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THE EMPLOYMENT TRIBUNAL

BETWEEN

Claimant

and

Respondent

Mr Kumir Patel

William Hill Organisation Limited

Held at London South

On 4 February 2020

BEFORE: Employment Judge Siddall (Sitting Alone)

Representation

For the Claimant: Mr A Young, Counsel

For the Respondent: Ms G Hicks, Counsel

JUDGMENT

The decision of the tribunal is that the claim for unfair dismissal is not well founded and it does not succeed.

REASONS

1. The Claimant was dismissed for misconduct on 8 March 2018. He claims that he was unfairly dismissed. A claim for disability discrimination had been withdrawn at an earlier stage of the proceedings. During the course of the hearing I heard evidence from the Claimant, from Mr Patrick Fullarton, Business Performance Manager of the Respondent and from Ms Tara Collins, Area Manager.

2. The hearing had been due to commence in October 2019 but it was adjourned after medical evidence had been produced showing that the Claimant had been suffering from anxiety. At the start of the hearing today he confirmed that he felt fine now and that he was able to participate in the hearing.
3. It was noted from the documents that the Claimant has dyslexia. He confirmed that he was struggling to read some of the pages of the bundle that he was referred to. Ms Hicks agreed to read out the relevant passages to him as she conducted her cross examination and we proceeded in this way.
4. The facts I have found and the conclusions I have drawn from them are as follows.
5. The Respondent operates a large number of licensed betting offices ('LBO') and employs around 11,000 members of staff.
6. The Claimant started work for the Respondent in October 2011. He was promoted twice, first to the position of Deputy Manager in Retail and then to the role of Customer Experience Manager ('CEM'). He received training for his role as Deputy Manager. He was promoted to CEM when the role of shop manager was merged. No further training was provided at that point as the Respondent considered that the procedures relevant to the CEM role were the same as those for a Deputy Manager. The CEM acts as the manager for the shop or LBO with overall responsibility for all transactions conducted within it, including the receipt and payment out of cash and card payments for bets. Customers can place bets over the counter or at self-service betting machines ('SSBT') placed within the shop.
7. In September and October 2017 a number of process issues were raised with the Claimant but no formal action was taken. On 4 December 2017 the Claimant attended a disciplinary meeting to answer two allegations of breaches of procedure: an incident where a customer's stake had been reduced after a result was known; and of re-translating a bet onto the incorrect race after the result was known. The hearing was conducted by AM who confirmed to the

Claimant at the end of the meeting that he would be given a final written warning.

8. That warning was confirmed in writing on 8 January 2018. The letter states: 'further evidence of misconduct while this warning is live may result in further disciplinary action being taken against you and this warning will be taken into consideration when considering the appropriate sanction'. It was expressed to last for twelve months. The Claimant was given ten days to appeal but did not do so, because his grandmother passed away on 18 January 2018.
9. After that the Claimant began to make enquiries about transferring to a less busy shop. He was advised by management that he could apply for any vacancy that was advertised. He did apply for one post but failed an online assessment.
10. In early January it came to the Respondent's attention that a sum of £147.10 had been removed from a Self-Service Betting Terminal on 1 January 2018 but had not been declared. The Claimant had been seen on CCTV receiving the cash from a colleague and placing it in his till, but he did not enter it on the EPOS system. The Claimant agrees that he did not complete the end of day checks when he left around 5.30pm on 1 January: it was New Years day and he had received a call from his mother who was distressed. If he had completed his cash declaration, he would have noticed a surplus in his till which could then have been correctly recorded. The following day he opened the shop but did not complete cash checks at that time either. A colleague, 'L' arrived at the shop around 9.30 at which point the Claimant left to go back to his mother. He agreed that he did not complete the checks before leaving and asked his colleague to do it. It appears that the money taken from the SSBT machine then went missing in circumstances that have not been clearly explained.
11. The Claimant attended a fact-finding meeting on 21 January 2018 again with AM. Although AM had issued the final written warning, his involvement on this occasion was fairly minimal. The issue had been identified by the central security department as requiring investigation. AM had the initial discussion

with the Claimant who was then suspended on 24 January. He attended a formal investigation meeting on 12 February conducted by a different manager.

12. The Claimant was called to attend a disciplinary hearing fixed for 8 March 2018 to answer an allegation of gross misconduct (theft) by 'failure to process £147.10 of SSBT monies through EPOS with no corresponding surplus'. The letter of invitation dated 5 March warned that as the allegation may constitute gross misconduct, and as he had a 'live' final written warning, the hearing could result in dismissal if the allegation was proven.
13. The disciplinary hearing was conducted by Mr Patrick Fullarton. The Claimant confirmed that he understood the process for emptying the SSBT and putting the money into the EPOS till system. Mr Fullarton decided at the end of the meeting that the Claimant should be dismissed on notice. Although the outcome letter refers to the allegation of theft, Mr Fullarton made it clear that he did not believe that the Claimant had taken the money for personal gain, however the Claimant had failed to complete basic procedures which led to a loss to the company of £147.10. Completion of the checks would have spotted the error and stopped this potential loss.
14. Mr Fullarton said in his evidence and I accept that he had considered other sanctions including extending the written warning, demotion or reduction in salary. He decided that none of these would have resulted in such errors being avoided. As there was a final written warning in place he decided that dismissal was the appropriate sanction.
15. Mr Fullarton also confirmed in his evidence that he did not believe the Claimant's conduct to constitute gross misconduct, which is why he decided that the Claimant should be dismissed on notice with five week's pay in lieu. Unfortunately for reasons that are not clear the notice pay was not received by the Claimant until March 2019. I suspect that although Mr Fullarton's outcome letter is very clear, HR did not believe that notice pay was due. However as this is not a claim for notice pay and relates to events that took place after the decision to dismiss I do not consider it to be relevant.

16. The Claimant appealed against his dismissal to Ms Tara Collins. There was some delay in convening the appeal hearing as the Claimant went to India. It took place on 13 April 2018 and the Claimant was given a full opportunity to put forward his reasons why he should not have been dismissed.
17. The Claimant argues that Ms Collins should not have conducted the appeal as she knew the Claimant and was aware of some of his personal issues including the death of his grandmother. His counsel argues that Ms Collins would therefore have been aware of the Claimant's need for support and queried what the Respondent had done for him. It seems strange that the Claimant should argue that his appeal should not be heard by a supportive manager but in any event I do not consider that Ms Collins was conflicted in her role; she was an appropriate manager to hear the appeal.

Decision

18. The Claimant argues that the errors that occurred in late 2017 and early 2018 were out of character and should have been addressed as performance issues. It is suggested that he should have been placed on a performance improvement programme rather than being subjected to disciplinary action. I find that the Respondent acted reasonably in treating the errors made by the Claimant as a conduct issue: They had established that he understood what he was meant to do with the cash from the SSBT. It was not a matter of him not understanding the processes or requiring further training. Mr Young argued that the Claimant was clearly in need of support. It is accepted that he was going through a difficult time personally. That offered some explanation for the errors that had been made but it was reasonable for the Respondent to take the view that it did not excuse the mistakes in their entirety and that this was not a performance issue. I find that it was reasonable for the Respondent to categorise what happened as misconduct.
19. Misconduct is a potentially fair reason for dismissal. In accordance with the case of *Burchell v British Home Stores*, I must go into consider whether the

Claimant had a genuine belief in the Claimant's misconduct, based on reasonable grounds after a reasonable investigation.

20. The Claimant admits that he did not enter the SSBT money into the EPOS system and neither did he carry out the cash declarations either at the end of the day on 1 January or at the start of the following day, after he opened up the shop and was working by himself for some time. The Respondent's position is that the money would not have been lost if these procedures had been complied with.
21. The cash issues were spotted by the central security department on their regular audit of the financial transactions recorded by the machines contained in each shop. The Claimant had two opportunities to give his version of events at the fact-finding meeting and at the formal investigation meeting. On each occasion he confirmed he was aware of the expected procedures and had made an error.
22. I find that Respondent had a genuine belief that the Claimant had committed serious breaches of procedure and they reached this view after a full investigation. It was not inappropriate to have the initial fact-finding meeting conducted by AM, who did not carry out the formal investigation and was not the decision maker. The Claimant admitted his mistakes and there is very little dispute over what had actually happened. There was sufficient evidence before the Respondent for it to conclude that significant errors had occurred.
23. Was dismissal a fair sanction? The Claimant was at the time under a current written warning that had clearly been identified as a 'final' warning. This warning also resulted from breaches of procedure that, although somewhat different in nature, according to the evidence of Mr Fullarton, meant that the company suffered financial losses. I accept that the written warning letter was not sent to the Claimant until around 11 January, but the fact that a final warning was being given was clearly set out to the Claimant at the disciplinary hearing on 4 December and is recorded in the notes that the Claimant signed.

24. It was open to the Claimant to appeal that warning but he did not do so, for understandable reasons related to a bereavement in his family.
25. Mr Young does not seek to argue that the warning was manifestly inappropriate and it was reasonable for the Respondent to take it into account in making the decision to dismiss. (*Wincanton Group plc v Stone [2013] IRLR 178*). I have noted that although the circumstances were rather different, the breaches identified in December 2017 also related to a failure by the Claimant to carry out processes around bets correctly leading to loss of revenue for the Respondent. The existence of the warning was a highly relevant factor.
26. I accept that Mr Fullarton addressed the matter carefully. I find that he did not take the view that dismissal was the automatic penalty. He considered other options but stated on a number of occasions that he had identified significant breaches of what he called 'basic procedures'. He noted that the Claimant was an experienced manager who had received training while taking up his deputy manager role. The Claimant accepted that as the manager in charge of the shop he had overall responsibility for all transactions that took place within it. Mr Fullarton had formed the view that a lesser sanction would not have resulted in such errors being avoided in the future. His outcome letter makes it clear that he was aware of the Claimant's personal situation and took the mitigation evidence into account but ultimately decided that this did not offer sufficient explanation of what had happened. I find that dismissal was within the range of responses that were reasonably open to him following the disciplinary hearing.
27. The appeal although delayed was carried out fairly by Ms Collins who provided the Claimant with a full opportunity to present his case, and who replied to all his points in her appeal outcome letter.
28. As stated it was Mr Young's submission that this was a member of staff who was in need of support due to difficult issues in his personal life; that he should have been placed on a performance programme rather than a disciplinary process and that he should have been supported to move branch. This is a

point that the Claimant raised on appeal. Ms Collins addressed it by looking into the question of whether the Claimant had been able to transfer branches, and discovering that he had been told he could apply for other vacancies but had failed an online assessment. I am not satisfied that in this case the Respondent was under a legal duty to facilitate a transfer. It was reasonable of them to inform the Claimant that he could apply for other roles. Whilst the Respondent could have taken a more sympathetic approach to the errors that had occurred in light of the Claimant's personal circumstances, it is not for me to substitute my view of what they should have done. It was reasonable of the Respondent to treat the breaches of procedure as a disciplinary matter, and dismissal was within the range of sanctions open to them.

29. In all the circumstances the claim for unfair dismissal does not succeed and it is dismissed.

Employment Judge Siddall
Date: 4 February 2020.