



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr S Talbot

v

Gaywood Church Rooms Trust

Heard at: Bury St Edmunds

On: 19 October 2020

Before: Employment Judge Laidler

Appearances

For the Claimant: Did not attend (written representations).

For the Respondent: Reverend J Boyd and Mr M Stevenson, Treasurer.

JUDGMENT

1. The claimant was not unfairly dismissed, and his claim of unfair dismissal fails and is dismissed.
2. There was no evidence that any further monies were due to the claimant and any claims for such are also dismissed.

REASONS

1. The ET1 in this matter was received on 27 October 2019 in which the claimant brought claims of unfair dismissal, breach of contract and unpaid holiday pay. The respondent defended the proceedings stating the claimant had been dismissed for gross misconduct, that it had acted fairly in all the circumstances of the case and that it did not believe any further monies were due to the claimant.
2. The matter had been listed for a one day full merits hearing in the Norwich Employment Tribunal on 11 May 2020. In view of the Coronavirus pandemic that hearing did not take place but was converted to a telephone case management hearing which was heard by Employment Judge Postle on that day. The matter was re-listed to be heard in the Norwich Employment Tribunal on today's date, 19 October 2020. Due to lack of judicial resources

the matter had to be transferred to the Bury St Edmunds Employment Tribunal which the parties were advised on the preceding Friday afternoon. The claimant emailed to say that he would not be attending and that he relied on written representations. In fact, he had done the same for the hearing in May 2020 having filed the written representations on 30 April 2020 although he did take part in the telephone preliminary hearing.

3. Whilst the Rules do of course provide for parties to submit written representations the Judge was concerned that the claimant must appreciate that more limited weight would be given to his witness statement in view of him not attending to be asked questions on it and instructed a letter to be sent to him on the morning of the 19 October 2020 to that effect. That was duly done, and the claimant responded that he still wished the matter to go ahead in his absence.
4. The Judge therefore read the bundle submitted by the claimant with his written representations together with the respondent's bundle containing the witness statement of the Reverend Julie Boyd and heard from her and Mr Stevenson who was also present. From the evidence heard the Tribunal finds the following facts.

Findings of Fact

5. The claimant had been employed as a caretaker by the respondent from 4 November 2013 working approximately 12.5 hours per week. The Tribunal did not see any contractual documentation, but it seemed not to be in dispute that one of the claimant's tasks was after the last booked group left the church hall the claimant had to clean the hall ready for the next day and fill out his paperwork and lock the outer door. He was to set the alarm and un-set it in the morning.
6. The claimant produced an email dated 1 September 2016 from Mathew Stevenson in which Mr Stevenson agreed that the claimant could go in later to lock up after 9pm and with regard to de-activating the alarm 10am would be fine on days when there were no bookings. Mr Stevenson told this Tribunal that that was when there were no pre-booked events as if there were they invariably went on till 10pm in the week or later at weekends. The claimant's role was then to set the alarm after the last event had finished.
7. The Tribunal also saw an email that the claimant was sent by Steven Ashton (Mr Stevenson's predecessor) sent on 5 August 2018. He explained that as a result of an independent fire risk assessment changes had been made to the front door lock. It would have an internal thumb turn fitted so the doors can be securely locked from the inside without key locking and could then be exited without a key in the event of a fire.

8. Gillian Hiles, booking officer and secretary to the Trustees, attended the church rooms with Mathew Stevenson on the evenings of Tuesday 3, Wednesday 4 and Thursday 5 September 2019 having received reports from Washaway Cleaning Services that the alarm was often not on when they arrived at 7am to do the cleaning. The Tribunal saw statements from Ms Hiles and Mr Stevenson which were provided to the claimant in the invite to the disciplinary hearing. The times of the visits were after the last meeting in the rooms on each evening when they could have expected the rooms to have been secured for the night. The alarm system had not been set, the internal doors were not locked (which is necessary in order to enable the alarm system to be activated) and the movement sensitive lighting system for the toilets was still on. The building was secured only by external locked doors. They found however that the opening and closing schedule for the week had been completed stating that the alarms had been set even though they had not been. On Thursday 5 September Robin Banham, Trustee, also joined them to witness that the rooms were not secured. No statement was however provided by him.
9. A statement had been provided however by a Ben Masters, of Washaway Cleaning Services. He confirmed that they had been contracted since January 2019 to do cleaning and weekend care-taking for the church rooms. They arrived at approximately 7am Monday to Thursday to do the morning cleaning and most days apart from the Monday they would find the alarm not set. They had found it to be on the mornings after the 3, 4 and 5 September but that was because it had been activated by Mr Stevenson and his colleagues.
10. As a result of these investigations the claimant was suspended on 6 September 2019 and a letter of that date confirmed this to him. This indicated that the respondent considered there may have been gross misconduct in that "on more than one occasion you have not been setting the alarm overnight for the church rooms and then indicating you have performed this task on the opening/closing schedule". The letter explained that the Trustees considered this very serious as unalarmed premises would have insurance invalidation implications and the security of the premises was a key part of the claimant's job description. The claimant would in due course likely be invited to a disciplinary meeting and he was advised he had the right to be accompanied by a friend or colleague.
11. By letter of 9 September 2019 the claimant was invited to a disciplinary hearing on 13 September 2019. This was to be held by the Reverend Julie Boyd with Mathew Stevenson, Joan Greening and Gillian Hiles. The claimant was again advised of his right to be accompanied. The reason for holding the disciplinary hearing was to discuss the allegations in the letter of suspension namely that "you have not been alarming the premises overnight on a number of occasions and then indicating that you had done so on the opening/closing schedule". With that letter were the statements referred to above together with photographs of the opening/closing schedules.

12. The letter stated that it appeared that the rooms had not been alarmed overnight and no attempt to perform the normal checks on the premises had been carried out and that this was not an isolated incident but showed a pattern of behaviour. The Trustees were taking the matter very seriously as they considered it went to a matter of trust and honesty.
13. The claimant attended the disciplinary hearing on 13 September 2019 and notes of the meeting were in the bundle. The claimant started by explaining that he had received an email in August 2018 from Steven Ashton about the internal doors. There was an issue about hall 1 door being faulty. The claimant said on multiple occasions he got locked in the hall after he had set the alarm. The fire risk assessment in August 2018 required a thumb turn to be fitted to the front door to ensure that people could exit in the event of fire. Mr Stevenson explained to the meeting that Magpie Security had been out to check the door and the thumb turn and said it worked properly. The claimant stated that closing the 1 door made the outer door swing and the lock operated so he is not setting the alarm. The claimant explained he came back to set alarms after midnight to half past twelve because he got lots of phone calls from church groups who had let themselves in after hours and set off the alarm and he opened up again at 5.30 am. He said he signed off the opening/closing schedule when he locked up after the last group but did not set the alarm until he returned after midnight to do it.
14. After considering the matter the disciplinary panel concluded that the evidence indicated the claimant had decided not to set the intruder alarm because of issues about the door lock. The meeting could not understand why the issue about the door lock would affect the setting of the intruder alarm. It did not accept that reason. The claimant was deciding not to set the alarm without notifying the Trustees or his line manager. He had given evidence indicating he set the alarm after midnight and took it off at 5 or 5.30am. They concluded this was not acceptable as the claimant was not fulfilling his duties by not setting the alarm at the close of hirings. There was clear evidence that on the dates in question the alarms were not set by the claimant at the close of hirings and the rooms were left vulnerable. The meeting concluded that the allegations were proven, and the evidence provided by the claimant was not accepted. They believed this amounted to gross misconduct and the claimant was dismissed with immediate effect due to the erosion of trust between him and the Trustees.
15. The outcome was confirmed in a letter dated 13 September 2019 from the Reverend Boyd. It confirmed the claimant's right to appeal. He did not do so.

Relevant Law

16. The claimant claims that he was unfairly dismissed. The respondent must satisfy the Tribunal that it had a potentially fair reason for dismissal falling

within s.98 of the Employment Rights Act 1996. It relies upon conduct. The Tribunal must then determine in accordance with s.98(4) whether the respondent acted reasonably in all the circumstances of the case in treating that reason as one to justify the dismissal of the claimant. It must not substitute its view for that of the employer but determine whether the decision to dismiss was within the band of reasonable responses.

17. As this is a dismissal related to conduct the Tribunal must consider the guidance set out in the case of British Homes Stores Ltd v Burchell [1978] IRLR 379. The Tribunal must consider firstly whether the employer did believe in the guilt of the employee of that misconduct at the relevant time. Whether the employer had in its mind at that time reasonable grounds upon which to sustain that belief and whether at the time the employer formed that belief it had carried out as much of an investigation as was reasonable in all of the circumstances of the case.

Conclusions

18. Whilst the Tribunal did of course consider the claimant's bundle of documents, written representations and witness statement he was not here to be questioned by the respondent or the Employment Tribunal. Limited weight therefore has to be given to his evidence as it could not be tested in that way.
19. The respondent has satisfied the Tribunal that it did dismiss the claimant for his conduct, a potentially fair reason within the meaning of the Employment Rights Act 1996. In considering the Burchell test it did have a genuine belief in that misconduct at the time of the claimant's dismissal, the Reverend Boyd was clear in the disciplinary hearing and her letter as to the grounds upon which that belief was formed. She explained to this Tribunal that all trust and confidence had gone by the claimant signing the closing sheets having said he had set the alarm when he had not done so. At the time that the respondent formed that belief it had carried out a reasonable investigation. It had the evidence from the cleaning services company and the Trustees who had visited the rooms and found them unalarmed.
20. The Tribunal must therefore determine whether the respondent acted reasonably in treating that as a reason to dismiss the claimant. It has to conclude that it did as dismissal was clearly within the band of reasonable responses for an action that could potentially have invalidated the respondent's insurance of the church rooms. Whilst accepting that the claimant had some flexibility in the way that he performed his role that was not the issue. The documentary records that he was completing showed that he had set the alarm when it had not been set. Those records could have been relied upon for some investigatory reason in the event of an incident or problems with the room and they would have been proved to be incorrect. If there were problems with groups using the room when they hadn't booked,

then this should have been raised with the Trustees but in evidence before this Tribunal that did not appear to be an issue.

21. The claimant states that the reason given in his suspension and invite letter was different to the reason given for dismissal in the outcome letter. The Tribunal does not accept that there was such a discrepancy. It is made clear in all the documentation that the issue was not setting the alarm. In the outcome letter it makes it clear that the allegation that was discussed was “you have not been setting the alarm overnight for the church rooms and then indicating you have performed this task on the opening/closing schedule” that is the allegation that was put to the claimant in the suspension and disciplinary invite letter.
22. It follows that the dismissal was a fair dismissal and the claimant’s complaint of unfair dismissal fails and is dismissed.
23. The claimant had in his ET1 form ticked the box that other monies were due and owing to him and that appeared from the narrative to be an allegation about holiday pay. There was nothing in his bundle of documents presented to this Tribunal about that and Mr Stevenson was satisfied all monies had been paid. As there is no evidence to support that claim it is also dismissed.

Employment Judge Laidler

Date: 26 October 2020

Sent to the parties on: 6 November 2020.

..S Bloodworth.....
For the Tribunal Office