



EMPLOYMENT TRIBUNALS

Claimant: Mr N Younus
Respondent: Royal Mail Group Limited

Heard at: by CVP

On: 12 November 2020

Before: Employment Judge Lang (sitting alone)

Appearances

For the claimant: Timothy Deal (Barrister)
For the respondent: Steve Peacock (Solicitor)

JUDGMENT

The complaint of unfair dismissal is not well founded and is dismissed.

REASONS

1. By a claim form issued on 22 April 2019 the claimant brings a complaint of unfair dismissal arising from his dismissal on 5 February 2019.

The issues

2. The claimant sought reinstatement or re-engagement in the event that his complaint succeeded. It was agreed with the parties that the hearing would deal with liability only. The issues to be determined by me are as follows:
 - 2.1 What was the reason for dismissal? The respondent asserts that it was conduct.
 - 2.2 Was dismissal fair or unfair in accordance with the Employment Rights Act 1996 (ERA) Section 98(4)? In particular, did the respondent comply with its own procedures and the ACAS Code of Practice? Did the respondent believe the claimant to be guilty of misconduct? Did it have reasonable grounds for this belief? Did it carry out a reasonable investigation? Was dismissal within the band of reasonable responses?
 - 2.3 If the claimant was unfairly dismissed and the dismissal was procedurally unfair, what adjustment if any should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed?

- 2.4 Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal pursuant to ERA Section 122(2) and if so, to what extent?
- 2.5 Did the claimant by blameworthy or culpable actions cause or contribute to dismissal to some extent and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award pursuant to Employment Rights Act Section 123(6)?

The Hearing

3. The hearing proceeded by CVP. I heard evidence from Ian Howe (Delivery Office Manager) and Julie Forde (Independent Casework Manager) on behalf of the respondent and the claimant also gave evidence. An agreed bundle totalling 187 pages was also before me.
4. At the start of the hearing I explained to the claimant that I had been a partner at Weightmans (the firm of solicitors representing the respondent) but had left in 2003 and did not act for the respondent during my time there. I also disclosed that Mr Peacock (the respondent's representative) was a personal friend and that we were at university together. I expressed the view that I saw no reason for me to recuse myself and no objection was raised by the claimant or his representative.

The Law

5. The relevant section of the Employment Rights Act 1996 is s98 ERA – the relevant parts of the section read as follows:
 - (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—
 - (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
 - b) relates to the conduct of the employee,
 - (c) is that the employee was redundant, or
 - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

- (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.

6. A conduct dismissal will generally only be fair in the following circumstances:
 - 6.1 The employer believed the employee to be guilty of misconduct.
 - 6.2 The employer had reasonable grounds for believing that the employee was guilty of that misconduct.
 - 6.3 The employer carried out as much an investigation as was reasonable in the circumstances (British Homes Stores Limited v Burchell [1980] ICR 303).
7. The Tribunal also has to decide whether the decision to dismiss the employee fell within the band of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted (Iceland Frozen Foods Limited v Jones [1982] IRLR 439).
8. It is irrelevant whether the Tribunal would have dismissed the employee if they had been in the employer's shoes. The Tribunal must not substitute its view for that of the employer (Foley v Post Office [2000] IRLR 82).
9. The band of reasonable responses test applies to the decision to dismiss and also to the investigation which led to that decision (Sainsburys Supermarkets Limited v Hitt [2003] IRLR 23). The investigation must be within the range of investigations that a reasonable employer could have carried out.

Findings of Fact

10. The claimant was employed as a Postman by the Respondent from 29 December 2015. He worked 27.5 hours per week and was based at the Slough Mail Processing Unit. When he first started he underwent an induction course and then had training from a "buddy" or senior colleague on the job. He was allocated a postal round known as 323 Reddington Drive and worked various times in the mornings on a rota basis normally 3-4 days per week.
11. He worked alongside a full-time colleague. They would take a van out together to start doing their rounds. The claimant's practice was to take a lightweight trolley which resembles a golf cart out of the van on arrival at the location and put

all of his bags of letters onto his cart rather than using a “ loop system “ of leaving some post in the van and looping around back to the van to collect more post during his round. His colleague would drive off in the van to do his round and the claimant would go on his round on foot. His round involved posting letters and small parcels into lots of buildings including residential flats and his round would normally take 4 to 5 hours. He would normally arrive at a block of flats, take in the relevant bundle of letters from the cart and deliver the letters and then return to the cart and move to the next block.

12. In September 2015, prior to his employment starting, the claimant had signed a personal declaration to Royal Mail which emphasised the respondent's obligations:

“Royal Mail Group must ensure that letters, parcels and all other communications or items entrusted to it are delivered as addressed promptly and safely and that the information in them reaches no one not entitled to it. To help Royal Mail Group provide this essential service to the community there are important legal requirements that you must comply with. It is important for you to be aware of and understand those provisions not only for your own safety but also in order that you should not, through any fault or omission on your part, enable or attempt others to break them”.

13. The declaration went on to state:

“Other misconduct which endangers the safety of a mail bag or postal packet may lead to termination of employment or engagement or contract with the Royal Mail Group”.

14. A National Conduct Procedure Agreement had been reached between the Respondent and the CWU and UNITE – CMA Unions. It applied to all employees and included a section headed “Safeguarding Customer's Mail” which included the provision:

“Royal Mail Group is responsible for protecting the security of the mail by making all employees aware of and have access to the security standards and related procedures required in their role. Employees have the responsibility to comply with the standards and have the responsibility of reporting when these are not met. For example reporting any instances of loss, theft, damage or interference. Deliberate breach of the security procedures and theft may be classified as gross misconduct and can result in dismissal without notice, even for a first offence”.

15. A further provision stated:

“Where an employee is prevented from completing their delivery for any reason it is essential that it is reported immediately either by returning to the office or by phone. A written record will be kept”.

16. A document entitled “Security of Customers Mail and Royal Mail Group Property - Guide for Employees” under the heading “Breach of Security Standards” gave examples of mail left unsecure which included:

“Misuse of delivery equipment which makes the mail contained on or within insecure. This will include mail within high capacity trolleys and lightweight trolleys where the delivery equipment is left insecure or the equipment has been left unattended for longer than the operational specification for that piece of employment” and “delivery pouches left unattended and insecure at any point of delivery”.

17. The claimant had left a bundle of mail in public but didn't realise he had missed it in March 2017. He signed a counselling record which stated:

“Understands the outcome and impact this will have, now knows to contact management if he has a similar issue”.

18. A work time listening and learning brief on annual mail integrity reminder took place in November 2018 which dealt with the obligation that the respondent has to take all reasonable steps to minimise the exposure of customer's mail to the risk of loss, theft, damage and interference. The respondent's position was that this training was carried out in November 2018 at the Slough depot, however, no record has been provided to confirm this or to confirm the claimant's attendance. The claimant could not recall attending the training.

19. The respondent's operating standards provide that when using a lightweight trolley this should not be overloaded and the maximum load capacity was two mail pouches. It goes on to state that when delivering mail and using a lightweight trolley:

“When delivering to flats or multi-level delivery points use a delivery pouch or secure your lightweight trolley in your van”.

20. On 12 December 2018 the claimant was asked to call at one of his delivery addresses by his manager to enquire about a parcel that a resident was expecting but had not received. He knocked on the door and asked about the missing parcel. He called his manager to let him know the outcome but his manager didn't answer. He carried on with his round until he reached a road called Kimberley Close. He opened his bag to obtain the bundle of letters for this road and was shocked to not be able to find it. He says that his colleague suggested that he finish his round and then take the van and look for the bundle of missing post.

21. The claimant spoke to his manager shortly afterwards and discussed the parcel delivery but made no mention to his manager of the missing post. He took the van to look for the missing bundle but could not find any sign of the bundle. He also did not speak to his manager at that point. In the meantime, the missing post had been found in a park by a member of the public and had been reported to the police. The respondent was notified. The claimant came into work as normal the next day but did not report the theft to his manager at that point either.

22. The claimant was interviewed the following day (13 December 2018). He said that he had gone back to look for the letters but couldn't find them and hoped he could get them back by chance. He was asked why he had not reported it to his manager when his manager spoke to him regarding the parcel delivery and he said he didn't report it because he thought the items would show up. He remembered he took five bags on a lightweight trolley and that the bundles must have slipped out of the bag.

23. The claimant was placed on precautionary suspension. He attended an investigation meeting with Mr O'Brien (his line manager) on 18th December 2018. He accepted that he had taken all of the delivery and not part of the

delivery from the vehicle and said that his colleague had refused to meet him with the van halfway around so he had to take it all. He accepted that he hadn't spoken to his manager about this issue/problem with his colleague. He was asked why he hadn't told Mr O'Brien or another manager on the day that the mail had gone missing and why he had not mentioned it when he came into work the next day. He accepted that he knew he should have told his manager on the day but "shirked my responsibility". He said "I made a mistake, I am embarrassed by it and did not want to get into trouble".

24. The claimant was invited to a formal conduct meeting on 15th January 2019 and this was chaired by the delivery office manager, Ian Howe. The following conduct notifications were made:

"Failure to report loss of mail whilst on delivery on 12th December 2018, failure to safeguard the mail whilst on delivery on 12th December 2018 and breaching health and safety standards whilst on delivery by overloading a lightweight trolley".

One possible outcome was his dismissal without notice.

25. The claimant was accompanied by a CWU representative at the interview. He said that he had not called his manager because his colleague had told him to wait until the next day. He said that he had left the trolley outside some flats for maybe 10-15 minutes. He was surprised that the thief had not taken the trolley or a bag but had only taken one bundle of post.
26. The claimant was invited to a decision meeting on 5 February 2019 and was told at that meeting that he was dismissed. The letter of dismissal was issued to him with a decision report.
27. Mr Howe concluded in the report "Whilst consideration has been given to a lower penalty of action short of dismissal, I have lost faith in Mr Younus as an employee. Royal Mail had well published and briefed standards of security and safety. Not only are these standards discussed in work time briefing sessions but also in monthly periodicals published and delivered to all Royal Mail employees. Mr Younus has knowingly broken these standards".
28. The claimant appealed against his dismissal and an appeal hearing was set for 19 February 2019, this was chaired by Mrs Julie Forde who is an independent casework manager. The claimant was again accompanied by a CWU representative.
29. The grounds for appeal were that the penalty was excessive on the basis that the respondent should have insisted on the mandatory use of the correct delivery methods and that the claimant had not had proper training on mail integrity.
30. During the appeal hearing he accepted that mail integrity was "The whole job, this is Royal Mail, this is what you are paid to do". He said that he worked with the same delivery partner 90% of the time and that his partner had declined the opportunity for the claimant to leave some of the bags in the van and that as a result he always took all of the bags with him. He said that he was originally taught to take out the trolley with all of the bags on it. He could not remember

who had taught him this but he had worked with him for 2-3 weeks at the start of his employment.

31. Following the appeal, Mrs Forde made some email enquiries with Mr Howe and Mr O'Brien and also interviewed a number of witnesses on 5 March 2019.
32. She spoke to Verindr Singh who gave tuition to the claimant when he started his employment. He told Mrs Forde that he had instructed the claimant to put his trolley inside the door of the flats when he was delivering to the flats and he had told the claimant to use a high capacity trolley rather than a lightweight trolley. His experience was that most walking postmen will loop back to the van to collect more mail and said, "where he works is a very rough area".
33. Mrs Forde spoke to Ravdeep Singh. He had known the claimant for two years and sometimes worked with him. The claimant took all of his delivery with him and most of the delivery was to flats. He did not know why the claimant took all of the mail in one go.
34. Mrs Forde interviewed David Sweetzer. He had never worked with the claimant. He explained that most employees work out of a van. The non-driver takes the trolley and it is up to the non-driver how they "want to work it" in terms of how much mail they take.
35. Mrs Forde spoke to Kaphil Ladwa who was the claimant's regular delivery partner. He said that the claimant took all of his mail. The claimant decided to do this himself as he didn't like to wait and he liked to finish early. The claimant should have used the high capacity trolley but he didn't want to do that. Some people use the loop system but the Claimant was always in a rush and took all of the mail. He denied that he insisted that the claimant take all of the mail in one go. He denied that he declined to meet the claimant halfway through the delivery. He said that on the day in question the claimant said that he couldn't find some mail and he took the van keys and tried to look for it. He was gone for 20-25 minutes. He did not provide the claimant with any advice as to what to do and did not tell the claimant not to tell management.
36. Mrs Forde sent copies of these interview notes to the claimant on 14 March 2019 and asked for his comments on the evidence by 20 March. The claimant responded by an e-mail of 19 March. He does not in that e-mail suggest that Mrs Forde should interview anybody else.
37. Mrs Forde confirmed her decision to uphold the dismissal by way of a letter dated 19 March 2019. She prepared an appeal decision document setting out her reasoning. Her findings were that the claimant's managers were unaware of how the Claimant was delivering and this only came to light when the mail went missing, Although there was no evidence that the claimant had attended the annual mail integrity brief, the claimant had confirmed that he understood the importance of mail integrity. She preferred Mr Ladwa's evidence that he had not told the claimant to wait to report the loss and in any event the claimant was responsible for the mail that went missing and responsible for informing management promptly of its loss. She concluded that the claimant chose the

method of delivery that he did because he could finish quicker and was not reliant upon meeting up with his delivery partner at the end of the delivery.

Conclusions

38. I am satisfied that the dismissal was for the reasons set out in the letter of dismissal at page 124 of the bundle.
39. I am satisfied that the respondent complied with its own procedures and with the ACAS Code of Practice.
40. Applying the Burchell Test, I find that the respondent did believe the claimant to be guilty of misconduct and that it had reasonable grounds for that belief. I consider that a reasonable investigation was carried out. In the investigation carried out by Mrs Forde she interviewed a number of employees including an employee who trained the claimant at the start of his employment and the claimant's regular delivery partner and I consider it reasonable that she chose to go no further with her investigations than she did.
41. The claimant's main challenges to fairness fell within the following headings:
 - 41.1 Training – the claimant contended that he was not properly trained and had been told by his buddy at the start of training to take out all of the post on his lightweight trolley. He could not recall having received any training on mail integrity. I am satisfied that Mrs Forde carried out a reasonable investigation in relation to this aspect. She spoke to the employee who trained him and she was satisfied that the claimant understood the importance of mail integrity. There were reasonable grounds for that belief.
 - 41.2 Normal practice. The claimant said he was adopting the normal practice within the organisation for delivering using a lightweight trolley. I am satisfied that Mrs Forde carried out a reasonable investigation in this regard. She was satisfied that the claimant chose to adopt this method of delivery (putting all the bags on his trolley and not using the loop system) in order to make his round quicker and that there was no evidence that his managers were aware of his practice before the day of the incident. There were reasonable grounds for that belief.
 - 41.3 What the claimant was told by his colleague. The challenge was in relation to the failure to report and the fact that the claimant says that he had failed to do this because his colleague had advised him not to and that he intended to report it the following day. Once again, Mrs Forde carried out a reasonable investigation in this regard. She spoke to his delivery partner who denied having given him any such advice and was satisfied that this was correct. There were reasonable grounds for that belief.
42. I am satisfied that the dismissal was within the band of reasonable responses having regard to the paramount importance of mail security and integrity to this respondent. The claimant admitted that he had lost the post. The key findings were that the claimant did not tell his manager when he spoke to him on the day in question, he did not tell him later in the day when he was unable to locate the

missing post and did not tell his manager when he arrived for work the following day. Dismissal plainly fell within the band in my view having regard to the investigation findings and despite the claimant's length of service.

43. The complaint is not well founded and is dismissed.

Employment Judge Lang

23 November 2020

Sent to the parties on:

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For the Tribunal:

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