



EMPLOYMENT TRIBUNALS

Claimant: Mr S Lawrence

Respondent: Quality Drainage Company Limited

Heard at: Ashford **On:** 5 July 2019

Before: EMPLOYMENT JUDGE CORRIGAN

Representation

Claimant: Ms B Grossman, Counsel

Respondent: Mr J Bryan, Counsel

RESERVED JUDGMENT

1. The Claimant was not unfairly dismissed by the Respondent and his claim is dismissed.

REASONS

Introduction

1. By his claim dated 12 January 2018 the Claimant brings a complaint that he was unfairly dismissed.
2. The issues agreed between the parties were:

- 2.1 What was the reason for dismissal? The Respondent relies upon conduct.
- 2.2 Was dismissal for that reason reasonable? In particular, did the Respondent have a genuine belief that the Claimant was guilty of misconduct, on reasonable grounds after a reasonable investigation?
- 2.3 Was it within the range of reasonable responses to dismiss?
- 2.4 Is there a chance the Claimant would have been fairly dismissed in any event?
- 2.5 Did the Claimant contribute to his dismissal?

Hearing

3. I heard evidence from Mrs Sarah Lawrence (Company Secretary and Claimant's sister in law), Mrs Natalie Smith (HR Consultant) and Mrs Joanne Davies (General Manager) on behalf of the Respondent. I heard evidence from the Claimant on his own behalf and evidence from Mr Mark Soave (Unite Regional Officer) on behalf of the Claimant.
4. The parties provided a bundle of documents and the parties' representatives made oral submissions. Based on the evidence I heard and the documents before me I find the following facts. **Facts**
5. The Respondent is a small family owned company employing about 15 employees. The majority shareholders are the Claimant's brother Ben Lawrence (Director) and his wife Sarah Lawrence (Company Secretary and the Claimant's sister in law). The Respondent specialises in commercial and domestic drainage systems, excavating and repairing drains.
6. The Claimant commenced work for the Respondent on 5 January 2015 as a Drainage Engineer. This was his second period of employment with the Respondent.
7. The Claimant's contract lists as gross misconduct on page 48 of the bundle rude or threatening behaviour to the employer's clients, customers or other employees (paragraph 40 e)).
8. Part of the Claimant's duties involved working with junior Engineers and Apprentices who were mainly school leavers. He was required to provide training and supervision.
9. There were issues with the way the Claimant behaved at work as set out in the time line on pages 54-58 (which cover the period from 28 August 2016 until his dismissal). I accept the time line was written contemporaneously by Mrs Davies, the General Manager, with Mrs Lawrence inputting into it at times. Mrs

Davies keeps a time line of issues arise like this for all staff not just the Claimant. The Claimant disagrees with the content and asserts it has been fabricated after the event but I accept it is a contemporaneous time line which is consistent with the Respondent's evidence and it shows that there were a number of complaints and issues involving the Claimant and discussions between Mrs Lawrence and the Claimant that his behaviour was not acceptable and improvement was required or promised by the Claimant. I find the Respondent had increasing concerns about the Claimant's behaviour and wanted improvement. The Claimant was advised that if there was no improvement then action would be taken. I accept that the Claimant was treated leniently because he was family and action would likely have been taken sooner if he had not been family.

10. In May 2017 the Claimant's marriage broke down and the police were involved. On 12 May 2017 the Claimant was signed off sick with a "stress related problem" in connection with this.
11. The Claimant suggests that Mrs Lawrence disliked him and disapproved of him because of his family life however the time line records constructive statements made by Mrs Lawrence to the Claimant suggesting how he could help himself improve his situation for example on 9 May, 24 May, 18 July, 28 July, 4 August, and 3 September 2017.
12. The Claimant also saw Mrs Lawrence as interfering in his relationship with his wife. Mrs Lawrence disputes this. I accept her evidence that she did not go with the Claimant's wife to the police and she was appointed as a go between between his wife and himself to facilitate the Claimant's contact with his child. This was upon the recommendation of the Judge as the Claimant was not happy with it being his wife's father. I accept Mrs Lawrence's evidence that she was supporting him and when he wanted to see his daughter she would "drop everything" and "made it happen", despite having responsibility for her own children.
13. On about 25 May 2017 Mrs Lawrence met with the Claimant and he apologised for his conduct and agreed to attend treatment and counselling. Mrs Lawrence arranged the counselling for him but he did not complete it.
14. The Claimant returned to work on 30 May 2017. He attended a return to work meeting with Mrs Smith, the Respondent's external HR consultant. This was confirmed in writing (pages 60-62). The Claimant's health was discussed and the situation with his wife. The Claimant's difficulty managing his DJ business with his work with the Respondent was discussed. It records the Claimant as saying his mind had not been on the job at the Respondent and he realised he needed to make things better (page 61).
15. The letter records that the Respondent was keen for the Claimant to return to work and wished to support him including with paid time off to attend his solicitor and health appointments, and to assist him to accommodate his disco business.

The letter records that the Respondent needed to see an improvement in his behaviour and attitude at work including speaking to people in an appropriate way and not shouting, threatening or being rude and rebuilding the damage to his relationships within the team. The letter said the Respondent wanted to see a major improvement and if there was no improvement then the next steps could be disciplinary action. The Claimant was referred to the Engineers Code of Conduct on page 50 and the disciplinary procedure on pages 51-52. This letter was not a “warning” in the sense of a disciplinary sanction but it was a clear warning that he could not keep carrying on as he had been. I find that because the Claimant was family the Respondent was prepared to support him as much as possible.

16. Issues with the Claimant’s conduct nevertheless continued and Mrs Lawrence continued to speak to the Claimant about his conduct and attitude in June and July 2017. I accept the Claimant began openly saying he did not “give a shit about QDC [the Respondent]”.

17. The time line records that on 4 August 2017 Mrs Lawrence explained that the situation was causing too much stress for the business and for her and Mr Lawrence and she did not know what else she could do to assist the Claimant. On 31 August 2017 staff and a sub-contractor complained about erratic behaviour by the Claimant. He refused to speak to Mrs Lawrence about this and said he blamed her for the situation he was in in his life.

18. There was a clear deterioration in conduct by September 2017 with further incidents of disrespectful behaviour recorded in the time line in the first weeks of September 2017 including another comment by the Claimant that he did not “give a shit about QDC”, telling his brother Ben Lawrence to “fuck off” and “sticking his fingers up” to a manager. The Claimant’s working relationship with Mr and Mrs Lawrence was breaking down.

19. Matters came to a head on 18 September 2017 when Ben Lawrence tried to discuss a job on the phone with the Claimant. The Claimant “screamed” on the phone at Ben Lawrence and was asked to come in and discuss the matter calmly but when he arrived the time line records that he was “screaming” that he would not go into the office and would not speak to Mrs Lawrence. It records that he finally came into office but would not let them close the door. He then ranted using the words recorded in the time line and that “everything that [had] gone wrong in his life [was Mrs Lawrence’s] fault’, he was pointing and aggressive. Mrs Lawrence found his conduct frightening and intimidating. Mr Lawrence suspended the Claimant to which he is recorded in the time line as responding “sweet, on full pay”. He is also recorded as saying later to the office that he would take clients if he left and saying “this bullshit of suspension, I have been suspended hundreds of times, I am having a great time sitting having lunch I will be back in a couple of days”. The Claimant accepts that he refused to go into Mrs Lawrence’s office and that he might have said everything was her fault. Otherwise he disputes that he was as angry as the witnesses say but this was witnessed by both Mrs Lawrence and Mrs Davies and I prefer their evidence,

which was recorded in the time line. The Respondent's account is also consistent with the fact that having treated the Claimant leniently the Respondent finally took disciplinary action following this incident.

20. The Claimant was then invited by letter dated 22 September 2017 to a disciplinary meeting on 27 September 2017. The Claimant was told the meeting was to discuss his misconduct and the time line of his conduct between 23 June and 18 September 2017 was attached (pp70-72). The letter warned he could be dismissed.

21. In the event the meeting took place on 26 September 2017. The Claimant was accompanied by Mr Soave, his union representative. The timeline and incident on 18 September 2017 were discussed. There was discussion about whether the Claimant could work for the Respondent any longer given his attitude to Ben and Sarah Lawrence. On page 75 Mrs Lawrence was recorded as saying "this aggressive behaviour had been like this towards her for the last few weeks". The Claimant did not disagree. He said it was due to personal matters. After an adjournment requested by the union representative the Claimant went through the time line with his comments. Some matters were accepted and others denied. He is recorded as saying "he feels he has tried to put his points across and admits he is under pressure with his marriage and is very upset with the situation but wants to work". When asked again how he could continue to work for the Company the Claimant said Mrs Lawrence should stop being the go between for him and his wife. She responded that she had not been since the solicitors were involved. His representative said he needed to go back to the doctors as he had come off medication and this had a lot to do with the frustration from the Claimant. He said a plan to return to work with goals was needed and the Claimant needed to sign on to this and be in the right frame of mind to work.

22. The Claimant and his witness have suggested that he was not able to state his case fully. The Claimant alleges that Sarah Lawrence said in the disciplinary words to the effect of "you're not going to spend all day responding", threw her paperwork and stormed out. I accept that tempers did become fraught and the Claimant was interrupted and there was an adjournment at the request of his representative, as recorded in the minutes, for everyone to calm down. The suggestion is that Mrs Lawrence did not give the Claimant an opportunity to respond to the allegations but the notes suggest that once the meeting resumed the Claimant was able to answer each entry in the time line. I accept it was a lengthy meeting and he did go through the points he wanted to make about the time line and these appear to match the points he wanted to make in his handwritten notes prepared for that meeting. I also note the statement he made in the meeting that he had tried to put his points across. This issue was also not raised in his grounds of appeal.

23. The meeting ended with the Claimant's union representative and Mrs Smith meeting on their own without the Claimant or Mrs Lawrence. Mr Soave says the meeting ended with Mrs Smith saying they would be in touch to reconvene.

This is not recorded in the notes. However, Mrs Smith recorded notes of a telephone conversation with the Claimant on 28 September in which she told him they

would be in touch to organise a second meeting. The Claimant was then dismissed by letter dated 5 October 2017 from Sarah Lawrence without any further meeting. However, the appeal did not take issue with whether there should have been a further meeting before the decision.

24. In the meeting the Claimant's representative had asked where witness statements were from colleagues and Mrs Lawrence had said they could be arranged. The Respondent did then collect the statements at pages 93-99 of the bundle (page 99 post dates the dismissal by a day). These were not shown to the Claimant before the dismissal letter was sent, or at all during the process.

25. The dismissal letter said:

"As you are aware, this hearing was held in relation to the allegation of gross misconduct on various dates, which included 28 July 2017, 3 September 2017, 6 September 2017 & 18 September 2017.

...I can confirm that the organisation has established to its reasonable satisfaction that you have committed offences including, rude, aggressive & threatening behaviour which has a derogative effect on the staff of QDC and the business and completion of jobs in a professional manner.

You were given a written warning by letter dated 31 May 2017 and many verbal conversations ...that a repeat of a similar misconduct or any other misconduct of any kind under the organisation's rules would likely lead to your dismissal. This point has now been reached..."

26. He was dismissed with notice. He was not required to repay annual leave that he had taken but not accrued.

27. Mrs Lawrence confirmed in evidence that the Claimant was dismissed because of his conduct on 18 September 2017. She said the point of the time line was that the Claimant had already had a number of chances to change and the Claimant knew of the need for improvement. The letter is not accurate in the detail in that it is said the Claimant was dismissed for misconduct on various dates, rather than just the 18 September 2017, but it does correctly reflect the spirit of the Respondent's decision, which was that the Claimant had behaved in a rude and aggressive manner and was affecting the business, he had had numerous chances and the Respondent had reached the limit of what would be tolerated.

28. The Claimant appealed on 5 October 2017. The grounds of appeal were that there had not been an investigation, the company did not submit evidence such as written statements, and that the company should have taken his depression into account and made adjustments. He also said he had not had a written warning or verbal warning (p79). The Claimant also spoke to Mrs Smith on 5 October 2017 and he was angry and aggressive with her on the phone (page 79a).

29. The appeal was heard on 20 October 2017 by Mrs Davies who is the General Manager employed by Mr and Mrs Lawrence and had been involved in writing the time line and the incident on 18 September 2017. She was also one of the staff who had written a statement, in her case on 29 September 2017, though the Claimant was not aware of this. She had not been involved in the disciplinary. It had been proposed that the appeal would be heard by Mrs Smith and Mrs Davies but the Claimant objected to Mrs Smith as she had been involved in the disciplinary. The appeal officer was therefore agreed with the Claimant. The Respondent had few options available given the size of the organisation and the number of senior management present on 18 September 2017. They had already used their external HR consultant in the disciplinary and the Claimant objected to her continuing with the appeal. The alternative would have been the Claimant's own brother which would also not have been ideal. Having heard her evidence I accept Mrs Davies would have felt able to say if she disagreed with their decision and felt the Claimant should be reinstated.

30. The Claimant was again represented by Mr Soave. The notes record that Mrs Davies said she would go back to management after taking the Claimant's points on board. The Claimant's representative is recorded as saying the Claimant would like his job back but his representative realised that might not be achievable.

31. The appeal decision was sent to the Claimant on 26 October 2017 by Sarah Lawrence. The letter said that at the appeal hearing Jo Davies (Company representative) listened carefully to the points made and passed them to the Company and "we" have concluded that the decision to dismiss you should be upheld. The letter said the company had carried out a thorough investigation and had asked many times for the Claimant to allow the Company to seek medical advice to try to help him. The Company had reduced his workload and eased his shift pattern when he returned to work. It said when the Claimant was employed he was warned many times but there was no change in performance, general behaviour and attitude which led to his dismissal.

32. The Claimant had been given a medical consent form and had not signed it and returned it, despite repeat requests.

33. Mr Soave in his evidence accepted the dismissal was inevitable whatever the procedure because the working relationship had broken down.

Relevant law

Unfair dismissal

34. In relation to ordinary unfair dismissal is contained in section 98 of the Employment Rights Act 1996. Section 98 provides:

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it-

....

(b) relates to the conduct of the employee,

....

(4) Where the employer has fulfilled the requirements of subsection (1), 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 a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

35. In considering reasonableness in cases of dismissal for suspected misconduct the relevant test is that set out in *British Home Stores Ltd v Burchell* 1978 IRLR 379, namely whether the employer had a genuine belief in the employee's guilt, held on reasonable grounds after carrying out as much investigation into the matter as was reasonable in all the circumstances of the case.
36. In applying section 98(4) the Tribunal are not to substitute their own view for that of the employer. The question is whether the employer's decision to dismiss fell within the range of reasonable responses open to the employer, or whether it was a decision that no reasonable employer could have made in the circumstances. The range of reasonable responses test applies as much to the investigation as to the substantive decision to dismiss *Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23.

Conclusions

What was the reason for dismissal? The Respondent relies upon the potentially fair reason of conduct.

37. I agree that the reason for dismissal was the Claimant's conduct toward Mr and Mrs Lawrence on 18 September 2017 in the context of the Claimant's increasingly disruptive and disrespectful conduct reflected in the log.

Was dismissal for that reason reasonable? In particular, did the Respondent have a genuine belief that the Claimant was guilty of misconduct, on reasonable grounds after a reasonable investigation? Was it within the range of reasonable responses to dismiss?

38. I agree that the Respondent's witnesses had a genuine belief in misconduct. The incident on 18 September 2017 was witnessed by Mr and Mrs Lawrence and Mrs Davies. The context is that of a small family run business. The Respondent was keeping an ongoing written log of the Claimant's behaviour and consequential discussions between Mr and Mrs Lawrence and the Claimant, including the Claimant's responses. Some of those incidents were also witnessed directly by the Lawrences and/or Mrs Davies.
39. In the return to work meeting in May 2017 there was a wide ranging discussion with the Claimant about his behaviour and the personal issues he was dealing with. He was recorded as saying that his mind had not been on the job and he realised he needed to make things better. At the disciplinary meeting itself the Claimant did not disagree that his aggressive behaviour towards Mrs Lawrence had persisted for the preceding few weeks. He said it was due to personal matters. His own representative acknowledged his responsibility for his conduct and said he needed to go back to the doctors as he had come off medication and this had a lot to do with the frustration from the Claimant. He said a plan to return to work with goals was needed and the Claimant needed to sign on to this and be in the right frame of mind to work.
40. The Respondent had reasonable grounds for the belief in misconduct, after a reasonable investigation. I agree with the Respondent that it is not a case that required further investigation or witness statements from colleagues. Mr and Mrs Lawrence and Mrs Davies had witnessed the Claimant's behaviour themselves. The Claimant was spoken to on an ongoing basis about the incidents recorded in the time line. The Claimant was given opportunity to comment in the disciplinary. The Claimant responded to the time line point by point including the incident on 18 September 2017. He made the concessions set out the paragraph above.
41. He was also given the opportunity to comment on how he could continue working with the Respondent after the way he had behaved towards the two owners. His representative made some suggestions but these did not suggest that the Claimant would necessarily change. There was no apology or commitment to behave differently from the Claimant himself. The Claimant had the opportunity to appeal.
42. It is right that the appeal officer was an employee and that the final decision appears to have come again from Mrs Lawrence. It might have been better if Mrs Davies or Mrs Lawrence had dealt with the disciplinary leaving Mrs Smith free to deal with the appeal. Mrs Davies had also been involved prior and written a statement about the Claimant's behaviour that the Claimant had not seen. However, all of the senior management and Mrs Smith had been involved in

managing the Claimant's behaviour. There was no one independent of the situation who could hear the appeal. Mrs Davies was the General Manager and having heard her evidence I agree that she would be able to robustly make her point known and disagree with Mr and Mrs Lawrence. I also accept that they would have taken her views on board. Although it is not ideal to have the same decision maker involved at both levels I do not find it outside the range of reasonable processes open to the Respondent, given its size. The Claimant objected to Mrs Smith conducting the meeting, but not to Mrs Davies. Mrs Davies informed them at the meeting she would be reporting back to management and no objection was made. In any event the Claimant's own representative accepted at the appeal meeting that he realised it may not be achievable for the Claimant to have his job back.

43. In my view dismissal for the Claimant's conduct was well within the range of reasonable responses. I agree with the Respondent's view that the Claimant had been treated more leniently and supportively than many employers would have done, because he was Mr and Mrs Lawrence's family and it was recognised that he had personal issues that were impacting his behaviour. However, it reached the point in May 2017 and the return to work meeting when he was told clearly what improvement was expected and what the consequences might be if it was not forthcoming. Yet his behaviour deteriorated further. He became uncooperative and rude to Ben and Sarah Lawrence themselves, culminating in the incident of aggression directed at them both, particularly Mrs Lawrence, on 18 September 2017. Whereas previously he had communicated with Mrs Lawrence he had begun to blame her for his situation. In my view dismissal is well within the range of reasonable responses when faced with that behaviour to the two owners of the business.
44. Issue has been taken with the fact that there had been no previous disciplinary sanctions. However, the Claimant had been clearly referred back to the policies and informed of what improved conduct was required in the May 2017 letter. He had also been spoken to verbally many times. The conduct leading up to the incident on 18 September 2017 was an escalation, it made Mrs Lawrence feel intimidated and evidenced an unwillingness to be managed by Mr and Mrs Lawrence. In these circumstances and given the fact the business is a small family business, it was not unreasonable to dismiss rather than issue a lesser sanction.
45. I also find it likely, given the efforts the Respondent had gone to previously, and the focus of the questions in the disciplinary meeting, that if the Claimant had at any stage accepted responsibility and taken the steps suggested in the May 2017 letter to restore relationships and deal with his behaviour, that the Respondent would not have dismissed him. However, in the absence of that change by the Claimant it is difficult to see what alternative the Respondent had to dismissal.

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46. I therefore find the dismissal was fair and there is no need to consider the other issues in the list of issues.

Employment Judge Corrigan
21st January 2020

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
5 February 2020

Miss L Ncheke
FOR EMPLOYMENT TRIBUNALS