Claimant ought not to rely upon the alarm system which was there for the benefit of management out of hours; and that whilst the training manual was not completely clear, the Claimant had been explicitly told by management of the importance of checking the T/siphon. BL upheld the decision to summarily dismiss the Claimant for gross misconduct.
33. There was no disciplinary investigation of the primary cause of the water stoppage in the waterline or the failure to identify and repair the broken alarm. It is understood that the alarms are checked for faults weekly and accordingly the fault may have arisen within that cycle.
34. By January 2019, the Claimant secured alternative employment at a higher rate of remuneration than his employment with the Respondent.

Observations on the evidence

35. The Respondent's solicitor asserted that the Claimant was dismissed because of his general practice regarding water checks rather than on his specific failure to ensure that water was in the drinker line which caused the increased bird mortality. This interpretation is not supported by the evidence. From the start of disciplinary investigation through to the outcome of the disciplinary hearing the Respondent focused upon the Claimant having allowed drinker lines to run empty causing the birds to be starved of water and their increased mortality. The allegations were not that he failed to carry out the requisite water checks generally (although they may have believed this) but rather on his failure to ensure the waterlines were operating correctly. There was only one line known not to be operating correctly and his failure in respect of that line was the reason for his dismissal.

36. The Claimant and JD had a difficult relationship. JD suspended the Claimant during the disciplinary investigation because he believed him to have a disruptive nature and imparted a negative influence. JD opened the disciplinary hearing by declaring that the Claimant had failed to carry out the water check. Shortly into the hearing JD expressed disappointment that the Claimant had failed to carry out the checks properly for four days. JD took only 10 minutes to reach his decision to dismiss. JD remarked that the only time the Claimant was telling the truth in this particular case was when he admitted to NH that he had not checked the water. JD's behaviour gave the impression that he was biased against the Claimant (i.e. that he had apparent bias).

Decision

Relevant law

37. Section 94 of Employment Rights Act 1996 ('ERA 1996') provides the Claimant with the right not be unfairly dismissed by the Respondent.

38. It is for the Respondent to prove the reason for his dismissal and that the reason is a potentially fair reason in terms of Section 98 ERA 1996. At this first stage of enquiry the Respondent does not have to prove that the reason did justify the dismissal merely that it was capable of doing so.

39. If the reason for his dismissal is potentially fair, the tribunal must determine in accordance with equity and the substantial merits of the case whether the dismissal is fair or unfair under Section 98(4) ERA 1996. This depends whether in the circumstances (including the size and administrative resources of the Respondent's undertaking) the Respondent acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee. At this second stage of enquiry the onus of proof is neutral.

40. If the reason for the Claimant's dismissal relates to the conduct of the employee, the tribunal must determine that at the time of dismissal the Respondent had a genuine belief in the misconduct and that the belief was

based upon reasonable grounds having carried out a reasonable investigation (*British Home Stores Ltd v Burchell* [1978] IRLR 379, [1980] ICR 303).

41. In determining whether the Respondent acted reasonably or unreasonably the tribunal must not substitute its own view as to what it would have done in the circumstances. Instead the tribunal must determine the range of reasonable responses open to an employer acting reasonably in those circumstances and determine whether the Respondent's response fell within that range. The Respondent's response can only be considered unreasonable if no employer acting reasonably would have responded in that way. The range of reasonable responses test applies both to the procedure adopted by the Respondent and the fairness of their decision to *dismiss* (*Iceland Frozen Foods Limited v Jones* [1983] ICR 17 (EAT)).

42. Any provision of a relevant ACAS Code of Practice which appears to the tribunal may be relevant to any question arising in the proceedings shall be taken into account in determining that question (Section 2017, Trade Union and Labour Relations (Consolidation) Act 1992). The ACAS Code of Practice on Disciplinary and Grievance Procedures provides in summary that –

a. *Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.*

b. *Employers and employees should act consistently*

c. *Employers should carry out any necessary investigations, to establish the facts of the case.*

d. *Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.*

e. *Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.*

- f. *Employers should allow an employee to appeal against any formal decision made*

Respondent's Submissions

43. The Respondent's submissions were in summary as follows: -

- 5 a. The Claimant's approach to checking the t/siphons was pointless because he didn't do anything with the information. This indicated he didn't check them at all.
- b. The Claimant's approach that the t/siphons were back up and that relied on the alarm was not sensible. The Claimant was aware that
10 management expected him to rely solely on checking the t/siphons
- c. The Claimant signed the House Check form even though he hadn't seen red balls in the T/siphons
- d. The Claimant was unable to say why he asserted that there hadn't been a reasonable investigation
- 15 e. It was not necessary for the Respondent to extensively investigate each line of defence advanced by the Claimant (***Shrestha v Genesis Housing Association Ltd [2015] EWCA Civ 94***)
- f. Any flaws in the disciplinary hearing were remedied by a full rehearing on appeal.
- 20 g. The tribunal must not substitute its view for that of the employer – it is irrelevant whether the tribunal would have dismissed in the circumstances (***Foley v Post Office; Midland Bank plc v Madden [2000] IRLR 827***).
- 25 h. Any failures in relation to the water supply and the alarm were not relevant because had the Claimant carried out the water checks the incident would not have arisen. Furthermore, any such failures are not relevant because they would not affect the reasonableness of the

respondent's belief in the Claimant's misconduct or the appropriate sanction.

- i. The Claimant had a live final written warning and would have been dismissed had a lesser sanction been given.
- 5 j. The Claimant's loses are not attributable to his dismissal because he had already been seeking alternative employment.
- k. The Claimant failed to mitigate his loses by not seeking better paid employment.

The Claimant's Submissions

10 44. The Claimant's submissions were in summary as follows –

- a. The Respondent had not carried out as much investigation as was reasonable. The Respondent must make reasonable enquiries appropriate to the circumstances (***Tendell & Co Ltd v Tepper [1980] IRLR 96***)
- 15 b. The Respondent did not have reasonable grounds upon which to suspect misconduct.
- c. The Respondent did not countenance the Claimant's explanation that he had been taught to rely on the alarm and that some of the red balls were missing or the siphons too dirty.
- 20 d. The water check procedure was not clearly specified. Managers belief that the shed operatives did not use the alarms did not reflect the shed operatives practice and the training records indicated that the alarm was to be used by all employees.
- e. It was not credible that all the siphons had been checked for red balls
25 – there is no record or evidence of this in the disciplinary papers and this was not mentioned in his evidence in chief
- f. JD was biased against the Claimant and presumed the Claimant to be guilty

- g. It was not credible that BL had meetings with management who assured him that the alarm system was not relied upon – this was not corroborated by the training records and was not mentioned in his evidence in chief
- 5 h. Disciplinary hearings should be approached with an open mind and matters advanced by the Claimant in explanation or mitigation should be considered (***Sillifant v Powerall Duffry Timber Ltd [1983] IRLR 91***)
- 10 i. Any failures by management and/or the engineers in relation to the water supply and the alarm were unreasonably ignored yet if they had been carried out the incident would not have arisen.
- j. If the failure to undertake the water checks was to be fairly categorised as gross misconduct this ought to have been specified in the employee handbook.
- 15 k. Categorisation of the conduct as gross misconduct without reference to the disciplinary rules was a breach of the ACAS Code. Dismissal was not within the band of reasonable responses because the conduct did not meet the definition of gross misconduct.
- 20 l. The dismissing officer did not rely upon the Claimant's final written warning rendering it irrelevant
- m. There is no basis upon which to conclude that the Claimant would have been dismissed in any event had a fair procedure been followed
- n. Given his training and the missing red balls and dirty siphons the Claimant's conduct did not contribute to his dismissal.
- 25 o. The burden of proving failure to mitigate rests on the Respondent. The Respondent must prove that the Claimant acted unreasonably rather than the Claimant prove that he acted reasonably (***Singh v Glass Express Midlands Ltd UKEAT/0071/18***).

Discussion and decision

45. The stated reason for the Claimant's dismissal was the Claimant's "failure to ensure all water lines to hens were working correctly; signing a document to state that you had ensured all lines were operating properly." Whilst there was apparent bias on the part of the Dismissing Officer, there was no evidence of bias on the part of the Appeal Officer, or that he had an alternative motive for dismissal. The Appeal Officer did not restrict his appeal to the grounds of appeal but instead undertook a full re-hearing of the allegations on appeal. The tribunal therefore concludes that the reason for dismissal was as stated. This reason related to his conduct and that is a potentially fair reason within the meaning of Section 98(1) of the ERA 1996.
46. The Dismissing Officer appeared entirely genuine and sincere in his belief that the Claimant had in summary failed to carry out the water checks. Apart from the apparent bias, there was no other evidence that his belief was not genuine. In any event, there was no evidence of bias on the part of the Appeal Officer and he appeared entirely genuine and sincere in his belief that the Claimant had failed to carry out the water checks. There was no evidence that his belief was not genuine and the tribunal therefore concludes that the Appeal Officer held a genuine belief in the claimant's misconduct.
47. A significant number of chickens in the Claimant's house (shed) died because of a lack of water over a number of days. The Claimant's duty was to ensure that the caged chickens in his house had sufficient water. The Claimant had been the only shed operative/ housekeeper tasked with undertaking the water checks in the relevant house over that period. The Claimant had completed and signed the morning and afternoon house checks confirming that he had undertaken the relevant water checks over that period.
48. The Claimant understood that the water check entailed checking the T/siphons and the alarm system. Management's position was he was to check the T/siphons only. Management had recently stressed to the Claimant the importance of the T/siphon check. According to the training, the T/siphon check entailed checking whether or not a red ball was visible. If it is visible there is water in the line; if it is not visible there is no water in the line.

49. The Claimant advised that some of the siphons were dirty making the red balls hard to see and that some of the red balls were missing. Only a minority of siphons were so affected and the Claimant did not specifically assert that the siphon in relevant waterline was so affected. Further the Claimant did not
5 advise that he was no longer checking the T/siphons because of the state of them. In any event if the Claimant checked a T/siphon, and could not see a red ball (for whatever reason), according to the training he should have inferred that there was no water in the line. He should then have taken remedial action to ensure that the chickens had access to water.
- 10 50. The Claimant advised that whilst he had checked the siphons, if he didn't see a red ball, he did not infer that there was no water in the line, but instead he checked and relied upon the alarm panel. The failure to infer that there was no water in the line in these circumstances was contrary to his training.
- 15 51. Throughout that time the alarm system did not indicate that there was problem either via sounding the alarm or via the lights on the alarm panel. It was subsequently established that the alarm was broken.
- 20 52. The Dismissing Officer relied upon NH's statement as an admission of guilt by the Claimant that he had not carried out the water check. That statement is open to a neutral explanation and the Dismissing Officer may have unreasonably discounted the Claimant's alternative explanation. However the Appeal Officer elected to discount that alleged admission during the re-hearing.
- 25 53. In the circumstances there was a reasonable basis for the Appeal Officer's belief that the Claimant had not checked the T/siphon either properly or at all and that by completing and signing the House Check form he was falsely indicating that he had properly checked the T/siphon.
- 30 54. There were multiple causes of the failure to ensure that the chickens had access to water – the primary water stoppage, the broken alarm, and the failure to check the T/siphons either properly or at all. Had any one of these issues not arisen the chickens would not have died. This did not however absolve the Claimant of his duty to ensure that there was water in the line.

55. There was no unreasonable failure by the Respondent to comply with their own Disciplinary Procedure or the ACAS Code which rendered the dismissal unfair. There was no unreasonable or prejudicial delay. There was no evidence of inconsistent treatment. The relevant facts were established. The Claimant was informed of the basis of the problem and given an opportunity to put his case. The Claimant was accompanied by his trade union rep. The Claimant was afforded a right of appeal. The Claimant was unable to suggest any additional steps the Respondent ought to have taken or lines of enquiry it ought to have pursued in conducting the investigation. The Respondent did not fail to take a step that no employer acting reasonably would have failed to take. The steps taken by the Respondent fell within the range of reasonable responses.
56. The tribunal therefore concludes that the Appeal Officer had reasonable grounds upon which to sustain his genuine belief in the claimant's misconduct and that he reached that conclusion on those reasonable grounds having carried out a reasonable investigation in satisfaction of the *Burchell* test.
57. The Respondent's Disciplinary Procedure applies to employees who fail to achieve the required standards of conduct or work performance. It states that negligence or lack of attention should be dealt with under the disciplinary procedure. Its examples of gross misconduct include cruelty to livestock; fraud; persistent or a serious refusal to comply with a lawful request or order; and negligence which could/does cause serious damage to company property. Whilst the Respondent did not categorise the allegations against the Claimant with reference the examples of gross misconduct set out in the disciplinary procedure, the allegations did potentially fall within the examples of "negligence which could/does cause serious damage to company property" (failing to carry out the water checks) and of "fraud" (falsely stating he has carried out the water checks).
58. The Respondent regarded the Claimant's failure to check that there was water as negligent rather than deliberate cruelty. Whilst the Claimant did not cause deliberate harm to the chickens, he had been negligent by failing to properly carry out water checks which foreseeably lead to the death of a significant

number of chickens. The Respondent regarded the Claimant as having falsely signed the water check from.

59. The Claimant's service at 3 years was not extensive. The Claimant had a live final written warning but this was not taken into consideration in reaching the decision to dismiss. There was no evidence of mitigating circumstances (other than the missing red balls or the dirty T/siphons which have already been taken into consideration). The Respondent acted reasonably in treating his conduct as a sufficient reason for dismissing him. It cannot be said that no employer acting reasonably would have dismissed the Claimant in the circumstances. The tribunal concludes that the decision to dismiss fell within the range of reasonable responses and was accordingly fair.

60. The tribunal therefore concludes that the Claimant was not unfairly dismissed.

Employment Judge: Michelle Sutherland
Date of Judgment: 04 March 2019
Entered in register: 26 March 2019
And copied to parties