



Case Number: 1401912/2018

EMPLOYMENT TRIBUNALS

Claimant: Miss A Harding

Respondent: Southampton Street Pastors

Heard at: Southampton **On:** 28-30 May, 3-4 June 2019

Before: Employment Judge Reed
Mr N Thornback
Mr N A Knight

Representation

Claimant: Mr D Curwen, counsel

Respondent: Mr A Griffiths, counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that

1. The claimant was not unfairly dismissed.
2. The claimant was not wrongfully dismissed
3. The claimant was not unlawfully discriminated against.

REASONS

1. In this case the claimant Miss Harding said she had been unfairly dismissed by her former employer Southampton Street Pastors (“SSP”). She also said that that dismissal and certain other acts of SSP amounted to unlawful discrimination related to disability and furthermore her summary dismissal was wrongful such that she was entitled to notice.
2. We heard evidence from Miss Harding herself and on her behalf from Mr Le Breton and Mrs Hawkins, former colleagues. For SSP we heard from Mrs



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Coleman and Mr Sarson whose grievances led to the dismissal of Miss Harding, together with Mrs Lambros who oversaw the grievance procedure and Mr Pitt who was one of the two trustees of SSP who took the decision to dismiss Miss Harding. Our attention was also directed to a statement from Ms Bloomfield who was involved in the appeal.

3. On the basis of the evidence that we heard and the documents to which we were referred we made the following findings.
4. Miss Harding began working for SSP in May 2012. SSP is a Christian charity that provides pastoral services to people on the streets of Southampton, those services being provided by volunteers. SSP had, at the relevant time, only three employees, namely Miss Harding and her two subordinates Mrs Coleman, who began working for SSP in March 2015, and Mr Sarson, who began working for them in April 2016.
5. In November 2016, Miss Harding was diagnosed with breast cancer and it was conceded by SSP that thereafter she was a disabled person. Shortly afterwards she went off sick. As a result of a combination of sickness absence and suspension she did not return to work before she was dismissed.
6. In December 2016 Mr Sarson submitted a grievance to SSP and that was followed in January 2017 by a grievance from Mrs Coleman. Essentially they both asserted, amongst other things, that Miss Harding had behaved in a deeply unpleasant way towards them over a period of months and indeed years.
7. SSP undertook an investigation into the grievances. They appointed someone outside the organisation – Ms Gibbs – to carry out that investigation. However, because Miss Harding was unwell she was unable to attend an investigatory meeting with Ms Gibbs. Ms Gibbs produced her report towards the end of March 2017. In effect she found that the complaints made by Mr Sarson and Mrs Coleman were well founded and indeed that Miss Harding had bullied them. There were other allegations made against Miss Harding which she also upheld, namely that she had been disrespectful towards and had criticised the trustees of SSP and also that her actions had resulted in the departure of volunteers and employees from SSP.
8. A copy of that report was sent to Miss Harding in April 2017 and she was told at that time that disciplinary proceedings against her would follow. However, she was still off sick throughout the remainder of 2017 and in effect could not participate in the disciplinary process.
9. Towards the end of 2017, Miss Harding indicated that she would be able to return to work in the early part of 2018 and she was called to a disciplinary hearing on 8 January 2018. She indicated that she would be unfit to attend that meeting. It was put off on two occasions but took place on 13 February. Again, by that date she was simply too unwell to attend. She had however submitted written representations. The hearing went ahead. The submissions



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were taken into account but a decision was taken by the trustees, Mr Pitt and Ms Pritchard, that Miss Harding should be summarily dismissed by reason of gross misconduct. They believed that all the allegations against Miss Harding other than that relating to the departure of volunteers were well founded.

10. She appealed against that dismissal and submitted more detailed submissions but again was too unwell to attend the hearing itself which took place on 11 April.
11. Mr Green, the trustee that heard the appeal with an external HR professional Ms Bloomfield, accepted that there was insufficient evidence to support the allegation that Miss Harding had been responsible for the departure of staff but concluded that this did not impact upon the decision to dismiss. Her appeal was rejected.

The Law

12. Under s20 of the Equality Act 2010, where a provision, criterion or practice of an employer puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, the employer is required to take such steps as it is reasonable to have to take to avoid the disadvantage.
13. Under s98 of the Employment Rights Act 1996 there are five potentially fair reasons for dismissal. If a respondent successfully establishes that dismissal was for one of those reasons, the tribunal must go on to determine if the respondent acted reasonably in treating that reason as justifying dismissal.
14. The contractual obligation to give notice of dismissal to an employee is of no effect if the employee has committed gross misconduct.

Application to the issues

15. In advance of the hearing the parties had produced a lengthy list of issues but at its commencement they were considerably narrowed.
16. Miss Harding said that she had been unlawfully discriminated against on the ground of her disability. That disability had resulted in a period of sickness absence such that she was unable to participate in the grievance or disciplinary proceedings. She said that that put her at substantial disadvantage such that SSP were obliged to make the “reasonable adjustment” of delaying those proceedings until she was well enough to fully prepare and attend the relevant meetings (ie an interview with Ms Gibbs and the disciplinary hearing).
17. She further asserted that her dismissal was unfair on both procedural and substantive grounds and that she had not in fact committed gross misconduct, so that that dismissal was wrongful and she was entitled to a payment representing notice.



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18. We deal firstly with the claim of unfair dismissal. The reason for the dismissal of Miss Harding clearly related to conduct so it was potentially fair. The question for us was whether SSP acted reasonably in treating conduct as justifying her dismissal.
19. The first procedural shortcoming alleged against SSP was that the trustees took the decision to dismiss Miss Harding and yet one of the allegations made (and indeed found) against her was that she had been critical of the trustees.
20. The fact was that Ms Harding reported to the trustees only. There was nobody else who could take any action against her, disciplinary or otherwise. It was inevitable that they would be the people who actually looked into the matter notwithstanding that one of the allegations (albeit a subsidiary one) involved them. It did not seem to us that their involvement could be criticised.
21. The second procedural criticism was that the decision to dismiss the claimant was taken at a time when the claimant did not have the opportunity to make an appearance at the disciplinary hearing or to completely present her case in written form.
22. At the hearing on 13 February Mr Pitt had in his possession medical evidence that indicated that Miss Harding was able to return to work in the early part of January, on a phased basis. He appeared to equate an ability to return to work within an ability to attend a disciplinary hearing but that simply did not follow. It was not reasonable for him to conclude that because she could work she could attend the disciplinary hearing.
23. It was clearly highly desirable that Miss Harding should attend the disciplinary hearing. As at 13 February, she could not do so. However, in a letter dated 11 January Miss Harding herself canvassed the possibility that the matter could be dealt with on the basis of written submissions. She described that as a “reasonable adjustment” to accommodate her inability to attend.
24. The fact was that this matter had been ongoing since the previous April. On the basis of the medical evidence before the trustees at the time there was no sensible view they could take as to when Miss Harding would be able to attend a disciplinary hearing. It appeared highly unlikely that she would be able to attend before early April and there was no sort of guarantee that she would be able to even then.
25. We were also conscious that throughout the period when the disciplinary process was ongoing, SSP had an obligation to the two complainants to resolve this matter one way or another. Given Miss Harding’s suggestion that this matter could be dealt with in writing, given the time that had expired and the uncertainty as to her ability to attend a disciplinary hearing in the near future, it seemed to us that it was reasonable for SSP to conduct the disciplinary hearing in her absence on 13 February.



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26. Miss Harding, in accordance with her own suggestion, produced written submissions for the hearing. The document she submitted indicated that it was incomplete. It was open to SSP to delay matters and perhaps invite her to complete it. However, she had indicated that she would be able to undertake preparation work several weeks before the hearing so on the face of it there was no reason why a complete document could not have been produced. This was in any event a fairly lengthy document - seven pages plus appendices. It did appear to canvass the position the claimant wished to take in the course of the proceedings.
27. Again, we remind ourselves that this matter had been ongoing since the previous April. There was no satisfactory reason why a finalised document could not have been produced by 13 February.
28. We concluded that the failure to postpone the disciplinary hearing beyond 13 February either for the further preparation of Miss Harding's submissions or in order for her to attend a hearing was not a procedural shortcoming that rendered the dismissal unfair.
29. We were also bound to say in that context that even if there had been some sort of procedural unfairness in connection with that first instance decision, Miss Harding did appeal. By the time of the appeal hearing she had submitted very extensive submissions, which were taken into account. She was still unable to attend and there was no indication of when she could. If there was a shortcoming at first instance it therefore seemed to us it was rectified upon appeal.
30. For those reasons we found that procedurally the dismissal was not unfair. We then turn to questions of substance – on the basis of what SSP reasonably believed Miss Harding had done, was dismissal within the band of reasonable responses? This was not a matter canvassed at any length in cross examination or indeed in submissions but it seemed to us it was an issue that we were bound to consider.
31. What was it reasonable for SSP to conclude Miss Harding had done? It was reasonable and indeed inevitable that they would conclude that the claimant had behaved very badly towards her subordinates. That much was apparent from the statements of Mr Sarson and Mrs Coleman. It was right to point out that more detailed narratives might have been obtained from those complainants but there was sufficient in those documents, even in the light of Miss Harding's submissions, for SSP to conclude that she had repeatedly treated them in a wholly unacceptable way. That conclusion was also supported at least in some respects by contemporaneous correspondence from Miss Harding herself in which she appeared to concede and accept that she had behaved inappropriately towards them. It seemed to us inevitable that any reasonable employer would conclude that she had, frankly, bullied her subordinates over an extensive period.



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32. There was a separate allegation upheld against Miss Harding, namely that she had “bad mouthed” the trustees. We did not think that could reasonably be regarded as a serious act of misconduct. It is almost inevitable that from time to time employees will express a less than flattering view of those to whom they report. The essence of the case against Miss Harding was that she had bullied her subordinates.
33. Was it reasonable for SSP to conclude that that bullying amounted to gross misconduct warranting her dismissal? There was an alternative that was potentially available to SSP. They could have issued her with a final warning and she would know if she stepped out of line again what the consequence would be. Our task, however, was to consider whether what SSP did was within the range of reasonable responses open to them. We bore in mind the nature and size of SSP’s operation and in particular the proximity of Miss Harding to the complainants, both physically and operationally.
34. It was reasonable, we concluded, for SSP to conclude that Miss Harding’s actions amounted to gross misconduct warranting her dismissal. Her claim of unfair dismissal therefore failed.
35. We then turn to the claims of unlawful discrimination. Those covered two distinct periods. The first related to the handling of the grievance itself. There was a provision, criterion or practice of the respondent that substantially disadvantaged the claimant, namely the decision to proceed with and conclude the grievance procedure at a time when she was off sick (by reason of her disability) and therefore unable to fully participate in it. The question for us was what reasonable steps would have avoided that disadvantage.
36. It was suggested that the process should be delayed until such time as she could attend a meeting with Ms Gibbs. There was simply no idea at the time when that might be, and with the benefit of hindsight we know that it was unlikely to have been for at least another year. We remind ourselves in this context that the outcome of the grievance of itself would not directly result in any sort of disciplinary action being taken against Miss Harding. Further proceedings would have to be taken (as they were) for that to occur. The complainants were entitled to have this matter resolved relatively promptly.
37. In one sense, we were not informed what reasonable adjustment it was being suggested would remove the relevant disadvantage, since no specific period of delay could be identified as a step that would have permitted Miss Harding’s involvement and avoided the disadvantage. In any event, we concluded that to delay matters further was not a step it was reasonable for SSP to have to take.
38. We then turn to the disciplinary process itself. There were two distinct claims in relation to that issue. Firstly, were SSP under a duty to make the adjustment of delaying proceedings in order that Miss Harding could make further written submissions? Secondly, were they under a duty to delay the disciplinary hearing so that she could attend it?



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39. As far as her submissions were concerned, it was not clear that Miss Harding had been substantially disadvantaged by the hearing proceeding when it did. She had had plenty of time, on her own account, to prepare submissions. Nor was there an indication from her at that time of precisely how much longer she would require to finalise them (although we know that a full document was to hand by the date of the appeal). In any event, the document she did produce was a fairly detailed one.
40. We were not satisfied that she was substantially disadvantaged in relation to her written representations by the hearing going ahead when it did. If we were wrong about that, we did not consider it would have been a reasonable step for SSP to take to delay matters. Miss Harding herself had suggested the reasonable adjustment of dealing with the matter in writing and SSP went along with that. She had ample time to produce submissions, which were detailed even if they were eventually expressed to be incomplete. There had already been a substantial delay in dealing with the matter.
41. We were satisfied, however, that Miss Harding was substantially disadvantaged in relation to her presence at the hearing itself by the provision, criterion or practice of SSP of taking the process forward as quickly as they did (it would not be accurate to say that the process took the course that it would have done if Miss Harding had not been absent. There were delays on account of that absence). Delaying the process until she could attend the hearing would have removed that disadvantage. Was that, however, a step SSP should reasonably have been required to take?
42. This is an issue we have already touched upon, in connection with the unfair dismissal claim. There was no sense of when Miss Harding would definitely be able to attend a hearing (and to that extent, as was the case in relation to the grievance process, no precise identification of how long a delay was required and therefore what “reasonable adjustment” would have avoided the relevant disadvantage. Mr Curwen suggested in his written submissions that there should have been a three month delay but there was no certainty about her ability to attend even then). She was clearly unable to attend the appeal hearing on 11 April. The proceedings had been on foot for a year by then. SSP had obligations to Mr Sarson and Mrs Coleman as well to resolve these matters reasonably promptly.
43. We also took into account the fact that SSP had in their possession correspondence that appeared to indicate an acceptance in certain respects by Miss Harding that she had misbehaved in precisely the way alleged by the complainants themselves.
44. There was no way SSP could predict with any confidence when Miss Harding would be able to attend a hearing. It was certainly not going to be soon. In all the circumstances we concluded that a further delay was not a step that it was reasonable for SSP to have to take to avoid the relevant disadvantage.



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It followed that the claims of disability discrimination failed and were dismissed.

45. Finally, we turn to wrongful dismissal. In this context the question for us was not whether SSP acted reasonably in concluding that Miss Harding had committed gross misconduct but whether we believed that she did. We heard her evidence on this subject and we saw the relevant documents and heard evidence from Mrs Coleman and Mr Sarson. It is perhaps worthy of note that the very witness that she called to give evidence on her behalf, Mrs Hawkins, was highly critical of the way Miss Harding had behaved towards her from time to time. Indeed in the course of the evidence that Miss Harding herself gave before us she described her treatment of the complainants as being rude and conceded that they had been treated badly.
46. We were satisfied that Miss Harding had acted in a bullying manner towards her only two subordinates, over an extended period. She was effectively in charge, on a day to day basis, of SSP - its most senior employee. This was a small organisation in which good relations were crucial. It seemed to us that the behaviour of Miss Harding could indeed properly be categorised as gross misconduct. It followed that she had forfeited her right to notice and therefore that her claim of wrongful dismissal also failed.

Employment Judge Reed

Date : 24 July 2019
