



EMPLOYMENT TRIBUNALS

Claimant: Mr Leslie Dyer

Respondent: Newcastle International Airport Ltd

Heard at: Newcastle via CVP

On: 17th December 2020

Before: Employment Judge AE Pitt

Representation

Claimant: Mrs. Dyer

Respondent: Mr. Dulovic

JUDGMENT having been sent to the parties on 23rd December 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This is a claim by Mr Lesley Dyer, the claimant, arising from his employment with Newcastle International Airport Limited, the respondent. He was employed as an Engineering Technician (Level 2) from 22nd May 2006 until his dismissal on 21st November 2019. At the effective date of termination, he was 57 years of age his salary was £2282.99 gross per month.
2. I have read witness statements and heard evidence from the claimant; Mr Nathaniel Clark, Principal Airport Engineer for the respondent; John Barker, Engineering Manager for the respondent and Mr Steve Armstrong, Airside Operations Manager for the respondent. I had before me a bundle of documents which included notes of investigation meetings, notes of a disciplinary hearing, and an appeal hearing. I also saw stills taken from CCTV footage of the claimant at the airport.

The Facts

3. The respondent is an International Airport. It employs, amongst others, a maintenance team who are referred to as 'techs'. The claimant was employed at 'Tech Two' level. He was in a team with two others who were 'Tech One', a grade higher than the claimant. Their base of operations is

referred to as The Engineers Crew Room (the Crew Room), where they carry out repairs and store their equipment. The claimant was dismissed for theft of items, including a socket set belonging to Paul Holbourn.

4. Mr Holbourn was a contractor; he worked for Blaydon Communications Limited on the respondent's site. On 11th October 2019, he left his socket set in the Public Address and Voice Alarm Room (the PAVA room). When he returned to collect it, it was missing. He spoke to Mr K Gallon, who advised him to speak to his own supervisor and get them to contact Mr Gallon. Mr Holbourn contacted his supervisor, who duly raised it with Mr Gallon by email on 22nd October 2019. At that time, there was no complaint of wrongdoing, merely a request to identify the whereabouts of the socket set so it could be returned. Mr Gallon commenced enquiries, reviewing CCTV footage and checking the Room Access System for the period 11th October 2019 – 21st October 2019. His review revealed occasions when the claimant appeared to be removing items from the respondent's site, including the socket set, cable trunking, cleaning fluid, and wooden pallets. Believing the claimant may be involved in theft Mr Gallon referred the matter to Mr Clark.
5. The socket set was moved from the PAVA room by the claimant to the Crew Room on 20th October 2019. It remained there on 1st November when the claimant took it home with him. From all the evidence I have heard, members of staff do borrow equipment and take home items that are no longer required. I am also satisfied, however, that when that occurs, the relevant employee will request permission or inform their supervision.
6. Mr Clark interviewed the claimant on 4th November 2019. After initial denials of knowledge of the socket set, he explained, 'A few weeks ago I took it home to do a job on my car. It is sat in my porch, I just keep forgetting to bring it, I used it to take a wheel brace off, I didn't have the right size at home, so I borrowed it' (page 60). He also admitted to removing cable trunking, cleaning solution, and wooden pallets. He explained that they were waste, and he did not think there was a problem taking them. Mr Clark also interviewed Mr Gallon, Michael Cottrell, and Thomas Glazzard, the claimant's colleagues. On the same day, Mr Clark followed the claimant home and retrieved the socket set from the porch at the claimant's home.
7. The claimant was suspended on 5th November, and Mr Clark commenced a formal investigation. He produced an investigation report which concluded, 'Having considered all the evidence I am of the view LD took the socket set with the intention of keeping it so committing the act of theft. I also conclude LD took other items (not including wooden pallets) without having prior approval'. He recommended, 'Although LD was previously of good conduct, having considered all available evidence such as the serious nature of the event that I have no alternative other than to recommend disciplinary proceedings be initiated in relation to the conduct of Les Dyer.'
8. On 8th November, the claimant was notified he was to be the subject of disciplinary proceedings concerning the following, 'It is alleged that you

removed from site property, namely a socket set belonging to a Business Partner (Contractor) without permission with the intention of keeping it; therefore, committing the act of theft. In addition, it is alleged that you stole/took without permission company property, namely trunking and cleaning solution.'

9. The disciplinary hearing was scheduled for 20th November. The claimant was given the opportunity to review the CCTV footage in advance of the hearing. Mr Jon Barker conducted the hearing. During the hearing, the claimant accepted taking the socket set, stating he had borrowed it. He also accepted taking the cleaning solution and the trunking but an unwritten rule that allowed him to do that. The claimant also raised an issue concerning Mr Gallon and the time taken to investigate and discipline him, alleging that Mr Gallon 'had it in for him'. The claimant stated he had seen the socket set some time ago in a room known as the Archive room; he removed it to the Crew Room, believing it belonged to the respondent. Later the claimant had found it in the PAVA room. It was at that point that he borrowed it.
10. Mr Barker concluded that the arguments put forward by the claimant did not stack up, in particular the failure to return the socket set until after it was noticed to be missing. He rejected the suggestion of any bias by Mr Gallon, concluding that the investigation was conducted fairly, objectively, and promptly. Mr Barker also concluded that the claimant's actions amounted to gross misconduct. Further, he concluded that, despite the claimant's length of service and his previous good conduct, the trust and confidence between the parties were breached, and there was no option but to dismiss. Mr Barker confirmed his decision in a letter to the claimant on 21st November.
11. The claimant was offered an appeal. He appealed on 24th November, setting out eight grounds of appeal, including 'borrowing was commonplace' at the respondent's, and restating the issue of Mr Gallon's attitude toward him. The appeal was heard on 5th December by Mr Steve Armstrong. I have seen verbatim notes of the meeting. Following the meeting, Mr Armstrong re-interviewed Mr Gallon. He also spoke to Steve Lowdon, another employee of the respondent, to whom the claimant had referred in the meeting.
12. Mr Armstrong concluded that there was no collusion in the original investigation, and it had been conducted fairly, objectively and promptly. He concluded that the decision taken by Mr Barker was reasonable. He also reviewed the sanction of dismissal. He concluded that because of the extent of the deceit and 'that there was little trust and confidence going forward in your ability to carry out the job role,' a sanction short of dismissal was not appropriate. He dismissed the appeal.

The Issues

13. What was the reason or principal reason for dismissal? The respondent relies on the claimant's conduct. If the dismissal was because of conduct, the Tribunal will need to decide whether;
- there were reasonable grounds for believing the claimant had committed an act of gross misconduct,
 - at the time the belief was formed, the respondent had carried out a reasonable investigation,
 - the respondent otherwise acted in a procedurally fair manner,
 - was dismissal within the range of reasonable responses?

The Law

14. Section 98 Employment Rights Act 1996, The Act, sets out the provisions in relation to unfair dismissal. First, it is for the employer to establish the reason or principal reason for the dismissal of the employee. If this is a reason falling within section 98(2) of The Act, the Tribunal must then consider whether, taking account of all the circumstances, the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee.
15. The approach to misconduct cases was formulated by Arnold J in **British Home Stores Ltd v Burchell [1980] ICR 303**. If the reason for the dismissal was misconduct of an employee and potentially fair, the Tribunal must go on to ask itself the following questions.
- Did the respondent act reasonably in treating the employee's conduct as a sufficient reason for dismissal in accordance with equity and the substantial merits of the case?
 - Did the respondent have an honest belief in the misconduct of the claimant?
 - Did the respondent have reasonable grounds to sustain that belief?
 - Did the respondent undertake as much of an investigation into the misconduct as was reasonable in all the circumstances?
 - Did the respondent follow a fair disciplinary procedure?
16. **Iceland Frozen Foods Ltd v Jones 1982 IRLR 439**. In determining the fairness of a dismissal, the Tribunal must consider if dismissal fell within the range of reasonable responses.

Submissions

17. The respondent's case was that it had complied with the guidance in Burchell. There had been an investigation which was reasonable and proportionate. There was a genuine belief by Mr Barker in the claimant's guilt on the evidence available, and it was reasonable for him to reach that conclusion. The Tribunal must not substitute its own view, but look at whether a reasonable employer would dismiss.
18. Mrs Dyer gave me written submissions, which included the following arguments. If Mr Gallon had done his job correctly, the socket set would have been back with its owner on 21st October, and there would be no Tribunal. The claimant only ever 'borrowed' the socket set. The other items were waste and held no value.

Discussions and Conclusions

19. It is clear that Paul Holbourn was working on site at the airport and had a socket set with him on 11th October. The CCTV shows him leaving the socket set in the PAVA room on that day. Mr Gallon, having been advised of the missing socket set, decided the easiest way to try and track it down was to use the CCTV system and check access to the PAVA room through the card swipe system. I am satisfied it was a reasonable course of action for Mr Gallon to review the CCTV for the period between the socket set being left in the PAVA room and the complaint to him. During his review, having discovered four occasions, namely, 12th October, 13th October, 29th October, 31st October, when he saw the claimant leaving the site with the respondent's property, it was reasonable for him to put the matter in the hands of a senior member of the team.

The Investigation

20. Having heard the evidence of Mr Clark and reviewed the documents, I concluded that the investigation undertaken by Mr Clark was proportionate to the allegation. He reviewed the CCTV footage himself and spoke to relevant witnesses concerning matters raised by the claimant, in particular the issue of removing items belonging to the respondent.

The Disciplinary Hearing

21. I am satisfied that Mr Barker had a genuine belief in the claimant's guilt. It was not suggested that he was part of the collusion involving Mr Gallon. Was his belief reasonable? Mr Barker relied, in particular, on the claimant's initial denials and the fact that the claimant did not return the socket set; rather, Mr Clark recovered it from the claimant's home. He concluded there was no evidence before him of an unwritten rule regarding removing items. These are conclusions that a reasonable employer could reach on the evidence.

The Appeal

22. Mr Armstrong allowed the claimant to fully state his case, dealing with all eight grounds relied on by the claimant. He also undertook a further investigation on matters raised by the claimant.

The Procedure

23. The claimant was invited to give his initial account of the relevant events in an investigation meeting with Mr Clark. He was invited to a disciplinary hearing with a representative. He was invited to review the CCTV footage before the hearing, although he did not do so. During the hearing, Mr Barker

explored all the issues with the claimant. At the conclusion of the hearing, the claimant was asked if there was anything further he wished to add. His representative asked Mr Barker to consider the claimant's previous lengthy and good history of employment. The claimant was given the opportunity to appeal, which he did. Mr Armstrong, having heard the appeal, undertook a further investigation into matters raised by the claimant. The procedure adopted and how it was carried out was a fair and reasonable procedure.

The Dismissal

24. Mr Barker concluded that despite the length of service of the claimant and his previous good conduct, the matters were so serious as to undermine trust and confidence between the claimant and the respondent. He considered whether a lesser penalty was available to him before coming to his decision to dismiss. It was reasonable for Mr Barker to conclude that the claimant had committed gross misconduct namely stealing. Dismissal fell within the range of reasonable responses open to Mr Barker.

Conclusions

1. Referring to the issues

- i) I concluded that the respondent acted reasonably in treating the claimant's misconduct, namely the theft of the socket set, cleaning fluid, and cable trunking, as sufficient reason for dismissing the claimant.
- ii) Mr Barker had an honest belief in the claimant's misconduct. It was never suggested that he did not have such a belief or been involved in any collusion.
- iii) On the evidence that was before him, Mr Barker had reasonable grounds to believe that the claimant had committed theft.
- iv) The investigation by Mr Clark was such investigation as a reasonable employer would undertake.
- v) Did the respondent follow a fair disciplinary procedure? The disciplinary procedure was fair; in particular, the claimant was allowed to state his case and review relevant CCTV footage.

2. The claimant was not unfairly dismissed.

Employment Judge Pitt

Date 25th February 2021