



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MR D BENNETT

AND

Respondent
MITIE TOTAL SECURITY LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL

ON: 24TH MARCH 2021

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANT:- WRITTEN SUBMISSIONS

FOR THE RESPONDENT:-

RECONSIDERATION JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's application to vary or revoke the Judgment is dismissed.

Reasons

1. Between 8th and 10th March I heard the claimant's claim for unfair dismissal and gave judgement orally on 10th March. Following the giving of the judgment the respondent made an application for its costs of the earlier discrimination claim. The parties were both content for me to reserve the decision as to that and to give Judgment on the papers. The written judgement in respect of the unfair dismissal and the reserved judgement in respect of costs have recently been promulgated.
2. Before promulgation and based on the oral decision the claimant has sought a reconsideration of the dismissal of his unfair dismissal claim. The application relates to one aspect of the claim for unfair dismissal. The dismissal was for misconduct occurring within the currency of a final written warning. As was set out orally and in the written judgement the final written warning was taken into account both in determining the sanction of dismissal and in dismissing the claimant's appeal. This is not a case in which there was any evidence that the misconduct was sufficiently serious in its own right to justify dismissal irrespective of the final written warning.

3. In the judgement I held that at both the disciplinary and appeal stages Mr Evans and Ms Wilcox were entitled to take the final written warning into account as firstly there had been no appeal, and because there was nothing before me which would have allowed me to conclude on the evidence that the final written warning was given in bad faith, that there was no prima facie evidence for it, or that it was manifestly improper.
4. The application for reconsideration relates to the question of whether I should have concluded that the sanction of a final written warning was manifestly improper as it fell outside the range open to Mr Stevens the decision maker. The basis for that is that the misconduct fell within the description of misconduct and not gross misconduct within the respondent's disciplinary policy and that it did not therefore allow for or permit Mr Stevens to impose the sanction of a final written warning.
5. The claimant is correct that the unreasonable refusal to follow management instructions is listed as misconduct. What is more difficult to follow is why he asserts that that precluded the imposition of a final written warning. The policy provides that "...depending upon the seriousness of the misconduct any stage can be bypassed. For example a manager can issue a Final Written Warning without first having to issue a First Written Warning ..if the offence is considered serious enough." Moreover it provides that the sanction for gross misconduct will normally be summary dismissal. It follows automatically that any sanction short of summary dismissal is available to manager where it is found that an employee has committed misconduct. In principle, therefore I remain unpersuaded that the sanction was manifestly improper by reference to the disciplinary policy.
6. As this is the only point raised in the reconsideration application it follows that I am not persuaded that there is any reasonable prospect of the original decision being varied or revoked and the application is refused.

**Employment Judge Cadney
Date: 24 March 2021**

Reconsideration Judgment and Reasons sent to the parties: 1 April 2021

FOR THE TRIBUNAL OFFICE