



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr K Baker

and

Respondent
The Governors of St Thomas
More Catholic Primary School

Held at Ashford on 12 April 2018

Representation

Claimant:
Respondent:

In Person
Miss M Trotter, Counsel

Employment Judge Kurrein

JUDGMENT

The Claimant's claim alleging unfair dismissal is not well founded and is dismissed.

REASONS

- 1 The Respondent's asserted that the Claimant's dismissal related to his conduct and was fair.
- 2 I heard the evidence of Mrs Uwaechia and Mr Hall, Governors, on behalf of the Respondent. I heard the Claimant on his own behalf. I read the documents I was referred to and heard the parties' submissions.
- 3 The following facts were asserted by the Respondent and admitted by the Claimant in the course of his disciplinary and appeal hearings, and before me:-
 - 3.1 The Claimant was born on 16 May 1956. He was employed by the Respondent as a Caretaker working split shifts, am and pm, from 22 April 2018.
 - 3.2 The Claimant is an accomplished pianist and his involvement with the TA, specifically the HAC Regimental Band in London, on Thursdays and for two week periods annually, was accommodated.
 - 3.3 The Claimant became somewhat disaffected with the Respondent from about 2015, when the then Head of Governors raised an issue about the Claimant giving private piano lessons in school time.
 - 3.4 On the 18 September 2015 the Claimant was issued with a first written warning because he failed to secure the school premises.

- 3.5 Subsequently there were further minor matters of alleged misconduct that were dealt with informally.
- 3.6 On 12 January 2016 the Claimant was given a final written warning for leaving the premises early, having locked a member of staff in the premises. That warning was for a 24 month period.
- 3.7 Subsequently there were further minor matters of alleged misconduct that were dealt with informally.
- 3.8 On 16 September 2016 the Claimant was given an informal written reprimand for having left the premises early.
- 3.9 On 9 January 2017 the Claimant left work early and failed to properly secure the premises. Following a disciplinary hearing on 31 January 2017 the Respondent issued the Claimant with a Second Final Written Warning, also for a 24 month period.
- 3.10 On 27 April 2017 the Claimant failed to lock the school gates and locked a child in the lavatory. He was reminded of his responsibilities.
- 3.11 On 3 July 2017 the Claimant made a short-notice request, 14 days being required, for special leave on 11 July 2017 to attend a funeral. He accepted that he had known of the funeral since at least 20 June 2017. When his request was refused on 10 July he dismissively threw his request in a bin.
- 3.12 The Claimant attended that funeral at 12.45, in non-working hours, and then went on to the wake at which he played the piano from 2.30pm. He was due to return to the school to start work at 3.00pm, and to open the gates at 3.05 pm. He telephoned to say he would be late, not returning until 4.25pm.
- 3.13 Throughout this period the Claimant had been under instructions to open the school gates at 3.05pm in preparation for the pupils leaving at 3.15pm. The Claimant did not agree with that instruction and, despite reminders, failed to open the gates until 3.15.
- 3.14 In addition, the Claimant had been instructed not to take all the school keys, a very substantial bunch, off the premises when he left, but to leave all but those he needed to enter the premises in the provided key cabinet. The Claimant did not agree with that instruction and disregarded it, despite reminders.
- 3.15 On Saturday 15 July 2017 the school fete was held. A door to the annexe was found to be unsecured.
- 4 Ms K Smart, an independent HR professional, was appointed to investigate these matters. She interviewed the Claimant and other witnesses on 25 July 2017, and made email enquiries of other staff as well. She provided a detailed, reasoned report on 1 August 2017 finding a case to answer in respect of:-
- 4.1 taking leave when it had been refused
- 4.2 failing to ensure the site was secure
- 4.3 failing to follow instructions

and advised a disciplinary panel should be convened.

- 5 The Claimant was invited to a disciplinary hearing on 22 August, subsequently amended to 29 August 2017. He was advised of his rights, provided with a copy of the investigation report and warned that he might be dismissed.
- 6 The offences of which the Claimant was accused are clearly set out as being misconduct in the Respondent's policies and procedures and repeated misconduct is clearly identified as a reason for dismissal.
- 7 That hearing took place as planned before three Governors. In the course of it the Claimant not only admitted to the facts that gave rise to the charges but asserted that in a like situation in the future he would again behave as he had in the past.
- 8 Having adjourned to consider their decision the panel reconvened to inform the Claimant he was dismissed with payment in lieu of notice. That was confirmed in a detailed reasoned letter dated 30 August 2017. The Claimant was informed of his right of appeal and exercised it by letter of 8 September 2017.
- 9 By a letter of 15 September 2017 the Claimant was invited to an appeal hearing on 25 September and informed that he could bring a companion as he was not in a TU and no colleague was available.
- 10 That meeting took place as planned, with Mr Hall and two Governors from associated schools forming the panel. In the course of that hearing, which lasted 2 ½ hours, the Claimant again made admissions as to the facts on which the charges were based and, in effect, asserted that he knew better than his employers.
- 11 The Claimant was informed that his appeal had been refused by a detailed reasoned letter of 28 September 2017.
- 12 I have considered the provisions of S.98 Employment Rights Act 1996 and the relevant authorities, in particular:
 - British Home Stores Ltd v. Burchell [1978] IRLR 379
 - Iceland Frozen Foods v. Jones [1982] IRLR 439
 - Sainsbury's Supermarkets Ltd v. Hitt [2003] IRLR 23
 - Taylor v OCS Group Ltd. [2006] IRLR 163
 - Newbound v. Thames Water Utilities Ltd [2015] IRLR 734
- 13 The Respondent has satisfied me that the Claimant was dismissed for a reason relating to his conduct.
- 14 The investigation of that conduct was entirely proportionate and reasonable, particularly as the Claimant admitted the facts on which the charges were based.
- 15 I have no doubt that Mrs Uwaechia and her colleagues held an honest belief that the Claimant was guilty of the charges laid against him. That belief was entirely reasonable, not least because of the Claimant admissions, but also because of the thorough investigation.

- 16 The decision in this case to dismiss was fairly and squarely within the band of reasonable responses open to any employer such as the Respondent. The Claimant had been given, and was subject to, two final written warnings at the time of these further offences. The further offences were multiple and, in particular that on the 11 July 2017, flagrant.
- 17 In all the circumstances of this case I find the Claimant's case is not well founded. His dismissal was fair. His claim must be dismissed.

Employment Judge Kurrein
Date: 12 April 2018