



EMPLOYMENT TRIBUNALS

Claimant

Mr J Pulsford

Respondent

Heathrow Truck Centre Limited

v

Heard at: Watford

On: 14 December 2020

Before: Employment Judge H Allen

Appearances

For the Claimant: R. White of Counsel

For the Respondent: S. Doherty of Counsel

RESERVED JUDGMENT ON LIABILITY

The judgment on liability is that the claims of unfair dismissal and wrongful dismissal (Section 94 ERA'96) are not well founded and are dismissed in their entirety.

REASONS

The complaint

1. Mr Pulsford presented his claim to the tribunal on 8 December 2019 following his dismissal by reason of Gross Misconduct. The complaints within that claim are as set out on form ET1.

Claims and issues

2. Was it common practice to allow work on private vehicles in the workshop; and
3. Was the claimant treated differently from other staff for the same conduct
4. Was summary dismissal for conduct within the range of responses open to a reasonable employer in this instance

5. Was the procedure fair and consistent with ACAS codes of practice and the respondent's disciplinary rules and procedures?

Evidence

6. I was provided with agreed bundles of statements and documents including:
 - Documentation regarding disciplinary proceedings including notes of investigation interview, disciplinary and appeal hearings and correspondence between the claimant and the respondent.
 - 7 CCTV stills dated 1 August 2019 and timed
 - 17:25:36 - entering workshop
 - 17:34:57 - equipment in the inspection pit
 - 19:15:44 - 1 man working on the vehicle
 - 19:31:27 - 2 men working on the vehicle
 - 21:22:34 - vehicle leaving workshop (3 stills over 13 seconds)
7. I also heard live evidence from the claimant and for the Respondent Mr Blackwell (**PB**) disciplining officer and Mr Foster (**SF**) the appeal officer.

Findings

8. The Respondent company operates a franchise dealing with the sale, finance and service of trucks. The Respondent operates from a number of sites around the UK including the Heathrow site where the claimant was employed. The Respondent employs dedicated human resources staff.
9. The claimant commenced employment with the respondent on 23 August 2016 as an HGV Technician in the service department at the Heathrow site (known as HTC Heathrow). He was promoted within 3 months and on one occasion received a commendation.
10. Mr Pulsford was made aware of the company Disciplinary Rules and Procedures by the Statement of Terms and Conditions of Employment signed by him on 23 August 2016. Page 2 under Disciplinary rules and procedures:

‘The disciplinary rules and procedures that apply to your employment are in the HTC Group’s Employee Handbook to which you should refer. A copy of the Employee Handbook can be obtained from the Human Resources (HR) Department’.
11. Disciplinary Rules and Procedures document – undated – sets out formal and informal procedures at section 2 paragraphs 2.1 - 2.2.9; at section 3.3.

are examples of conduct amounting to Gross Misconduct. Most relevant to this case are

- *Deliberate falsification of any records (including timesheets, absence records and so on, in respect of yourself or any fellow employee);*
- *Undertaking private work on the premises and/or in working hours without express permission;*

This section is concluded with the following notice.

‘Any behaviour or negligence that irrevocably destroys the trust and confidence necessary to continue the employment relationship will constitute gross misconduct. Gross misconduct will almost invariably result in summary dismissal without pay in lieu of notice. Only in cases of very serious gross misconduct will the company dismiss prior to holding a disciplinary meeting’.

12. On 30 July 2019 the claimant ordered a replacement part for his brother-in-law's vehicle
13. On 1 August 2019 he brought his brother-in-law's vehicle into the workshop
14. The vehicle was in the workshop between 17:25 and 21:22 hours on 1 August 2019
15. He directed another member of staff to work on the vehicle with him
16. He did not seek permission to carry out these repairs in the workshop
17. Both he and the other member of staff working on the vehicle were recorded as working on a customer vehicle at the time.
18. How long the claimant and his colleague worked on the vehicle is disputed. The respondent argues that it was some 4 hours based on CCTV which shows the times it was standing in the workshop. The claimant estimates that he and his colleague spent between 30-45 minutes working on it, the rest of the time it sat unattended in the workshop. 2 CCTV stills taken 15 minutes apart show the vehicle actually being worked on 2 hours after it enters the workshop; one further still shows equipment appearing in the inspection pit 9 minutes after the vehicle first enters the workshop. I prefer the claimant's evidence on this point which is more consistent with the CCTV provided by the respondent.
19. The claimant was dismissed on 22 August 2019 for conduct. He had been employed for 3 years.

20. On 7 August 2019 – The investigating officer Steve Marshall (**SM**) investigated several allegations of conduct against the claimant. Conduct issues were:

Earlier that day;

- Negligent in driving whilst reversing and manoeuvring a vehicle
 - Caused damage to customer vehicle FP63 ETF
 - Failed to follow company procedure by reversing and manoeuvring a vehicle without the assistance of another member of staff
 - failed to meet the expected standards of workmanship whilst replacing track rod ends on vehicle VU57 YPN.
- On 1 August 2019 worked on a 3rd party vehicle without permission during working hours.
- On 2 August 2019 permitted a member of staff to work on their own car in the workshop without management knowledge or permission.
21. SM viewed CCTV images referred to at 3.1.4. above. Having heard Mr Pulsford's explanation and spoken to Martin Champion on 13 August 2019 SM concluded Mr Pulsford should be suspended on full pay pending a disciplinary hearing on the following grounds:
- Damage to vehicle FP63 ETF
 - Poor workmanship on VU57 YPN
 - Working on private vehicles during working hours whilst clocked to jobs.
22. On 8 August 2019 – SM confirmed the suspension in a letter providing details of allegations and that the outcome could be summary dismissal. Poor workmanship on 7 August is not mentioned in this letter.
23. On 22 August 2019 – PB conducted a disciplinary hearing and summarily dismissed the claimant for conduct because:
- he worked on a 3rd party vehicle in the workshop during working hours without permission and
 - whilst 'clocked' onto a customer job; in addition,
 - he instructed a colleague to work on the same vehicle whilst that colleague was also 'clocked' onto the same customer job. This was further compounded by 2 factors,
 - there was ample opportunity to seek permission to use the workshop (the part having been ordered the day before) and
 - the claimant had conceded during the disciplinary hearing that he would not have told management about it afterwards and

- the customer was charged for the additional time in question.
24. The respondent does allow employees to use the workshop for repair of their own private vehicles with prior permission.
 25. Work is billed to customers based on a computerised recording system. This records who and how long staff work on a particular vehicle and is referred to as being 'clocked' on a vehicle/job.
 26. When the computerised system isn't working a time card may be used. That was not the situation in this case.
 27. The claimant states in dismissing him the respondent did not treat him fairly or consistently with other staff members and cites a similar private vehicle incident on 2 August 2019. The dismissing officer was entitled to take the view, as he did, that the 2 incidents can be distinguished as follows:
 - The claimant was the most senior technician on shift and responsible for staff in the workshop; and
 - whilst the claimant was aware of the 2 August incident, he took no action on the grounds he had not been asked for permission; and
 - The claimant said he would have refused permission if asked
 - The vehicle in question on 2 August 2019 belonged to a member of staff and not a family member as in the claimant's case.
 - On 2 August the member of staff was clocked out to 'training', consequently there was no issue as to the overcharging of a customer,
 - the involvement of a 2nd member of staff on 2 August amounted to giving advice which took no more than a couple of minutes
 - On 1 August the second member of staff worked on the vehicle for 30 minutes at the request of the claimant who was in a position of responsibility at the relevant time.
 28. That a customer was overcharged is not disputed. The claimant has conceded he and his colleague were both clocked to the customer job at the relevant time and management were unaware of this fact for 7 days. In the circumstances I accept the respondent's assertion that the customer was overcharged. This is compounded by the claimant's concession that he would not have raised this with management of his own accord.
 29. Effective date of termination 22 August 2019.

Conclusions

30. What was the reason for dismissal?

30.1. I am satisfied that the claimant was dismissed for conduct ie the respondent's undisputed belief that the claimant worked on a 3rd party vehicle without permission and remained 'clocked' on another job at the time thus causing a customer to be overcharged.

31. BHS v Burchell

The next question is the three stages in the BHS v Burchell case?

31.1 Did the respondent reasonably believe that the claimant committed the conduct; namely that he worked on a 3rd party vehicle without permission, remained clocked on another job at the time thus causing a customer to be overcharged. I am satisfied that they did.

31.2 Was that belief held on reasonable grounds? I find that it was. The dismissing officer had CCTV, evidence from a member of staff who worked on the vehicle with the claimant and the claimant's admissions that he ordered the replacement part in advance before bringing the vehicle into the workshop and working on it with another member of staff whilst they were both clocked to a customer job.

32. Inconsistent and disproportionate treatment.

32.1. I am satisfied as set out at para 4.17 above that the respondent was not inconsistent and disproportionate in his treatment of the claimant. There is a clear distinction between the claimant's conduct on 1 August 2019 and his colleague's similar conduct on 2 August 2019 namely that a customer was overcharged as a result of the claimant's conduct. This was not the case in respect of the 2 August 2019 incident.

32.2. Was there a fair and reasonable investigation? I find that there was. It is correct to say that during the disciplinary hearing Mr Blackwell did not cite the falsification of accounting records as a ground for dismissal. Nevertheless, the notes of investigation and disciplinary hearing highlight the fact that both staff members were clocked to a customer job and the customer was overcharged as a result. In the circumstances I conclude that this was not added at a later stage to justify dismissal as alleged by the claimant.

32.3. As regards procedure generally, I find that the procedure followed was reasonable.

33. The allegation that there was a failure to disclose documents to the claimant.

33.1. This allegation relates to only 1 document namely a time card. This document was investigated by SF in the course of the appeal. I am satisfied that the time card does not exist and never did. Time Cards are filled in by the staff themselves. I am also satisfied that the

claimant was aware this document never existed since if it had he would have created it. The dismissing officer misspoke when he referred to it.

34. The allegation there was unreasonable delay in confirming dismissal in writing.

34.1. ACAS guidance provides that a written statement of reasons for dismissal should be provided within 14 days of the request unless it is not reasonably practicable. At the end of the disciplinary hearing on 22 August, it was agreed that such a letter would be sent. In his statement of appeal, the claimant accepted he received it on 4 September. Consequently, I conclude there was no unreasonable delay.

35. Correspondence regarding the disciplinary proceedings.

35.1. The date of the incidents of negligent driving and poor workmanship were consistently said to be 8 August 2019 in letter after letter. This was incorrect it was 7 August 2019 however there was no unfairness to the claimant since he was fully aware of the correct date throughout not least because he was 1st questioned about them on that day and no confusion was caused.

36. Letter inviting claimant to disciplinary hearing.

36.1. The claimant was notified in a letter in advance of the disciplinary hearing of the allegations against him; a hearing was held at which he was able to put his case; he was informed of the outcome and his right of appeal. The letter did not advise him that he could bring a companion however he did bring one who assisted him at both the disciplinary and appeal stages.

36.2. Much was made by the claimant's representative of the fact this letter did not characterise the incidents to be dealt with as either Misconduct or Gross Misconduct nor did it identify which of the company policies had been breached. This is true however; ACAS has produced a sample letter which may be used in these circumstances and that sample letter does not require only that the details of the offences and possible outcome must be stated which it was. In the circumstances I am satisfied that the letter sent by the respondent was compliant in all respects with the ACAS sample letter.

36.3. I am satisfied that there is an inconsistency between the decision given at the end of the disciplinary hearing and in the letter confirming the outcome. Namely that the allegation of poor workmanship and failure to carry out proper checks was cited as misconduct in the letter but was not characterised as such in the

notes. This was not however cited as a reason for dismissal. Consequently, I am satisfied that the reason for dismissal given at the end of the disciplinary hearing and the subsequent letter are consistent.

37. Compliance with the Disciplinary Rules and Procedures document (DRPD).

37.1. There was a failure to follow the company's own disciplinary rules and procedures in that one of the issues to be investigated was defined as Gross Misconduct in the DRPD. Consequently, the investigating officer should have gone immediately to a formal process rather than an informal meeting with the claimant. See below re unfairness.

38. Prior notice of investigation.

38.1. The claimant was not given notice or time to prepare as recommended by ACAS guidance. This was unfair however the matters to be discussed occurred on the day of the investigative interview, or related to a private vehicle brought into the workshop by the claimant. See below re unfairness.

39. Failure to use a notetaker or witness.

39.1. Whilst ACAS guidance recommends a notetaker during the investigation it is not mandated.

40. Notes of investigation interview.

40.1. The notes of the interview were heavily criticised by the claimant however the amendments he ultimately made to them at the disciplinary hearing might best be described as minor and do not change the substance of the allegations themselves.

41. Unfairness.

41.1. The unfairness suffered by the claimant at the point of investigation was in respect of the failure to follow the formal procedure and give him notice of the investigation and time to prepare. However, in my view, this was cured during the disciplinary hearing for which the claimant did have time to prepare, amend SM's notes and present his case. In addition, 2 of the matters investigated happened on the day of the investigation and the earlier matter related to a vehicle of the claimant's family.

41.2. Finally, the question is whether dismissal was a fair sanction. Could a reasonable employer have decided to dismiss where an employee had not sought permission and thus caused a customer to be overcharged. I find that they could. The elements of the conduct as alleged correspond with 2 examples of Gross Misconduct listed in the

DRPD (referred to in the statement of terms and conditions of employment signed by the claimant on 23 August 2016), namely working on a 3rd party vehicle during working hours without permission and falsification of accounting records. The falsification of accounting records was by failing to take action to correct them when Mr Pulsford and his colleague worked on the 3rd party vehicle.

41.3. In some limited circumstances employees have been permitted to use the workshop for work on private vehicles. The respondent is adamant permission would have been refused for a 3rd party vehicle which I accept.

41.4. I am satisfied the failure to seek permission was important but the most important aspect of this incident is that it caused a customer to be overcharged and was compounded by the fact the claimant concedes he would not have told management.

42. Wrongful dismissal.

42.1. Payment in lieu of notice, I am satisfied that the decision to summarily dismiss was not in breach of contract. The claim for payment in lieu of notice is dismissed.

Employment Judge H Allen

Date: ...6 March 2021.....

Sent to the parties on:

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For the Tribunal Office