



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr O ILORI

INTERSERVE SECURITY (FIRST) LTD

Employment Judge Russell (sitting alone)

HELD AT: London Central (CVP video audio call) ON: 3 FEBRUARY 2021

BEFORE: Employment Judge Russell (sitting alone)

REPRESENTATION:

Claimant: MR. SHAW, SOLICITOR

Respondent: MS. TAYLOR, COUNSEL

Judgment

1. The Claimant was dismissed for conduct under s98(2)(b) ERA 1996.
2. The dismissal was fair in accordance with s98(4) ERA 1996.
3. In consequence the Claimant's claim of unfair dismissal fails and is dismissed.

Reasons

Background

1. The Claimant, Mr Ilori was employed as a security guard (in the position of the supervisor) for over 18 years from 19 November 2000 to 21 January 2019. This continuity of employment included a TUPE transfer from Reliant Security Services

through to the Respondent employer where he worked as a supervisor security guard prior to his dismissal for gross misconduct on 21 January 2019 following an incident on 13 October 2018. In a nutshell he was accused of giving permission/allowing 4 security operatives to leave their shift early ranging from 1 to 4 hours before their shifts were due to end. They were Mr Vangah Kouamelan , Shusil Gurung , Julios Mikosi and Bikrant Gurung (who when referred together I will call “the Four Guards”).

2. As a result of (in particular) Mr Kouamelan leaving early there was no one to validate the security pass of a senior Deutsche Bank staff member and this led to a complaint from Deutsche Bank one of the Respondent’s principal clients .This in turn escalated the concern to the Respondent’s senior management and led to the investigation and , ultimately , disciplinary sanction against the Claimant who was blamed for leaving the security detail insufficiently manned.
3. A preliminary issue concerned the CCTV evidence which was, in video form, seen by all parties including through the disciplinary and appeal process but was not available to this employment tribunal because the CD disc was corrupted. There were stills from the CCTV camera but there remained a dispute about the adequacy or evidential values of these because: -
 - A) there were only around five stills in the trial bundle against the 15 to 20 stills that the disciplinary officer said that he had seen, made available to him by Natasha Roberts the investigation officer.
 - B) The stills did not (so the Claimant states) show the Claimant’s guilt.
4. The issues from a legal standpoint were straightforward. I had to determine the reason for dismissal (in this case claimed to be conduct) and if a potentially fair reason then I must determine if the sanction of summary dismissal was reasonable in all circumstances applying s98(4) ERA 1996.

5. I heard evidence from the Claimant and his witness, Mr Abdul Sesay, a security guard who reported to him. I heard evidence from two Respondent witnesses, Mr Denton, the Respondent's operations and investigation manager, and Mr Morgan and IT contractor, as to the fact that the CD disk was damaged. And I heard from Mr. Wise (the disciplinary officer) along with the Respondent's appeals officer Mr. Murphy. Plus, helpful submissions from each of the parties' representatives.

These are my findings.

6. I find no bad faith from the Respondent in the fact that the CD showing the CCTV pictures was corrupted and as a result could not be seen by me. I'm satisfied that the Respondent made best efforts to try and ensure that it could be made available to the employment tribunal but in any event from the evidence heard and stills that I have seen I find the CCTV evidence would in all likelihood be inconclusive. And to the extent that the stills show any material point at all it is simply that it shows Mr Bikrant Gurung in shorts and a hi visibility jacket and rucksack was leaving the building and his shift earlier than expected/contractually permitted. Although I observe that Mr Bikrant Gurung says that this was not due to the Claimant having given him permission to do so but was of his own volition. And this seems to be accepted by both parties.
7. In consequence I find the Respondent cannot safely rely on the CCTV evidence to justify the dismissal of the Claimant and I certainly do not regard the CCTV stills evidence that I have seen as determinative of any act or omission on the part of the Claimant other than in one sole respect. And that is that he was clearly aware, or should have been aware, that Mr Bikrant Gurung left his shift early.
8. The Claimant was not authorised to give permission to security staff to leave before the shift ended. His own line manager Mr Mohammad Qamar was so authorised but did not give permission to any of the individuals who left early. To the extent that the Claimant did give permission he was therefore acting without authority and would legitimately be subject to potential disciplinary action given the requirements by the

Respondent's client to have security guards present at the contracted times and the fact that, due to some guards leaving early, this did not happen.

9. There remains some uncertainty as to who, amongst the security operatives, reported to who on the day in question, October 13 because it was a weekend the normal week day procedures were not followed. The Claimant states that Mr Kouamelan reported to Mohammad Qamar and that Shusil Gurung, Julios Mikosi and Bikrant Gurung reported to Mr Prah acting supervisor for the day. The Respondent says all Four Guards reported to the Claimant as their supervisor. I can make no finding on that other than to question why the procedures, given the detailed analysis over this 2 day case and an extensive bundle, were not clearer. But I do find that only the duty supervising manager (Mr Qamar) had authority to allow security officers to leave their shift early and only then if there was an emergency situation. As the Claimant accepted. I also find that neither Mr Prah or Mr Qamar gave the Four Guards (or any of them) permission to leave early. And so if Mr Ilori had given permission for/permitted the Four Guards to leave then this would have been a material breach of procedure.

10. The Claimant accepted that the Respondent may have had a genuine belief as to the Claimant's guilt, so his main complaint was as to the Respondent's grounds for their belief and procedure to reach that belief. It was submitted that three of the Four Guards benefited from giving evidence against the Claimant. Which they did in one sense, as it meant they were not personally held liable for leaving their post early. Mr Kouamelan had been warned before about leaving early and clearly all three of the Four Guards who blamed Mr Ilori would have been very aware of the possibility of disciplinary sanction (perhaps even dismissal) if they were found to have left without authority and without being able to pass blame to someone else (in this case the Claimant). And in fact, disciplinary action was taken against Mr Gurung for doing exactly that. But I find this does not adequately explain why they all blamed the Claimant. There was also a suggestion that the Four Guards gave conflicting evidence and for example Mr Mikosi initially said the Claimant nodded his consent and changed his story slightly and then, again, 6 weeks later said the Claimant had said

“ you can shoot” as in that he could leave the building. However, the central part of their stories were all consistent (that they all being given permission to leave by Mr. Ilori) and at no time was any evidence provided to show that any one of the Four Guards conspired together or, individually or collectively, had an axe to grind against the Claimant. The Claimant very honestly said there was no bad blood between any of them. They all left at different times and not from the same work area. The Respondents were entitled to find it implausible that all of them were being untruthful.

11. I make no finding that the Claimant tried to coerce Mr Mikosi to change his evidence although the Claimant was inconsistent and slightly evasive in his response to questioning by the Respondent’s representative as to his call to Mr Mukosi on 17 October allegedly forewarning Mr Mikosi that Mr Adeoti would be ringing him to get his evidence. And allegedly asking Mr Mikosi to support the Claimant. There is no evidence produced as to this. But in any event Mr Mikosi also remained unequivocal in stating that Mr Ilori had authorised him to leave and before the end of his shift.

12. I do find that the Claimant was in the pass room/B1 for the material time that would have allowed the individuals to get permission from him to leave. And whilst I cannot make any finding as to whether he did or did not give such permission, in reviewing the disciplinary process and the appeal, the Respondent did take comprehensive steps to investigate the position before determining that he did. I do not criticise them for failing to interview some of the security guards who did not leave early as clearly the focus of the investigation was with the Four Guards who did and the 3 of those who said that they did because of the actions of the Claimant.

13. I have found the Claimant knew or ought to have known Mr B Guring was leaving early but for the more serious claimed offences of authorising the other 3 of the Four Guards to leave early one might ask why the Claimant would have so acted and put his career at risk .And the reason he should do so (if he did) obviously causes me concern and demanded a careful investigation of the facts by the Respondent .Especially as I accept Mr Sessi’s evidence that Mr Ilori took his job very seriously and would not do this . The appeals officer Mr Murphy speculated that this kind of rules

violation or irregularity had happened before. And perhaps it is the case that the Claimant did not think that he would be found out to the extent he is guilty of the alleged offence. But whether he was or was not and however uncomfortable I am as to this , I cannot interfere with the Respondent's decision, reached after a full investigation and process, to decide on the balance of probabilities that he was guilty of the misconduct and I amplify the reasons for this below.

14. Mr Wise the disciplinary officer was entitled to find on the evidence he had before him after an initial and fair investigation that Mr Ilori had committed gross misconduct. His 8-page letter of dismissal of 21 January following the disciplinary hearing of 4 January was fully reasoned and comprehensive. And Mr Murphy was entitled to uphold this decision on appeal. Both followed a full and fair procedure investigation (other than some small points I have highlighted below) following a thorough process and all times the Claimant had an opportunity to be represented and state his case fully. His concern (understandably) is that he was not believed. And again understand he perceives the process was unstoppable , that he would never be believed.

15. In her submissions the Respondent's representative states

"The procedures leading to dismissal were fair.

- a. There were two investigation meetings before Mr Ilori was suspended.*
- b. There were updated investigation reports as and when further evidence was forthcoming.*
- c. The second meeting was held after further allegations had been made to allow Mr Ilori to answer those points.*
- d. For every meeting Mr Ilori was told of the allegations in advance and provided with the evidence.*
- e. A disciplinary meeting was held with Mr Wise, who had not been involved in the investigation.*
- f. The date was changed to permit Mr Ilori sufficient time to review the evidence, as he had not picked up the evidence pack with more than 48 hours' notice to spare*

before the original hearing. This was despite Mr Ilori indicating he would proceed with the original hearing date.

- g. During his meeting with the Claimant, who was accompanied, he was played the CCTV of each allegation multiple times, he was given the opportunity to add anything he wished at various points and he was given the opportunity to answer every allegation.*
- h. Further enquiries were conducted to try and corroborate Mr Ilori's explanations.*
- i. Detailed reasons were given for his dismissal. Mr Wise considered the possibility of redeployment and retraining but they were deemed unsuitable given the gross misconduct concerned.*
- j. A thorough appeal was permitted out of time, which was carried out by Mr Murphy who had no prior involvement with the matter before that point.*
- k. Mr Murphy carried out a review of the process, checked how Mr Wise came to his views and asked HR about anything he wanted clarity on. I. Notes were taken of all meetings.*

16. I accept all these points are correctly stated.

17. Although the Respondent's procedure was full it was not above criticism. I have already mentioned the confused lines of authority as to who could (in effect) clock out the security guards and, in particular, the Four Guards. What was Mr Prah's exact role and was the Claimant his senior or not? Why was this not explored in more detail during the disciplinary process? None of the Four Guards gave evidence the hearing and there is limited criticism of their conduct (quite the reverse in fact) in the disciplinary process. Their narrative was more readily believed than Mr Ilori.

18. Mr Wise indicated that he did take the Claimant's unblemished record and excellent sickness record into account but admitted he had no idea whether the record was unblemished or not for the 14 years he worked for the business before Mr Wise arrived. Why not? Did Mr Wise assume it was of no import? Also, the Claimant's job was advertised before the appeal took place which is described by the Respondent as industry practice but if so, it should not be so. And I find the appeals officer was

surprised to learn this at that time in contrast to his evidence in this hearing. And it may have been that the Claimant's job had been replaced before the appeal outcome was given. In addition, although Mr Wise indicated that the client would not know the outcome of the disciplinary process and trusted the Respondent to reach the right decision it is clear from Mr Murphy's evidence that Deutsche Bank did know when the Claimant was dismissed summarily (as opposed to just being a "leaver") and that would have made it extremely difficult for the Claimant to be reinstated if the appeal had been successful. The Respondent may wish to reflect on their practices in this respect. And of course, the CCTV images have confused not clarified and if they are to be relied upon in the future this needs to happen clearly and with the evidence secured.

19. However I also find that the Respondent did not rely substantively on the CCTV evidence here, did not need to find that Mr Ilori was the supervisor for the Four Guards and did not need to prove, on the same basis as , say a criminal trial, the Claimant's guilt as to giving permission for the Four Guards to leave or as to coercion of at least one guard to support the Claimant's version of events. It is enough they concluded that he was guilty of gross misconduct on a balance of probabilities after a fair process and I have explained why I found that they did so. I do not find that the dismissal of the appeal was predetermined, three of the Four Guards corroborated each other , I do not find that Mr Wise was unduly influenced by having to find a "scapegoat" for the client , I do find that Mr Wise would still have dismissed if he known the Claimant had an unblemished record from 2000 to 2014, Mr Murphy (as is apparent from past appeals and I accept his unchallenged evidence in that respect) would have been prepared to uphold the appeal if there had been grounds to do so and the Claimant would have been reinstated if the appeal had been successful. Or redeployed to same level job if for some reason Deutsche Bank would not allow that to happen. The Respondent acted in good faith.
20. I do believe the decision was unduly harsh especially given the Claimant's excellent work record and possible alternative explanation for the events of 13 October but whether I would have come to the same decision as the Respondent or not (and I

would not have done on what I currently know) is not material as I cannot substitute my personal view for that of the Respondent but must measure it by reference to the range of reasonable responses open to a Respondent in a situation such as this. The fact is that the Respondent's disciplinary procedure specifically indicates that where someone is determined to bring the company's reputation into serious dispute whether and/or where there is a gross breach of company rules, policies, or procedures that summary dismissal is an option and this was made clear to the Claimant through the investigation, invite to the disciplinary proceedings and in a well thought out disciplinary outcome letter. And that is what happened here. Mr Wise concluded on balance of probabilities that the Claimant was guilty of the alleged charges and decided to dismiss and a subsequent appeal was handled professionally by Mr Murphy who agreed with Mr Wise's decision albeit that he reviewed and did not rehear the case.

21. Applying **British Home Stores v Burchell** I must look to see if the Respondents applied a fair procedure and came to an honest belief as to the Claimant's guilt (and even the Claimant's representative accepts this was likely to be the case) with reasonable grounds for that belief following a reasonable investigation before applying a sanction open to it as a reasonable employer . I find that they did in all cases and therefore the unfair dismissal claim fails.

EMPLOYMENT JUDGE Russell
3 FEBRUARY 2021

Order sent to the parties on

04/02/21.

for Office of the Tribunals

Case

Number:2203368/2019VP

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