



EMPLOYMENT TRIBUNALS

Claimant: Mr AA Adle
Respondent: Abellio London Limited

REASONS

(requested by the claimant on 12.8.20)

1. This was a request for written reasons for the tribunal's Judgment, sent to the parties on 3 August 2020, dismissing the claims of unfair dismissal; wrongful dismissal; and unlawful deduction of wages in respect of holiday pay and bonus pay.
2. By a claim form presented on 7 January 2020 the claimant complained that he was unfairly dismissed and wrongfully dismissed from his role as bus driver with the respondent. He also claimed holiday pay and bonus pay though no particulars have been provided.
3. The respondent admits dismissal but denies that it was unfair. The respondent says that the claimant was dismissed for driving his bus through a red light. That is a reason related to conduct.
4. The claimant gave evidence. The respondent gave evidence through Sylvia Kuzdra, Urvi Patel and Andrew Worboys. I was provided with a bundle of documents and references in the reasons in square brackets are to pages within that bundle.
5. In conduct cases the relevant authority is the case of *British Home Stores v Burchell [1980] ICR 303*, which provides that the tribunal must be satisfied that the respondent held a genuine belief in the claimant's guilt and that the belief was based on reasonable grounds following a reasonable investigation.
6. Once that reason is established the tribunal has to consider section 98(4) of the Employment Rights Act 1996, that is; whether in all the circumstances of the case the respondent acted reasonably or unreasonably in treating the conduct in question as a sufficient reason for dismissing the employee having regard to equity and the substantial merits of the case.

7. In considering section 98(4), the tribunal must not substitute its view for that of the respondent but must only consider whether or not the processes and the decision to dismiss fell within a band of reasonable responses open to the employer.

Findings of Fact

8. The claimant was employed by the respondent as a Bus Driver between 13.8.13 until his dismissal on 3.10.19.
9. On 16 September 19, following a fact-finding interview, the claimant was suspended from work, on full pay, pending investigation into an allegation that he had driven his bus through a red light. [74]
10. On 17 September 2019, the respondent wrote to the claimant inviting him to attend a disciplinary hearing to respond to an allegation of dangerous driving – driving through a red light.
11. On 3 October 2019, the claimant attended a disciplinary hearing, accompanied by a trade union representative, and chaired by Ms Urvi Patel. [79-82]
12. The outcome of the hearing was the claimant's dismissal, which was confirmed in writing by letter on the same day. [83-84]
13. The claimant appealed against his dismissal on grounds that the sanction was too severe [85] An appeal hearing took place on 30 October 2019, chaired by Mr Andrew Worboys. The claimant was again accompanied by his trade union representative. The outcome was that the decision to dismiss was upheld. [90]

Submissions

14. The parties made oral closing submissions which I have taken into account.

Conclusion

15. I am satisfied that the reason for dismissal was conduct and that there was evidence to support the allegations. The respondent was alerted to the offence when it received a prosecution notice from the police. However, it did not just rely on the notice, it carried out its own investigation. The main evidence relied on was CCTV footage from the bus driven by the claimant on the day which showed the incident.
16. The claimant was shown the footage and although he initially suggested that he had gone through the lights on amber, he eventually admitted that he had gone through them on red. Indeed, the footage showed that the light had been on amber for 3 seconds and then on red for 1.1 seconds before the claimant crossed the line.
17. The respondent also took into account evidence on the CCTV of the claimant's general standard of driving. There, they observed that on a number of occasions, he was drinking tea while driving the bus with one hand. The claimant in his evidence contended that when he was drinking, the bus was stationary with the hand brake on. However, I had an opportunity to watch some of the footage and observed the claimant drinking with one hand and driving with the other. I therefore accept the respondent's evidence on this.

18. The claimant contends that the respondent's procedure were inadequate though he has not provided any particulars of the inadequacies. However, I am satisfied that the procedure adopted was reasonable. The allegation was clear, and the claimant had an opportunity to consider the evidence and put his case, at a fact finding interview, disciplinary hearing and appeal hearing. The only issue that the claimant raised by way of appeal related to the sanction being too harsh.
19. I am satisfied, based on the respondent's investigation that it was entitled to reach the conclusions it did on the evidence before it. The reason for dismissal is therefore made out.
20. Turning to the sanction of dismissal. The respondent's disciplinary procedure cites going through a red light as an example of gross misconduct. Indeed, the respondent takes a zero-tolerance approach to this and it will only be in the most exceptional circumstances that it will not result in a dismissal.
21. The claimant suggested that there was disparity of treatment in his case as other drivers had gone through red lights and not been dismissed. That was a general assertion not backed up by any evidence. The respondent on the other hand has produced evidence in the bundle of other employees who have been dismissed for the same offence. In one of the appeal letters relating to another driver, it is mentioned that as of July 2018, 25 drivers had either been dismissed or resigned prior to discipline for red light offences [104]. Ms Patel said that she had dealt with about 10 such cases. That to me supports what is said about the respondent's zero policy approach and I don't accept that the claimant was treated differently.
22. The claimant also said that he was not offered resignation. He had union representation so if that was something he wanted to do, he could have. It is not for the respondent to determine whether a resignation takes place.
23. Driving through a red light is a serious offence for any driver. For a bus driver there is an even greater responsibility for the safety of himself and others. It is therefore right that the respondent should treat his conduct with the seriousness that it did given the potential consequences of serious injury or death that such action could cause.
24. I am satisfied that the respondent was entitled to treat the conduct as warranting dismissal, regardless of the claimant's previous good record. I find that the sanction of dismissal was one that the respondent was entitled to impose. I find that the dismissal was fair.

Wrongful dismissal

25. As the conduct amounted to gross misconduct, the respondent was entitled to dismiss without notice. This claim is not made out.

Holiday Pay and Bonus

26. No evidence was presented in respect of these claims and they are accordingly dismissed.

Judgment

27. All claims are dismissed.

Employment Judge Balogun
Date: 9 October 2020