



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE MARTIN sitting alone

BETWEEN:

Mr Robson

Claimant

AND

South Eastern Railway Ltd

Respondent

ON: 13 March 2020

APPEARANCES:

For the Claimant: in person

For the Respondent: Ms Carter – Counsel

JUDGMENT

The judgment of the Tribunal is that the Claims for unfair dismissal [and wrongful dismissal/ holiday pay/unauthorised deductions from wages] fail and are dismissed.

REASONS

1. The Claimant contends that he was unfairly and wrongfully dismissed. This matter was heard over one day. The Respondent defended on the basis that it had fairly dismissed the Claimant for gross misconduct.
2. I heard oral evidence from Mr Chomba Musonda (Station Manager) and Mr Danny George Hackett (Orpington Area Manager) on behalf of the Respondent and the Claimant in support of himself. I have carefully considered such documents as I have been taken to in the bundle and read and listened to the closing submissions of the parties. I have also

viewed CCTV footage of the incident leading to the Claimant's dismissal.

3. The Claimant was employed as a Platform Manager (Grade 4) with the Respondent between 1 December 2008 until 11 April 2019 when he was dismissed for gross misconduct.
4. It is for the Respondent to show that there was a potentially fair reason for dismissal. In this case the Respondent asserts that it was for a conduct reason. Once that reason is established I have to consider section 98(4) of the Employment Rights Act 1996 to consider whether in all the circumstances of the case the Respondent acted reasonably or unreasonably in treating conduct as a sufficient reason for dismissing the employee whilst considering the equity and the substantial merits of the case.
5. I remind myself that it is not for me to substitute my own view for that of the Respondent but only to consider whether or not the processes and the decision to dismiss fell within a band of reasonable responses. In conduct cases I am to be guided by the case of ***British Home Stores v Burchell [1980] ICR 303***, and that I need to consider whether the Respondent held a genuine belief in the Claimant's misconduct on reasonable grounds following a reasonable investigation.
6. The Claimant's role is safety critical. Part of his role is to ensure that platform staff were the correct personal protective equipment. This includes safety shoes which are designed to a specific standard which is marked inside the shoe. On 5 March 2019 the Claimant stepped on DO's front part of his shoe to check if it was a safety shoe. He did this twice. He then stamped on DO's foot across the arch (where there is no protection). This was captured on CCTV. DO complained to Mr Musonda that he had been assaulted by the Claimant. This in turn led to an investigation which included viewing the CCTV footage and interviewing DO. DO was absent from work after the incident and on then on medication which meant he could not undertake safety critical work.
7. Mr Musonda viewed the CCTV footage which he said showed the Claimant stamping on DO's foot after tapping it twice. He could see that this was done in front of passengers and also could see it was done at a time when DO was about to dispatch a train which is a safety critical task.
8. Mr Musonda interviewed the Claimant on 14 March 2019 who told him that he approached DO to ask if the shoes he was wearing were safety shoes and that he did not think the shoes were safety shoes. DO put his foot out for the Claimant to see and the Claimant admitted that he had stamped on his foot.
9. There is no set method of testing safety shoes, however the Respondent says that they would have expected the shoe to be taken off to be inspected to see if it had the correct safety standard stamped inside.
10. Mr Musonda also interviewed DO on the 14 March 2019 who told him that

he was in pain and in a fragile state. DO confirmed that the Claimant had stamped on his foot three times, the first two times were minor but the third was much more major.

11. The Claimant attended a further fact-finding interview on 15 March 2019 which he attended accompanied by Ms Hayward the Station Controller London Bridge.
12. On 17 March 2019 Mr Musonda told the Claimant that he wanted to go through the CCTV footage with him and needed him to run through this with him. The Claimant handed him a letter which apologised to DO but insisted he did to assault him. The letter gave his account of the incident admitting putting his toes on DO's foot but denying any more force the third time he did it. He admitted it was 'silly' of him to have tested the shoes in this way. Mr Musonda went through the CCTV footage with the Claimant giving his explanation.
13. Mr Musonda considered the Claimant's actions to be assault and recommended a disciplinary hearing. The Claimant was invited to attend a disciplinary hearing which took place on 11 April 2019.
14. The Claimant attended the disciplinary hearing which was heard by Mr Hackett. He was accompanied at this hearing. Prior to the hearing the Claimant and his representative viewed the CCTV footage.
15. Having considered the documentation and the witness evidence I am satisfied that the Claimant was able to put his point of view forward fully in this meeting and that the incident was considered in full. After the hearing Mr Hackett viewed the CCTV footage again and concluded that the Claimant had stamped on DO's foot with force on the third occasion. He took into account character references supplied by the Claimant and the Claimant's ten years' experience as a Team Leader. He considered that there were alternative options the Claimant could have taken but that the Claimant had chosen to act as he did, in front of customers and at a time DO was carrying out safety critical work. He felt there was a lack of remorse despite his apology and decided to summarily dismiss the Claimant. This was confirmed by letter dated 11 April.
16. The Claimant sent a letter of appeal on 12 April 2019 which was heard by Mr Wilson. The Claimant was accompanied to the hearing which took place on 30 April 2019. The Claimant and his representative went through the incident and was able to tell Mr Wilson what they wanted. After the hearing Mr Wilson decided he wanted to ask the Claimant more questions, so he reconvened the hearing at which the Claimant was again able to say what he wanted. After an adjournment Mr Wilson decided to dismiss the Claimant's appeal on the basis that the third point of contact showed excessive force, and that the method of testing the shoes was highly questionable. He considered that as a Team Leader the Claimant was expected to lead and set an example and that the Claimant had caused distress to DO.

17. I conclude that the Respondent has demonstrated that the Claimant was dismissed for a conduct reason. The procedures carried out within the disciplinary process was in accordance with the disciplinary policy and within ACAS guidelines. The Claimant was given every opportunity to defend himself against the allegations and did so at length. I am satisfied that the investigation was reasonable and that following on from that investigation and the hearing there were genuine grounds upon which the Respondent held their belief that the Claimant was guilty of gross misconduct.
18. I am satisfied that the decision to dismiss fell within a band of reasonable responses in the same way that I am satisfied that the process was reasonable. The single issue of stamping on DO's foot in the manner that the Claimant did is enough on its own to dismiss summarily even in the absence of any previous disciplinary matters against the Claimant. I have viewed the CCTV footage. It is not for me to decide whether the Claimant did assault DO, but to see whether the Respondent had a genuine belief that he had done so based on the evidence. I am satisfied that the Respondent did. The CCTV footage supports this.
19. On the balance of probabilities I find that the Claimant did commit the act for which he was dismissed which entitled the Respondent to dismiss without notice.
20. Accordingly, I dismiss the claim for both unfair and wrongful dismissal.

Employment Judge Martin
Date: 30 March 2020