



EMPLOYMENT TRIBUNALS

Claimant: Miss E Rudnicka

Respondent: International Automotive Components Group Ltd

HELD AT: Hull

ON: 3 October 2019

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: Mrs B Suwalska-Pawlik

Interpreter: Mrs M Sarvjahani,

Respondent: Mr J Small, Counsel

JUDGMENT

The Claimant's claim for unfair dismissal is hereby dismissed.

REASONS

1. The claim

The sole claim in this case is that the Claimant was unfairly dismissed.

2. Issues

2.1. Whether the Claimant committed an act of gross misconduct.

2.2. Whether the dismissal which took place as a result of the act of gross misconduct was fair and in particular whether or not the termination of the Claimant's contract was too harsh.

3. The law

The principle law relating to unfair dismissal can be found in section 98 of the Employment Rights Act 1996 and it is for the employer to show (subsection 1) the reason for dismissal). A reason falls within the subsection if amongst other things it relates to the conduct of the employee (subsection 2). Where the employer has proved the reason for dismissal the determination of the question whether the dismissal is fair or unfair depends on whether in the circumstances the employer acted reasonably in treating it as a sufficient reason for dismissing the employee and is determined in accordance with equity and the substantial merits of the case (subsection 4) (my wording).

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. At all material times the Claimant was employed by the Respondent as a trainer at its Scunthorpe factory where the Respondent manufactured plastic internal panels for the automotive industry. At that site there were approximately 400 workers, some permanent and some agency but all managed internally and it was well-known that this was so.
- 4.2. The Claimant was employed from 1 February 2013 until her dismissal on 23 May 2019.
- 4.3. The Claimant was a good worker and was of good conduct until the incident that led to her dismissal.
- 4.4. On 3 April 2019 Mark Norris, a shift manager, who gave evidence before the Tribunal, had a meeting with an agency worker Elisangela da Silva Asis (Elisangela), at her request. She was unhappy working in her team and she made certain accusations about the Claimant. Mr Norris felt that Elisangela was a good worker and did not want to lose her so he recommended to his unit leader to make some adjustments for Elisangela which seemed to work, coincidentally with the Claimant's absence, but on the Claimant's return Mr Norris perceived that some issues returned.
- 4.5. Nothing more was done about this until 8 May 2019 when the Claimant approached Mr Norris and one thing led another, another being that the Claimant said she had some issues with Elisangela, in particular Elisangela's attitude. The Claimant said that she had discussed these with the unit leader "thousands of times" and then, out of the blue, the Claimant stated that she had spoken directly to the agency which supplied Elisangela to the Respondent on 3 May 2019 about Elisangela's attitude.
- 4.6. Mr Norris was taken aback that the Claimant had done this, effectively over the heads of management, which the Tribunal finds as a fact that the Claimant knew was not in accordance with correct procedures and which the Claimant, the Tribunal finds, had previously followed. This is despite the fact that at the hearing the Claimant has given evidence to the contrary. That is that she was not aware of the procedures in relation to agency workers.

- 4.7. On 9 May 2019 Mr Norris emailed the agency concerning the alleged conversation on 3 May 2019 and the agency confirmed that there was indeed a conversation between the Claimant and themselves about Elisangela.
 - 4.8. On 11 May 2019 Mr Norris asked Ian Aslam, warehouse manager, to carry out an independent investigation, the result of which was that there was the possibility of the Claimant having committed an act of gross misconduct for serious insubordination and that discipline should follow.
 - 4.9. On 24 May 2019 Mr Norris conducted a disciplinary hearing. The Claimant was accompanied by a colleague. The Claimant stated that Elisangela was co-operative, that she had never refused to do anything and that she had not done anything bad or aggressive. The Claimant confirmed that she had spoken to the agency because she just wanted them to speak to Elisangela to change her behaviour. The Tribunal finds as a fact that it was no accident that the Claimant had raised the matter with the agency and behind the back of management. At the end of the disciplinary meeting the Claimant apologised to the Respondent for bypassing Respondent management.
 - 4.10. Mr Norris formed the view that the Claimant's actions constituted a breach of trust and confidence as the Claimant failed to follow procedures and that her actions appeared to display a malicious intent and the Claimant was summarily dismissed for gross misconduct.
 - 4.11. This was confirmed by a letter dated 3 June 2019.
 - 4.12. The Claimant appealed to Mr Adam Fickling, operations manager at Scunthorpe, who heard the Claimant's appeal on 13 June 2019. He gave evidence before us. The Claimant was again accompanied. Mr Fickling heard from the Claimant what was in effect a change in her story in an attempt to lessen the effect of the meeting with the agency on 3 May 2019. Mr Fickling took the trouble to check matters himself with the agency and as a result of that and other matters, which were contained in his letter, dismissed the Claimant's appeal.
- 5. Matters occurring during the hearing**
- 5.1. Interpreter - I record, presumably by arrangement between the Claimant and Mrs Sarvjahani, that interpreting only took place during the Claimant's evidence and not the remainder of the hearing.
 - 5.2. Respondent witnesses - The Respondent called two witnesses, Mr Norris and Mr Fickling, but it had a third witness, Mr Ian Aslam, who as the Tribunal has found carried out the investigation. It is unusual to call the investigating officer in a case such as this and as the parties agreed there was no substantive procedural issues around the investigation Mr Aslam was not called to give evidence.
- 6. Determination on the issues (after listening to the factual and/or legal submissions made by and on behalf of the respective parties):**
- 6.1. The Tribunal is satisfied that the conduct in this case was indeed gross misconduct. It is clear that in going behind the back of management to the agency, which the Claimant does not deny, the Claimant undermined the authority of management and that did indeed go to the issue of trust, particularly as the complaint by the Claimant related to a worker who was

well regarded by management and about whom at the disciplinary interview the Claimant could say nothing wrong and very little today.

- 6.2. What could the Respondent do other than summarily dismiss the Claimant in the circumstances? It is true that the Claimant had six years' service and a good record but in the view of the Tribunal it was within the band of reasonable responses for the Respondent to dismiss the Claimant in the way it did.
- 6.3. In all the circumstances the Claimant's claim for unfair dismissal is hereby dismissed.

Employment Judge Shulman
Date 10 October 2019