



EMPLOYMENT TRIBUNALS

Claimant: Miss E Croydon
Respondent: South Central Ambulance Service NHS Foundation Trust

REASONS

(requested by the Claimant following promulgation of Judgment)

1. The Respondent was established in 2006 by the merger of four existing Trusts. It serves four counties, including Hampshire, and employs over 3600 staff. The Claimant commenced employment with the Respondent as a Healthcare Professional Technician on 7 December 2015. On 26 April 2016 she transferred to the Respondent's Bank arrangements and commenced work as an Ambulance Care Assistant. The Claimant's ill health prevented her undertaking any work for the Respondent after 25 September 2018 until she was dismissed by the Respondent for gross misconduct on 3 April 2019. The Claimant claims that this was an unfair dismissal.
2. The Respondent denies that it unfairly dismissed the Claimant. It submits that after completing an investigation into the Claimant's alleged conduct on the evening of 27 December 2018 and referring the findings of that investigation to a disciplinary procedure it genuinely believed that the Claimant had been guilty of gross misconduct and dismissed her for that reason.
3. There was an agreed bundle of documents (**Exhibit R1**). The Tribunal received evidence on behalf of the Respondent from Mr J Edwards, Senior Operations Manager; Mrs S Stirrup, Area Manager and Mr P Stevens, Director of Social Services. They gave their evidence-in-chief by written statements (**Exhibits R2, 3 and 4** respectively). The Claimant also gave her evidence in chief by written statement (**Exhibit C1**). The Tribunal received oral submissions from the Claimant and Ms Musgrave, Counsel, on behalf of the Respondent. Ms Musgrave also submitted written submissions (**Exhibit R5**). The Tribunal made the following findings of fact after careful consideration of all the documentation, oral and written evidence and submissions it had received during the course of the hearing.
4. On 28 December 2018 a Security Guard based at Portsmouth Football Club sent an email to her Line Manager in which she provided details of an incident that had occurred on the evening before in the Club's car park. The email states that she, and a colleague, had seen a Patient Transport Service Vehicle (PTSV) drive into the Club's car park followed by an unmarked car. These vehicles parked next to one another and a male member of the Respondent's staff, in uniform and the female occupant of the car then entered the back of the PTSV. The email then stated that when the security guards attended at the vehicle they saw the occupants in a state of undress. After this, CCTV footage showed that the occupants were engaging in, or about to engage in a sexual act. The email also noted that at this time a blood donation unit had been located in the Club's car park which was in operation at this time and open to members of the public.
5. On 2 January the Security Manager of the Club contacted Mr Roberts, the

Respondent's Clinical Operations Manager, by telephone to report this incident to him. This report was communicated to Mr Courtney, the Respondent's Locality Manager for the Portsmouth area. The registration of the PTSV provided to the Respondent enabled Mr Courtney to identify the male driver of the PTSV, who had been on duty at the time on which the reported incident occurred. Subsequently, further enquiries confirmed that the Claimant had been driving the car that followed the PTSV into the car park and who had then joined the male driver in the back of the vehicle.

6. After appointing Mr Edwards to investigate this incident, Mr Courtney wrote to the Claimant on 4 January 2019 to inform her that her conduct in the Club's car park on the evening of 27 December 2018 was to be investigated by Mr Edwards. The male driver of the PTSV had been suspended by Mr Courtney. He had been in contact with the Claimant to inform her of the concerns which were being raised by the Respondent. Mr Courtney did not suspend the Claimant because she was absent from work due to illness. His letter did explain that if she recovered and became available to undertake work for the Respondent then he would not be able to offer any work to her until the investigation and any procedures connected with it had been completed.
7. He also advised the Claimant that Mr Hall, an Operational Team Leader, had been appointed as her Welfare Officer to support her during these internal procedures. The Tribunal notes that documentation in the agreed bundle confirms that Mr Hall gave considerable support to the Claimant as these matters proceeded. Finally, Mrs Fawcitt, HR Manager, was delegated to support Mr Edwards during his investigation of the incident.
8. Mr Edwards arranged a meeting with Miss Steadman, the Security Manager at Portsmouth Football Club, to enable him to view the CCTV footage that had been referred to, and interview the security guards who had been on duty at the relevant time. Mr Edwards, and Mrs Fawcitt, attended Portsmouth Football Club on 15 January 2019. They met with Miss Steadman and the two security guards, Miss Fitzgerald and Mr Schillemore, who had been on duty on the evening of 27 December 2018 and who had witnessed the incident. Mr Edwards and Mrs Fawcitt also viewed the CCTV footage that the security guards had referred to, and were able to talk through with Miss Fitzgerald and Mr Schillemore what they had observed on that evening.
9. Mr Edwards' evidence as to what he viewed on the CCTV footage, which is accepted by the Tribunal is as follows:

"I recall that on viewing the CCTV, you could clearly see the ambulance vehicle drive into the football ground. At the far side, you could see the blood bank was taking place on that day. The ambulance vehicle drove into the centre of the car park, then turned around and parked up. This was followed by what was later identified as Emma's car which parked up next to the ambulance. I recall seeing the male member of staff at the side of the ambulance door. Emma got out of her car and into the back of the ambulance. I could then see a vehicle driven by the football security approach the ambulance and a member of security staff got out and knocked on the ambulance to speak to the occupants. I could see the male member of staff speaking to the security officer and his shirt appeared untucked and his belt undone. The security officer returned to her vehicle.

Due to it being dark and the position of the camera, I could not clearly see what was happening inside the ambulance as the lights were off. However, I clearly recall seeing the ambulance rocking from side-to-side quite significantly after the security officer left. The security officer then returned in front of the ambulance and put her car headlights on full beam so it was shining onto the front of the ambulance. I understand she did that she did this in order to take down the registration number. I could then clearly see that the male member of staff had his shirt untucked, shoes off and what looked like doing up his belt. A short while later, I could see Emma leave the ambulance vehicle and drive out of the car park."

10. The two security guards were asked by Mr Edwards to provide written statements of what they had observed on that evening. These were received by Mr Edwards on 21 January 2019. Both security guards state that when Miss Fitzgerald turned on her lights to take down the registrations of the vehicles they could see those in the PTSV in a state of undress and "*could see them about to undertake what looked like a sexual act*".
11. Mr Edwards had contacted the Claimant to ask her to attend an investigation meeting with him on 23 January. The Claimant was concerned about her state of health and sought Mr Hall's advice. After he had spoken to Mr Edwards explaining the Claimant's concern arrangements were made for the Claimant to attend on the Respondent's Occupational Health provider. The purpose of this referral was to ensure that the Claimant was well enough to participate in the investigation meeting which was postponed to enable the referral to be completed.
12. The Occupational Health Assessment was undertaken by telephone on 28 January 2019. Occupational Health advised Mr Edwards that there appeared to be no medical reason why the Claimant should not be able to participate in the ongoing procedures if it was necessary for her to do so. It was also suggested that certain steps could be taken to alleviate stress for the Claimant, who had been suffering with mental health difficulties. These were for the preparation of a detailed agenda in respect of the meeting, to allow the Claimant to be accompanied to the meeting and to have regular breaks during the meeting as and when required.
13. The Claimant was already aware of the matters under consideration because of her conversation with her male colleague who was also under investigation and her contact from Mr Edwards when he had sought to arrange an investigation meeting with her. On 30 January 2019 Mr Courtney wrote to the Claimant and in that letter he set out the allegations which were under investigation. In his letter he confirmed that Occupational Health had reported that she was fit to participate in the investigation and set out the allegations which were under investigation. These were as follows: that she had engaged in lewd conduct whilst off duty with another member of staff in Trust uniform, in a public place; used Trust property to engage in that conduct; and had engaged in behaviour that could potentially tarnish the reputation of the Trust. The Claimant was invited to attend an investigation meeting on 5 February 2019 with Mr Edwards and Mrs Fawcitt and Mr Courtney informed her of her right to be accompanied to that meeting by a work colleague or a trade union representative.
14. The matters discussed at the investigation meeting which was held on 5 February 2019 are subject to some dispute between Mr Edwards and Mrs Fawcitt (who took notes as a record of the meeting) and the Claimant. At the start of the meeting Mr

Edwards explained the purpose of the meeting to the Claimant and referred again to the allegations that he was investigating which Mr Courtney had communicated to her. He also confirmed that the Claimant was content to proceed with the meeting unaccompanied. Finally, he explained that the Claimant would be provided with a copy of the notes of the meeting being taken by Mrs Fawcitt and would receive a copy of the report he would prepare when he had completed his investigation.

15. The Claimant explained that on 27 December she had been depressed and upset. She said that she and her male colleague had met by chance when they had seen each other while waiting at traffic lights on a crossroads. Her colleague had realised she was upset, asked if she was OK and then said she should follow him after which they drove to the car park. It remained unclear how, with the vehicles travelling in opposite directions, with a considerable distance between them, they could have communicated with each other as described, but this was not an issue pursued by the Respondent.
16. The Claimant agreed that she and her male colleague had got into the back of the PTSV and that they were in the back of the vehicle in the dark when two security guards arrived at the vehicle. She denied that they had been in a state of undress or that she had ever engaged in an act of a sexual nature in this car park. The Claimant then explained that she had found the definition of "lewd conduct" in a dictionary and asked Mr Edwards and Mrs Fawcitt if she had been accused of exposing her genitalia, fondling herself in public or being involved in prostitution. They were not prepared to answer those questions and after further unsatisfactory exchanges about them Mr Edwards read out the statements that had been made by the security guards to the Claimant. At this point the Claimant left the meeting which had by that time lasted about 30 minutes.
17. The Claimant was sent a copy of Mrs Fawcitt's notes of the meeting. She returned a copy of these notes on which she had added a signed note to Mr Courtney. This states that she did not consider that the notes that had been sent to her were a full and accurate reflection of what was said at the meeting. She informed Mr Courtney that she had prepared her own notes of the meeting. He asked her to send those notes to him. When he received the notes he directed that they should be added to the Respondent's notes of the meeting and included in the Appendices to Mr Edwards' Investigation Report. He also confirmed with the Claimant that he had taken that step and gave her the opportunity of preparing a supplementary statement if she wished to do so.
18. After Mr Edwards completed his investigation he prepared a comprehensive Investigation Report attaching all relevant documents to it as Appendices. He concluded that there was a case for the Claimant to answer in respect of the allegations which he had investigated. The Respondent concluded that these matters should be referred to a disciplinary hearing. Mrs Stirrup was appointed to chair that hearing. After considering all the papers referred to her she sent the Claimant a written invitation to attend the disciplinary hearing on 3 April and enclosed all relevant papers in respect of that hearing with that invitation.
19. Mr Edwards established that the Football Club would require a formal written application to release the relevant CCTV footage to the Respondent. Initially he set arrangements in hand to obtain the footage. Subsequently, after attending at the Football Club, and taken statements from the security guards involved, and watched the CCTV footage with Mrs Fawcitt, he decided that it would not be

necessary to obtain a copy of the footage. However, the Respondent ensured that the Claimant could have access to view the CCTV at the Football Club if she wanted to do so and advised her that she could have such access. The Claimant confirmed to the Tribunal that it had been her choice not to do so. The Claimant was also informed by Mr Courtney that she still had the opportunity to prepare a supplementary statement that she could submit to Mrs Stirrup either in advance of the disciplinary hearing or on her attendance at the hearing.

20. At the disciplinary hearing Mrs Stirrup was accompanied by Mr Courtney and Mr Smith, HR Manager. The Claimant was aware that she could be accompanied to the hearing by a work colleague or a trade union representative, but was content to attend by herself. Mrs Stirrup was aware that the Claimant had written to the Respondent's CEO to complain about unprofessional conduct in completion of the Investigation Report and her dissatisfaction with the conduct of it.
21. The Respondent's minutes of the hearing are agreed as an accurate record of what was discussed during the hearing. They do not indicate that Mrs Stirrup was hostile towards the Claimant, or unsupportive of her, during the meeting as she has alleged. The Tribunal finds that the minutes establish that the Claimant was given every opportunity to put her case by Mrs Stirrup.
22. During the course of the disciplinary hearing the Claimant asserted that the driver of the PTSV was not a friend of hers but could provide no satisfactory explanation of why, if that was the case, she would join him in the back of a PTSV vehicle with the lights off. Mrs Stirrup concluded on reasonable grounds that the Claimant's description of how she met with her male colleague at the crossroad was implausible. The Claimant's position was that the security guards had lied about what they had seen when they attended on the PTSV and watched the CCTV. The Claimant maintained there was no evidence of any misconduct by either her or her male colleague and that all matters that had been placed before Mrs Stirrup were a fabrication. She declined the opportunity given to her of explaining how the events witnessed by the security guards had occurred and to provide an innocent explanation for what had been witnessed by them. The Claimant did accept that she did not have her shoes on when the security guards arrived at the PTSV and that at one stage her male colleague would have been seen leaning over her while they were in the PTSV. The Claimant confirmed that she did not know either of the two security guards and accepted that they did not know her and could have had no knowledge of who was in the PTSV when they approached it on that evening. The Claimant could provide no reason why the security guards should fabricate the information they had reported to their manager and which they subsequently confirmed to Mr Edwards and which was supported by the CCTV footage which he had seen.
23. After considering the evidence and representations which she had received at the disciplinary hearing, Mrs Stirrup concluded that the Claimant had been guilty of gross misconduct and that she should be summarily dismissed for that gross misconduct. The Claimant exercised her right of appeal. She provided written grounds of appeal to which the Respondent provided a written response in advance of the appeal hearing that was chaired by Mr Stevens on 15 May 2019.
24. The Claimant complimented Mr Stevens on his approach and professionalism in considering her appeal. In summary in her appeal she submitted that the Respondent's procedures were flawed and dishonest, and in addition to asserting that the security guards had lied about what they had seen in the car park, she

accused Mr Edwards and Mrs Fawcitt of lying about what they had seen on the CCTV footage. She further submitted that the outcome of the disciplinary hearing had been predetermined.

25. The minutes of the appeal hearing confirm that the Claimant was given full opportunity to set out her case in full after which Mr Stevens adjourned the hearing to consider the Claimant's grounds of appeal. After doing so Mr Stevens informed the Claimant that he had upheld the decision that she should be dismissed for gross misconduct. He subsequently set out his reasons for doing so in a letter sent to the Claimant shortly after the appeal hearing.
26. The male driver of the PTSV who met with the Claimant in the car park on 27 December was also invited to attend a disciplinary hearing after investigation of his involvement. He faced the same allegations as the Claimant. He did not attend his disciplinary hearing and after due consideration of the evidence in his absence he was also dismissed for gross misconduct. The Claimant was aware that she could have called her male colleague to give evidence at her disciplinary hearing but did not do so.
27. The Tribunal find that Mrs Stirrup was given no reason to find that the security guards had made up these allegations. They were trusted, longstanding employees of the Football Club and were not known to the Claimant. The Claimant admitted that she did not know of any reason why they would lie about what had happened. Their account was supported by the CCTV evidence viewed by Mr Edwards and again the Tribunal accepts that Mrs Stirrup was given no reason for him to have lied about what he saw. He had no previous knowledge of, or involvement with the Claimant, and no reason to want her to lose her job. The Claimant had herself had the opportunity of viewing the CCTV evidence but declined to do so.
28. The evidence available to Mrs Stirrup was effectively unchallenged by the Claimant in her representations at the disciplinary hearing. The Claimant and the male colleague spent approximately 20 minutes in the dark in the back of the PTSV vehicle parked in a public place adjacent to an operating blood donor unit. The vehicle had been approached twice by security guards responsible for the site who were concerned at what was happening inside the vehicle. The vehicle was seen to be swaying from side-to-side and the male colleague was seen with his trousers undone and shoes off and, subsequently, CCTV evidence indicates that the Claimant and her male colleague were either engaging in, or about to engage, in sexual activity.
29. The Tribunal finds that the Claimant was dismissed by reason of her conduct on 27 December 2018. This conduct is a potentially fair reason for dismissal. The Tribunal is satisfied that the Respondent followed sound and fair procedures in investigating the allegations raised with them by a third party and then convening a disciplinary hearing in which the Claimant had a full opportunity to set out her position and thereafter providing the Claimant with a right of appeal.
30. The Tribunal has concluded that at the relevant time the Respondent had a genuine belief that the Claimant had been guilty of the following gross misconduct:
 - inappropriate use of Trust property;
 - conduct likely to give an offence to patients, other employees, visitors or the general public; and
 - conduct that had potential to impact on the reputation of the Respondent.

31. The Tribunal find that Mrs Stirrup's genuine belief that the Claimant had been responsible for such conduct was based on reasonable grounds after the Respondent had conducted a reasonable investigation into the allegations made against her. The Tribunal also finds that the decision to terminate the Claimant's employment was, in the circumstances of this case, within a range of reasonable options available to a reasonable employer taking into account the alleged misconduct and the circumstances in which it had occurred.
32. Therefore, the Claimant's claim of unfair dismissal fails and is dismissed.

Employment Judge Craft

Date: 02 August 2021

Sent to the Parties: 11 August 2021

FOR THE TRIBUNAL OFFICE