



EMPLOYMENT TRIBUNALS

Claimant: Mr M J Saxon

Respondent: S Williams Carpet Fitting Services Ltd

Heard at: Manchester

On: 21 October 2019

Before: Employment Judge Feeney

REPRESENTATION:

Claimant: In person

Respondent: Mr C Peel, Employment Law Consultant

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claims of unfair and wrongful dismissal fail and are dismissed.
2. The claimant's claim of unlawful deduction of wages succeeds and the respondent is ordered to pay the claimant £283.24.

REASONS

1. The claimant brought a claim following his dismissal for gross misconduct by the respondent on 22 November 2018. The claimant brought a claim of unfair dismissal, wrongful dismissal and unlawful deduction of wages in respect of approximately £300 deducted from his final salary.

Issues

2. The Issues for the Tribunal to decide are:

(1) Was the claimant unfairly dismissed?

(a) Was the claimant dismissed for a permissible reason in accordance with section 98 Employment Rights Act (1996) (the 1996 Act), the respondent says the reason was misconduct

- (b) Did the respondent meet the **BHS v Burchell** test in that they formed a genuine belief in the claimant's misconduct after a reasonable investigation on reasonable grounds?
 - (c) Did the claimant contribute to his dismissal and if so to what percentage extent?
 - (d) Were there any defects in the procedure followed by the respondent and if so would they have delayed or altered the outcome in accordance with **Polkey**?
- (2) Did the respondent make an unlawful deduction of wages contrary to Part 2 Employment Rights Act (1996) from the claimant's final salary in respect of a loan to the claimant to enable the claimant to repair his car
 - (3) Was the claimant guilty of gross misconduct entitling the respondent to dismiss him without notice?

Claimant's Submissions

3. The claimant submitted that his dismissal was unfair because the respondent unquestioningly accepted the evidence of a family member over the claimant's evidence and failed to draw the right conclusions from the evidence they had gathered. In addition, the respondent had no authorisation to recoup the loan from the claimant's last payment

Respondent's Submissions

4. The respondent submitted that the investigation had been reasonable, that no-one else supported the claimant's account of events and that they had been impartial as regards the family member's evidence.

5. The offence of physical violence was a dismissible offence and they had throughout followed a fair procedure, met the **BHS v Burchell** test and to dismiss for the offence in question was in the range of reasonable responses. In addition, the claimant had contributed 100% to his dismissal.

6. The physical violence and swearing in front of suppliers was gross misconduct entitling the respondent to dismiss without notice.

7. In respect of the unlawful deduction they had indicated in writing that if the claimant did not reply to the email about that they would take that as acceptance that the deduction could be made.

Witnesses

8. For the claimant we heard from the claimant himself and for the respondent Mr Stephen Williams, Managing Director and owner who heard the disciplinary hearing, and Mr Ryan Williams, son of Stephen Williams, who conducted the investigation and the appeal.

9. Whilst the claimant did not raise this point I discussed with the parties the fact that it was the respondent's position Mr Ryan Williams had to undertake the

investigation and the appeal due to lack of other personnel in the small business to undertake these roles.

Findings of Fact

The Tribunal's findings of fact are as follows:

10. The respondent is a small family owned carpet fitting business. Mr Stephen Williams (SW) had known the claimant since he was a young boy and offered him the opportunity to train as a carpet fitter when he could not find work in his chosen trade of plumbing. The claimant began working for the respondent on 12 August 2014.

11. It was Mr Stephen Williams' view that the claimant was quite a hothead but as he had known him for so long he was prepared to make allowances. It appears also he was fairly well regarded as proximate to the events which led to his dismissal Mr Williams had discussed with him whether he wanted to partially buy into the business due to the illness of Mr Stephen Williams' wife leading him to wish to reduce his involvement to spend more time with her. The claimant was, however, unable to raise the requisite amount of money and in addition was not sure he wanted to be a carpet fitter permanently.

12. Prior to the events leading to the dismissal on 9 January 2018 the claimant said that Mr Garry Williams (nephew of SW) had assaulted him, that punches had been thrown and Mr G Williams had threatened him with a metal bar. The argument had arisen because the claimant felt that Garry Williams had not undertaken the work he had been left with by Ryan Williams whilst Stephen Williams was on holiday, and the claimant felt that he had been left doing all the work.

13. The claimant phoned Ryan Williams about this incident and Ryan Williams said, "for fuck sake, what's he playing at?". Mr Ryan Williams in evidence denied that he knew the details of this incident. The claimant spoke to Stephen Williams on his return from holiday and was advised that if the matter was pursued both the claimant and Garry Williams would have to be dismissed. Mr Stephen Williams' evidence was that he spoke to them both together and as far as he was aware both of them had agreed that the matter would not be pursued and from time to time they would make a joke about "I'll go and get the metal bar". The situation although serious therefore seemed amicably resolved and there was no report of any further incidents until the matter which led to the claimant's dismissal. I found Mr S Williams' evidence fair and reasoned and accepted his version of the aftermath of this incident.

14. On 15 November 2018 two other workers called Jacob Gould and Peter Morrison, were with the claimant at the respondent's shop waiting to go to some premises to lay some flooring. A mistake had been made in ordering the materials for the job, according to the claimant. He blamed Mr Garry Williams for this. Stephen Williams was again on holiday. The claimant loaded up two vans and had an argument with Peter Morrison for picking up some of the wrong material. The claimant felt when the delivery had arrived that Garry Williams had remained in the office to avoid helping with the loading and unloading of the van. The claimant says he asked Garry Williams to go through the delivery notes in order to ensure it was correct as he believed some of the goods had not been delivered for a job on Monday in Newcastle. The claimant said he had explained this to Garry Williams a

number of times and he did not seem to understand what he was saying. He said then "let the sales rep explain the position then". The claimant said as he was going to get in the van to go, as they had the correct materials for that day's job by this stage, that Garry Williams grabbed his jumper, ripping the zip open and said "why are you talking to me like I am f***ing stupid", so the claimant grabbed Garry Williams back to restrain him and said, "what do you think you're doing, you c**t?" to which he replied not to call him a c**t. The claimant said, "when he let go of me, I let go of him".

15. The claimant said he was concerned Garry Williams may have the carpet knife on him as he had previously attempted to assault him with a weapon, i.e. the metal bar. The claimant believed that nobody who was in the office at the time could see the whole of what happened and the two sales reps who were present were also unable to see the whole incident. The claimant got in the van and drove off, calling Ryan Williams to report the incident as Stephen Williams was on holiday. The claimant had a discussion with Peter Morrison as to whether he was well enough to continue as he seemed quite shaken. The claimant therefore rang Ryan Williams to say that he was going to the Jobcentre for advice, which Mr Ryan Williams was annoyed about as he was concerned the job would not get done. The claimant also took his tools out of the van, put them in his own car and left.

16. In view of these circumstances there was some doubt in Ryan Williams' mind whether the claimant was going to come back or whether he had, in effect, resigned. Accordingly, he made arrangements during the day for somebody to cover the claimant's work so that when the claimant actually rang near 5 o'clock he was advised that there was no work for him the next day.

17. The claimant was then called to an investigatory meeting at 4.30pm the next day. He was told he would be getting suspended with pay.

18. The claimant was concerned that this decision was made without considering the evidence. Mr Ryan Williams' evidence was that he did have statements coming to him throughout the day from the individuals involved which had been obtained by his sister who appeared not to work for the business but did have some HR experience, and therefore he accepted that yes, he had made the decision to suspend the claimant before the actual meeting with the claimant.

19. Before he met with the claimant Mr Ryan Williams had a statement from Adam Rogers, a supplier, which stated:

"I saw an altercation between Mike and Garry. Mike was angry due to a problem with a delivery from a supplier. Garry was outside the door and Mike walked through it. I heard Garry say, 'will you stop shouting'. I couldn't see what happened through the doorway but I did see Mike manhandle Garry back outside. Mike called Garry 'a little c**t'. Garry just replied that he was not. Mike then stormed off shouting that he had previously reported Garry and that Garry needed to be careful (meaning from being reported)."

20. Peter Morrison provided a statement stating:

"At roughly 9.30am I heard raised voices both by Garry Williams and Mike Saxon. I was curious to see what was going on so I stepped to the doorway to

see what was going on between them both outside. As I stepped into the doorway I saw Mike's arms reach for what I think was Garry but I couldn't really see. I decided to stay out of it and stepped back into the shop as I didn't want to get involved. I then didn't see anything else but continued to hear raised voices. After it all died down Mike called me to the van ready to set off for the job."

21. Mr Garry Williams wrote out a witness statement on 15 November 2018. He said that:

"At approximately 10.30 a delivery of flooring supplies arrived at the shop premises. I, Garry James Williams, was talking to a representative from Hadfields as I received a phone call from my uncle, Robert Williams...being quite upset at the time. The Hadfields rep decided to leave the shop which I accompanied him to the main entrance. As I stood in the shop doorway Michael Saxon, employee of S Williams Carpets, burst past me ranting and raving at Peter Morrison, another employee of the company, over the delivery we had just received not being correct. As he barged past me I told him to calm down. Within a flash he had lunged forward and grabbed me with both hands around my neck. There was words spoken between us and after loading the work's van he went to his job which I thought. After an hour had passed the work's van appeared outside the shop premises. Michael Saxon walked into the premises and threatened me with the police for what I do not know as I only asked him to calm down. Then throwing the van keys he started poking me in the chest saying he had been advised by the Jobcentre to leave work and go home. I asked him if he was walking off the job and he replied 'no, we have been advised to go home'. I asked again, he did not reply, walked out of the shop and got into his own vehicle."

22. Craig Hetherington, another supplier, sent an email on 16 November stating:

"I arrived at S Williams about 10.00am to be greeted by a fitter (the claimant) and Garry. The fitter took the paperwork off me and started telling me about a damaged piece from the day before which he believed was the same piece in my car, which it wasn't. I told the fitter I had three pieces and the fourth was on the normal van which he was ok with. The smaller piece was in my car, he was still convinced it was wrong, and shouted at the younger fitter for taking the piece off me and saying, 'pay attention and less of the attitude'. The fitter then disappeared inside to speak to Garry and an argument started. I didn't hear what was said until he came outside and was aggressively swearing and pointed a finger at Garry, to which Garry replied 'who are you talking to?' and 'I'm not a c**t'. Garry was then grabbed and thrown against the wall for a few minutes. I didn't see any punches but there was manhandling. Garry's cap was knocked off his head and told he would 'knock him out' from the fitter. He then jumped in the van with the other fitter and sped off."

23. The claimant was interviewed on 16 November. The claimant said:

"Delivery came off for reps. Three cuts were coming. Was expecting two on special delivery. We'd sent them back the day before, went out and identified the vinyls that I needed and put them on the back of my van. I asked Pete to help and he picked up the smaller one which I was trying to identify. He

picked up the wrong one and I told him to put it down so that we could find out that it was. The other vinyl was for Lorne House and so I asked Garry for a job sheet to confirm. Whilst Garry was doing that the rep got his delivery notes and there was one for Lorne House and two for Blair House. Should have been two for Lorne House and so one was missing, which has happened before. I asked the rep where the other cut was and he told me it was coming later on on another van. I explained to Garry what the rep had told me in regards to deliveries, twice, to which he replied have I got the vinyls that I needed today for Blair House. I replied 'yes, they are on the van'. Garry then asked me what the four metre vinyl was for that I had already told him twice about. I turned round and told Pete to get ready to go and then Garry turned to me and asked 'why are you talking to me like that?' whilst grabbing my jumper on the chest area, separating my zip. I grabbed Garry back by the chest in the same place he had me and pinned him to the wall between the door and the office window until he let go. I reminded him that I'd told him on January 9th the last time he assaulted me at work that I would not hold back again and told him that he is a silly old c**t. I then told Pete we were leaving. While Garry was shouting 'that's it, you're finished, you're sacked' to which I replied 'you can't sack me' and then Garry said 'I'll make sure you don't work here again'."

24. Mr Ryan Williams said to the claimant:

"The accusation has been made that you physically assaulted Garry and placed your hands round his neck in front of two reps and a delivery driver."

25. The claimant said:

"No delivery drivers just the two reps."

He said:

"It's not acceptable but I have every right to defend myself. Last time this happened it was with a metal bar. I did not touch his throat, it was by the chest. If I had my hands round his throat he would not have been able to reply "I am not a silly old c**t."

Ryan Williams stated:

"We are not here to discuss that, we are here to discuss of what happened on November 15th. Did you put a grievance in against Garry?"

The claimant replied:

"No I didn't, I needed work at the time so no grievance was put in against Garry, no, because Stephen said 'I would have to sack you both so can we forget it' in front of Joanne Pye and Jack. When Garry climbed over to the passenger seat to swing at me and then went to get a metal bar I told you about it and you said 'what's he playing at?'."

Mr Williams simply repeated that no grievance was put in. He then went back to the incident:

“Back to yesterday’s event. So when you finished this altercation with Garry you left for your job in Southport. Why did you return an hour later?”

The claimant replied:

“While I was on the van I was on the phone to the Jobcentre speaking to an adviser about what had just happened. My adviser said to come in immediately if I’m not happy at work so I turned around and went back.”

26. He said he was stressed and angry about what had happened. He took his tools because he did not want anybody else using them. He said he had apologised for walking off the job. He said he was goaded into quitting. He said:

“Garry said, ‘you’ve not turned into the job so you’ve quit. Hand in your uniform’. I replied I hadn’t quit and that I was not ok with the position that I had just been put in. The whole situation has arisen from me trying to make sure that a mistake wasn’t made for the second time as is the company’s motto ‘it’s ok, the lads will sort it.’”

27. Mr Saxon also complained that he had only been paid for three days and felt he should have been paid for the days he had missed. Mr Williams said that Stephen Williams would look into that. Eventually the claimant was paid for those days.

28. The claimant was then advised he was suspended from work pending further investigation into the acts of gross misconduct, using physical violence in the workplace, bring the employer into serious disrepute and serious insubordination. The claimant then received a letter setting out the suspension as described.

29. Mr Garry Williams was also interviewed. It was put to him that he grabbed Mike Saxon by the chest first. He said, “No, I held his coat to get his attention as he barged past me and told him to calm down and stop shouting as I was talking to Craig, the rep from W’s, discussing the delivery that had just been sent”. He was asked whether he had done it in an aggressive manner. He said, “No, I did it to attract his attention as he was in an erratic state, shouting, as for what reason I don’t know as it was my job to do”.

30. Mr Ryan Williams said, “did you say ‘that’s it., you’re finished, you’re sacked’.” He denied this. He was then asked:

“During your statement you’ve said that Mike grabbed you by the neck, Mike has stated he grabbed you by the chest so which one is it?”

Mr Garry Williams replied:

“Mike grabbed me with both hands around my neck, reacted by moving away and my cap ended up falling off, then grabbing me by the chest of my work coat and pinned me against the wall by the entrance door.”

31. Mr Garry Williams said he had to apologise to both of the reps present for Mike Saxon’s behaviour and it was highly embarrassing. He said it was a regular occurrence in that “he is always bullying the other younger workers, like Peter yesterday”. Peter Morrison was holding his head in his hand saying he had had

enough because Mike Saxon was shouting at him over delivery of vinyls and was calling him a "tit" in front of the reps, "which is why I told him to calm down".

32. On 19 November the claimant was sent a letter inviting him to a disciplinary hearing. It was stated that the purpose of the hearing was to consider the following allegation of gross misconduct:

"At approximately 10.30 on 15 November you assaulted another employee by physically grabbing him and pinning him against a wall. This was done in the presence of two suppliers bringing the company into serious disrepute. You then walked off your shift without authorisation to do so meaning that the job you were booked in to do that day was postponed."

33. The claimant was advised he might be dismissed as a result.

34. The claimant asked that certain employees be brought to the hearing (Peter, Jack and Jacob), however they declined to attend.

35. Mr Stephen Williams took the disciplinary hearing. The claimant said not one of the statements he had been sent was true. He was asked how it looked in front of suppliers and agreed it did not look good, "I didn't plan for anybody going for me though". He was asked whether he was shouting. He said, "Not the entire time. When Garry grabbed me, yes, and when I told Pete to lose the attitude. I would like to point out that afterwards Pete apologised to me for arguing". The claimant agreed it did not look good and he had apologised but he did not plan on it. He was asked whether his behaviour and mannerisms could come across as threatening. He said, "not threatening, no". He was asked whether shouting was a regular occurrence. He said normally they sorted it out away from customers. He denied he regularly shouted.

36. It was put to the claimant that he had said, "Garry had said 'why are you talking to me like that' while grabbing his (the claimant's) jumper on the chest, and that he had grabbed him back and pinned him to the wall: is this true?" He agreed with that. He then said, "you then called him a silly old c**t: is this true?" He agreed with that. He was asked whether it was acceptable behaviour. He said, "defending myself is acceptable behaviour".

37. Mr Williams referred to some other witness statements and Mr Saxon said they all contradicted each other. Mr Saxon agreed that violence is never right in the workplace.

38. Mr Williams pointed out that two of the witness statements were from suppliers who heard him use obscene language and witnessed him physically assaulting another employee. The claimant referred to the fact that it was the second time he had been assaulted in the workplace in nine months.

39. There was then some discussion about the claimant going to the Jobcentre and not being authorised to leave.

40. The claimant then said in his defence:

"Garry states I lunged at him but on his interview replied, 'no I grabbed his coat to grab his attention as he barged against me'. Garry put his hands on

my first. He put both his hands on my chest. Garry states he was in the office with Adam discussing with Adam who had committed suicide the day before, being quite upset at the time. Adam decided to leave the shop and he accompanied him to the main entrance. This wasn't true. He left because we had stuff to do. Garry didn't escort him out after grabbing his paperwork. Adam was at the side of his car outside his shop in front of the big windows. Adam's statement says Garry was stood outside the door with Mike, couldn't see what was happening through the doorway but did see Mike manhandling Garry back outside. I did call Garry a little c**t when I had hold of him. He said I had my hands around his throat. How can he reply if I'm strangling him? I queried the violence. It's not that I wasn't doing as I was told. I was preventing a mistake like what happened at the Grammar School which has happened twice this week while I have been off. My voice was raised because I was going to the toilet. Nobody sees me barge past Garry. When I came back to the shop I told Garry what I had been told on the phone. I informed Garry that I had been told to inform the police and he accused me of punching. It's not in his statement or interview. When I got back to the shop I didn't argue with Garry. I remained calm, placed my keys on the side and pinned my paperwork to the wall..."

41. It should be noted that GW had said, "I held his coat to get his attention as he barged past".

42. The claimant said then Garry Williams then goaded him, telling him to leave his uniform. The claimant said he was fearing what might happen as it was the second time this had happened in that he had been assaulted before and been threatened with a metal bar in January 2018, and that Peter Morrison had witnessed this and witnessed him reporting it to Ryan. He had also reported it to SW. He also asked why Garry Williams was not suspended and that people in the street were asking what had happened. He was also asked why he had not been paid for Thursday and Friday: it was not his fault that the respondent had got cover. The claimant also complained that the suspension letter had already been prepared. Mr Stephen Williams said the claimant would be paid but at the time they thought he had left the job.

43. There was a break for half an hour and Mr Williams came back and stated that he found the allegations of gross misconduct proven and that dismissal was an appropriate sanction, as the claimant had admitted to using obscene language and using physical violence in the workplace which could bring the company into serious disrepute and lose business. A letter was then sent on 23 November confirming all of this. This said:

"You were given the opportunity to provide an explanation for your conduct and your response is summarised as follows:

- You admitted to physically grabbing Garry and pinning him against a wall, however you said you did this in retaliation for Garry grabbing you.
- You admitted to using inappropriate language and swearing at Garry, calling him a 'silly old c**t' in front of suppliers.

- You agreed that this did not look good on the business, acting this way in the workplace in front of suppliers.
- You agreed that you did not seek authorisation to leave work: you left to go the Jobcentre.

Having listened to your explanation and having considered all the circumstances and the facts available to me I would summarise my conclusions as follows:

- You admitted to using physical violence. You state it was in retaliation however five witness statements I have only suggest that you physically 'manhandled' another employee. Not one of them suggests it was in retaliation.
- It is my belief you used threatening behaviour in that you admitted calling Garry a 'silly old c**t' in front of two suppliers and from the witness statements in my opinion this was said in an aggressive manner.
- It is my belief you brought the company into serious disrepute as you acted this way in front of two suppliers.
- I believe that given circumstances you could react in a similar way in future and therefore in my mind you remain a significant risk to your colleagues and customers and suppliers if you are placed in an angry or confrontational situation as to how you would react.

I was not satisfied with your explanation for your conduct and on review of all the evidence I find the allegation of gross misconduct to be proven.

I considering the level of sanction I have considered the following – the company's dismissal policy clearly sets out the likely sanction as a result of this particular misconduct. I believe the sanction of dismissal is reasonable in all the circumstances of the case.

I have considered all your mitigating factors however the seriousness of the misconduct outweighs these and I believe the sanction of dismissal is reasonable in view of all the circumstances."

44. There was then a query about money owed by the claimant. On 23 November Mr Williams emailed the claimant and said that he still owed him £300 for carpets and asked him how he wished to pay for it. He could deduct it from his final pay packet if he wanted or he could pay it separately in cash?. It was said if the claimant did not reply they would take his silence as agreement to deduct it from his last wages. Mr Saxon said that it was not for the carpets (they were actually given to him free) but Mr S Williams had given him £300 at the end of October which in effect was to pay for repairs for his car. He then said he needed to know what the final amount would be before making a decision.

45. It was then confirmed that this would be deducted from his pay by Kate Squires in accounts following a conversation with the claimant but there was nothing in writing to confirm he had agreed to the deduction.. The total sum of £283.24.

46. Mr S Williams agreed that he had got the matters confused and it was a loan for the repairs to the car which the money was owed for. It was agreed also that he had advised the claimant at the time of the loan that as he now had a young daughter and was engaged he could pay the money back as and when he could afford it.

47. In evidence SW confirmed that the matter concerning the claimant leaving work was not part of the reason for the claimant's dismissal.

48. The claimant appealed his dismissal on 29 November saying he felt the punishment was excessive. "I think a warning and a letter of apology to anyone that I offended would have been sufficient". He went on to say:

"You have stated that you do not believe that I have acted in self defence even though Garry has admitted to grabbing me by the coat as stated in his interview. These circumstances should never have arisen in the workplace and with this being the second time it has happened I do not feel that the mitigating circumstances have been taken into account. I don't believe that when I said to Garry 'what do you think you're doing you silly old c**t' was said in an aggressive manner, but I understand how my accent may come across to people that don't know me."

He referred to the previous incident when Garry had reported an incident. Garry had also said that there was a family issue that day which could have contributed to Garry's behaviour.

49. The respondent then arranged to hold an appeal on 4 December. Mr Ryan Williams undertook the appeal. Whilst the claimant had used bad language, it was not said in an aggressive manner and he had not instigated the situation. The claimant did not see how he could be punished for defending himself "when he's admitted he's grabbed me".

50. Mr Ryan Williams took the view that new evidence would be required in order to challenge Mr Stephen Williams' decision. The claimant said he did not have any new evidence but it was there in the witness statements. He had agreed he had grabbed him by the coat in his interview, and the other witnesses said that they could not see everything. Mr Ryan Williams implied that because the claimant had not brought a grievance he could not consider the previous incident. The claimant said both of them should have been suspended whilst an investigation took place. He also complained that people seemed to know about what had happened, which he regarded as a breach of confidentiality and defamation of character.

51. After the claimant had insinuated that witnesses had been told they had to toe the line or they would be sacked, Mr Stephen Williams interviewed Peter Morrison because it was his mother who had raised this issue, but he denied that. He was asked further questions about the incident and said he did not really see anything: he did not even see who the claimant grabbed, but both sides were definitely shouting at each other. There were raised voices. He said the claimant was agitated and

seemed stressed out. He was also asked whether his attitude and mannerisms to work colleagues generally was acceptable, to which he said “no”.

52. Jack Hargreaves was also interviewed, as his mother had also had a conversation with the claimant. In this interview he stated that there had been no incidents between Garry and the claimant that he had observed.

53. On 11 December the appeal outcome was sent to the claimant. Mr Ryan Williams stated:

“You asked me during the meeting to revisit Garry’s witness statement where he admits to grabbing you first. From looking at Garry’s statement he admits ‘I held his coat to get his attention as he barged past me and told him to calm down and stop shouting’. He states he didn’t do this in an aggressive manner. He had five witness statements but not one of them stated that he acted in retaliation, and two of them were from suppliers. He accepted that he and Garry had had an altercation in the past but I am satisfied that issue was dealt with appropriately at the time and no grievance was put in, and also they had worked together for 11 months since the incident without any issue. The difference in your case was that the incident escalated to such an extent that you assaulted Garry Williams by physically pinning him to the wall in front of two suppliers, which you agreed does not look good on the company even if it was not done in an aggressive manner as you stated.”

54. The letter stated the claimant had brought the company into serious disrepute.

55. In response to his statement that people on the stress were discussing the incident, Mr Ryan Williams stated that it was likely it was because he had posted matters on Facebook. Peter had admitted he had spoken to his mother regarding his witness statement, hence why she has spoken to the claimant, which the company could not control. Peter however had been interviewed and he denied that he had been told he couldn’t say anything bad about the company or Garry during his witness statement and that his witness statement was true. Mr Ryan Williams stated:

“In regard to your claim that if this was any other employee other than a family member you feel the case would have been dealt with differently, I feel the whole process has been dealt with as fairly as can be possible and in accordance with the company’s disciplinary procedure.”

Further Mr Ryan Williams further commented:

“In answer to your question as to why only you were suspended, Garry made the grievance against you and based on the witness statements present at the time none of them pointed to Garry doing anything wrong.”

56. Mr Ryan Williams upheld Stephen Williams’ decision.

57. In evidence the claimant stated that he had said to Garry Williams:

“I told you last time you touched me if you did it again I’d knock your block off.”

Later in submissions the claimant said:

“Well, we probably both should have been dismissed.”

The Law

Unfair Dismissal

58. Section 98 of the Employment Rights Act 1996 sets out the relevant law on unfair dismissal. It is for the employer to show the reason for dismissal, or the principal reason, and that the reason was a potentially fair reason falling within section 98(2). Conduct is a potentially fair reason for dismissal. In **Abernethy v Mott, Hay & Anderson [1974]** it was said that:

“A reason for the dismissal of an employee is a set of facts known to the employer or it may be of beliefs held by him which caused him to dismiss the employee.”

59. Once the employer has shown a potentially fair reason for dismissal a Tribunal must decide whether the employer acted reasonably or unreasonably in dismissing the claimant for that reason. Section 98(4) states that:

“The determination of the question whether the dismissal is fair or unfair, having regard to the reason shown by the employer:

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee; and
- (b) shall be determined in accordance with equity and the substantial merits of the case.”

60. In relation to a conduct dismissal **British Home Stores Limited v Burchell [1980] EAT** sets out the test to be applied where the reason relied on is conduct. This is:

- (1) did the employer Did the employer genuinely believe the employee was guilty of the alleged misconduct?
- (2) were there reasonable grounds on which to base that belief?
- (3) was a reasonable investigation carried out?

61. In respect of deciding whether it was reasonable to dismiss **Iceland Frozen Foods Limited v Jones [1982] EAT** states that the function of the Tribunal:

“...is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted.”

62. The Tribunal must not substitute its own view for the range of reasonable responses test.

63. In respect of procedure, the procedure must also be fair and the ACAS Code of Practice in relation to dismissals is the starting point as well as the respondent's own procedure. In **Sainsbury's PLC v Hitt [2003]** the court established that:

"The band of reasonable responses test also applies equally to whether the employer's standard of investigation into the suspected misconduct was reasonable."

64. In addition, the decision as to whether the dismissal was fair or unfair must include the appeal (**Taylor v OCS Group Limited [2006]** Court of Appeal). Either the appeal can remedy earlier defects or conversely a poor appeal can render an otherwise fair dismissal unfair.

Polkey

65. The House of Lords in a decision of **Polkey v A E Dayton Services Limited [1988]** decided that where a case is procedurally unfair a decision would still be of unfair dismissal even if there was a strong argument the procedural irregularity made no difference to the outcome unless the procedural irregularity would have been utterly useless or futile. Rather the question of the irregularity making no difference would be addressed in terms of remedy. This principle has also been extended to cases where dismissal is substantively unfair, although it is most likely to apply to procedural irregularity cases. The outcome can be that it would have made no difference and the claimant, although unfairly dismissed, would be entitled to no compensation or the rectification of the problem would have resulted in a delay in the claimant being dismissed and therefore the claimant receives compensation for that delayed period.

Contributory conduct

66. The Tribunal must always consider whether it would be just and equitable to reduce the amount of the compensatory award pursuant to section 123(6) of the Employment Rights Act 1996, where an employee by blameworthy or culpable actions, caused or contributed to his dismissal. If the claimant did so the Tribunal will have to assess by what proportion it would be just and equitable to reduce any compensatory award, usually expressed in percentage terms. The three principles are:

- (1) That the relevant action must be culpable or blameworthy;
- (2) It must have actually caused or contributed to the dismissal; and
- (3) It must be just and equitable to reduce the award by the proportionate specified.

67. These principles were set out in **Nelson v BBC No. 2 [1980]** Court of Appeal.

Wrongful dismissal

68. An employer is entitled at common law to dismiss summarily i.e. without notice where the employee is guilty of gross misconduct amounting to

repudiation of contract. This involves the tribunal in a factual enquiry as to whether in fact the employee was guilty of such conduct.

Unlawful Deduction of Wages

69. Section 13(1) of the Employment Rights Act 1996 states that:

“An employer must not make a deduction from the wages of a worker unless –

(a) The deduction is required or authorised to be made by virtue of any statutory provision or a relevant provision of the worker’s contract; or

(b) The worker has previously signified in writing his or her agreement to the deduction.”

There was no contractual provision so the respondent would have to rely on 13(1)(b).

70. This claim concerned a loan that was made to the claimant by the respondent in order that he could do repairs to his car. The question which arises here is whether the email exchange following the claimant's dismissal constitutes sufficient to signify written agreement to the deduction..

Conclusions

71. The main issue in this case is on the **Burchell** test regarding whether the respondent properly weighed up the evidence in relation to Mr Garry Williams’ version of events and the claimant's version of events.

72. The respondent accepted that Mr Garry Williams had tugged at the claimant's coat and not that he had grabbed him by the lapels of his coat. They did explore whether that was done aggressively. The description given by GW was convincing, the claimant’s account on any reading was full of aggression and anger not just towards GW but towards Pete Morrison as well which corroborated that he was aggressive. Further on the balance of probabilities it is unlikely that none of the two suppliers who were present would not have seen such an action by Mr Garry Williams if it took place.

73. In addition, the claimant’s view of GW’s evidence was distorted as the claimant constantly said that Garry Williams had agreed he had grabbed him but he did not say he had grabbed the claimant but that he had held his coat. Further the claimant imbued with over-significance that Garry Williams could speak whilst the claimant was supposed to have him by the throat however the two things are not contradictory.

74. Further there was corroboration of Garry Williams’ version of events :

(1) Alan Rogers’ evidence supported Garry Williams account that he was remonstrating with the claimant for shouting and he heard the swearing

(2) Craig Hetherington confirmed the claimant was shouting at Pete Morrison and that Garry Williams was 'grabbed' and 'thrown' against a wall, that his cap fell off

(3) The claimant himself agreed with many aspects of the incident

(4) There was no-one else the claimant suggested they should speak to. Whilst it was possible they could have gone back and asked more detail of the suppliers, as these were not employees, I accept that would have been difficult and inappropriate. They did go back and question GW in the light of the claimant's interview.

(5) Accordingly, under the **BHS v Burchell** test I find the respondent had undertaken sufficient investigation, and on the balance of probabilities, the respondent reached a reasonable conclusion on the evidence they had.

(6) One of the issues the claimant argued was that GW had been treated more leniently than him however, the claimant's actions were extreme even if GW grabbed his jumper at chest level. Further the claimant used obscene language which the GW did not.

(7) In respect of whether Garry Williams should have been suspended when he agreed that he had tugged at the claimant's coat, there may have been a case for saying that until all the statements were in and the claimant had been seen that Garry Williams should have been suspended for a short time. However, this would not have been for long as all the statements and the interview with the claimant took place by 23 November.

(8) However on balance given that there was corroboration of Garry Williams's first statement almost immediately there was no compelling evidence to believe he was partially or equally at fault.

(9) The claimant's dismissal was in the band of reasonable responses as the claimant had admitted he had resorted to physical violence and obscene language and the respondent had reached a reasonable conclusion that GW had not acted aggressively which in effect was the claimant's mitigation. The claimant's reference to the previous incident was also potential mitigation but SW had discounted this as a considerable period of time had passed and at the time there appeared to be a genuine reconciliation. It was reasonable to take that view and that even in the light of that incident the claimant's behaviour was totally unacceptable.

(10) Regarding the appeal it is clear that although Ryan Williams gave the impression he would only consider new evidence, he did make further enquiries and the outcome letter shows that he considered the points made. Accordingly there was nothing about the appeal which made the process unfair.

Contributory Conduct

If I am wrong in finding this was a fair dismissal then I would have decided that the claimant contributed 100% to his dismissal and therefore that no compensation would have been awarded.

Wrongful Dismissal

(11) On the claimant's own evidence there was sufficient information to conclude he was in fact guilty of gross misconduct but in addition there was sufficient corroborative evidence as detailed above to, on the balance of probabilities, find that the claimant was guilty of gross misconduct such as to justify a summary dismissal.

Unlawful Deduction of Wages

(12) In respect of the amount of money deduction from the claimant's final pay packet to cover an agreed debt of £283.24, I find that the email exchange following the claimant's dismissal was insufficient to signal that he had agreed in writing to the deduction. As 13(1)(b) is being relied on, as there was nothing in the contract to allow the respondent to make deductions of this nature, the consent has to be in writing. Accordingly, this was an unlawful deduction.

Employment Judge Feeney

Date: 5 November 2019

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

12 November 2019

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**NOTICE****THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990**

Tribunal case number: **2402173/2019**

Name of case: **Mr MJ Saxon** v **S Williams Carpet Fitting Services Ltd**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **12 November 2019**

"the calculation day" is: **13 December 2019**

"the stipulated rate of interest" is: **8%**

For the Employment Tribunal Office