



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

MS A SZCZESNA

AND

Respondent

CARE TECH
SERVICES LTD

COMMUNITY

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 21ST / 22ND AUGUST 2019

EMPLOYMENT JUDGE MR P CADNEY MEMBERS:
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MR M GREEN (SOLICITOR)

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim that she was unfairly dismissed is not well founded and is dismissed.

Reasons

1. By this claim the claimant brings a claim of unfair dismissal. She was employed by the respondent as a Team Leader at Matson House in Gloucester and the events which led to her dismissal can be shortly described.
2. The claimant's account is that on 1st October 2018 she was asked to get some cash and do some shopping. She and a colleague Symone Degg, and a service user, went to Morrisons. The claimant inserted the card in the cash machine and attempted to withdraw £500 but the display indicated that that exceeded the daily limit of £350. She attempted to withdraw £350 but the machine display informed her that she could only withdraw £200. After she pressed to withdraw £200 the display indicated that she could only in fact withdraw £100. She selected £100, and £100 was dispensed. However, before and after this withdrawal she had requested account balances. The account balance after the withdrawal showed £350 less in the account than before. She contacted the machine services number and was put through to the bank. However, she could not proceed as she was not the account holder. She did the shopping and returned to the home where she spoke to Joanne Davis the Service Manager and explained what had happened, and left the balance of the £100 remaining after the shopping had been paid for and the three advice slips in her possession that had been dispensed by the cashpoint machine. She had therefore accounted to the respondent for everything she had both withdrawn and spent, and had drawn to their attention the £250 discrepancy of money that had not actually been dispensed.
3. The respondent's account is that the claimant was instructed to obtain an account balance before withdrawing £350, which Ms Davis knew was the maximum permitted, and obtain a subsequent balance; and then to do the shopping. The claimant returned and drew to her attention the apparent shortfall and left her three documents; an account balance timed at 12.28, the receipt for the cash withdrawal of £100, and an account balance from 12.33 showing £350 less than at 12.28.
4. She contacted Philip Yates, the Internal Auditor to advise him of what at this stage was regarded as a dispensing error by the cashpoint machine. However on 2nd October Ms Davis obtained a mini statement which showed two cash withdrawals, one for £100 and one for £250. On 9th October she received an email forwarded from the bank which gave a sequence of balance enquires at 12.28 and 12.30 followed by a £250 cash withdrawal at 12.30; a further balance enquiry at 12.31, a withdrawal of £100 at 12.31 and the final balance enquiry at 12.33. An audit report was provided by Philip Yates, which confirmed that £350 had been withdrawn on 1st October. Ms Davis spoke to the claimant again on 15th October 2018

- when the claimant gave a similar, although Ms Davis says not identical account, to that she had given before. As a result, Ms Davis produced an investigation report which set out the findings above, and recommended disciplinary action.
5. On 15th November the claimant was invited to a disciplinary meeting to answer an allegation of withdrawing £350 but only returning £100. The letter set out that if proven the allegation could amount to gross misconduct and result in dismissal. The hearing was conducted by Angela Czerny, the Locality Manager on 21st November 2018. The claimant produced a written statement setting out in greater detail the events summarised above. In addition, she requested that CCTV from the cashpoint machine be obtained from Morrison's which would show what cash was dispensed by the machine. Ms Czerny made further enquiries with the bank after the hearing which confirmed that the cash reconciliation at the end of the day showed no discrepancy, meaning that the £250 had, therefore been dispensed. There was a further meeting on 12th December 2018. Ms Czerny concluded that on the balance of probabilities the claimant had withdrawn the £250 for her own gain, and that this amounted to gross misconduct for which the appropriate sanction was dismissal. The detailed basis for the conclusion was set out in a letter of the same date. In summary it was that the claimant's account was contradicted by the bank records, and the fact that there was no discrepancy in the amount remaining at the end of the day. She concluded that the claimant had withdrawn and kept the £250 for her own gain.
 6. The claimant appealed by a letter dated 3rd January 2019. The appeal hearing took place on 24th January 2019 and was heard by Christina Yewdell, Operations Director, on 24th January 2019. The claimant advanced four grounds of appeal of which the most significant were the alleged failure to report the case to the police which would have allowed CCTV footage to be obtained, and to escalate the issue to RBS and Note Machine ATM to conduct further investigation.
 7. Ms Yewdell concluded that the decision not to report the matter to the police was reasonable; and that sufficient steps to investigate the transactions had been carried out as the information from RBS was sufficient to conclude that the claimant had withdrawn the £250. She describes the evidence from RBS as "compelling". Ms Yewdell concluded that the claimant had only provided three advice slips, and that those not provided related directly to the missing money. She concluded that they had been withheld deliberately in order to disguise the withdrawal. Moreover, she concluded that on the basis of the documents that the claimant had provided that there was an unexplained three minute gap, which was subsequently explained by the evidence of the withdrawal. As a result, she concluded that the evidence supported the fact that monies had been taken from the cashpoint which had not been accounted for by the

claimant and that she had attempted deliberately to disguise the withdrawal. She did not uphold any of the grounds of appeal and confirmed the disciplinary outcome.

Conclusions

8. The first question is whether the respondent has satisfied the burden of demonstrating that it dismissed for a potentially fair reason. Misconduct is a potentially fair reason with s98(2) of the ERA 1996 and the claimant accepts that both Ms Czerny and Ms Yewdell genuinely believed that she had withdrawn the £250 and not accounted to the respondent for it. Accordingly, this question is not in dispute.
9. The next questions are whether the respondent carried out a reasonable investigation, drew reasonable conclusions as to the misconduct, and reasonably dismissed the claimant. In respect of each of those questions the “range of reasonable responses” test applies.
10. Taking the last question first, if it was reasonable to conclude that the claimant had withdrawn the £250 and had not accounted to the respondent for it; then the conclusion that she had acted dishonestly and that that was gross misconduct for which dismissal was the appropriate sanction clearly falls within the range reasonably open to the respondent.
11. That leaves firstly the question of whether there was a reasonable investigation. The respondent contends that there was. Firstly, the respondent interviewed the only other member of staff present Ms Degg. Secondly and more pertinently it had obtained the information from the bank which, if accurate, clearly showed the sequence described above and the £250 withdrawal. There was nothing more reasonably required.
12. The claimant contends that there were other steps that should have been taken. Firstly, if there had been a prompt investigatory interview she could have asked the respondent to obtain the CCTV footage which, she maintains would have shown that there was only one withdrawal and that the banks records are wrong. Alternatively, the respondent should itself have obtained the CCTV footage, or should have informed the police who would have had the power to obtain it.
13. In terms of the reasonableness of the conclusion as to the misconduct the claimant contends that in the absence of having made the enquires which could have exculpated her it was not reasonable to conclude that she was guilty of the misconduct.
14. The respondent submits that the conclusion was on any analysis reasonably open to it. Firstly, they had no reason to doubt the accuracy of the bank records. Secondly, the information supplied matched and explained the shortfall in the account, and explained the three minute time

gap in the documents presented by the claimant, which the claimant's account did not. Thirdly; Ms Czerny had specifically asked and had been told that there were no discrepancies when the reconciliation was carried out at the end of the day, which meant that the £250 had definitely been dispensed at some point. In order for the claimant's account to be correct there would not simply need to be a defect mechanically in that the machine was dispensing a different amount to that requested, but it must have recorded transactions that had never occurred, as on the claimant's account she had never requested or withdrawn £250 at any stage. Put simply the respondent contends it had made ample enquires and had more than sufficient evidence from which to draw the conclusion that by far the likeliest explanation, and in reality the only reasonable explanation, was that that claimant had withdrawn the £250.

15. As I indicated at the start of the hearing, and as is set out above my task is to ask whether at each stage the respondent's conduct of the investigation, conclusions as to misconduct and sanction fell within the band of reasonable responses.
16. As is set out above the fundamental issue is whether the respondent conducted a sufficiently thorough investigation from which to draw reasonable conclusions. In my judgement the evidence they obtained was more than sufficient to allow them to determine whether the claimant had or had not withdrawn the £250. If they were entitled to conclude that she had, which on the evidence in my judgement they were, then for the reasons set out above they were entitled to conclude that that was misconduct which merited dismissal.
17. It follows that in my judgment the respondent did conduct a reasonable investigation, and did draw reasonable conclusions as to the misconduct and the appropriate sanction. All three of the Burchell question must be answered in the respondent's favour; and it follows that the claimants claim must be dismissed.

EMPLOYMENT JUDGE CADNEY

**Judgment entered into Register
Dated 21st October 2019**