



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Mr M Momber

AND

**Respondent**  
Kwik Fit (GB) Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT:** BRISTOL      **ON:** 24<sup>TH</sup> / 25<sup>TH</sup> MAY 2021  
**BEFORE:** EMPLOYMENT JUDGE MR P CADNEY (SITTING ALONE)

**APPEARANCES:-**

**FOR THE CLAIMANT:-**      IN PERSON  
**FOR THE RESPONDENT:-**      MS G BOORER

### JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim that he was unfairly dismissed is not well founded and is dismissed.

### Reasons

1. By this claim the claimant brings a claim of unfair dismissal. I have heard evidence from the claimant on his own behalf and for the respondent from Mr Phil Keeler (Area Manager) Mr Martin John (Operations Manager) who dismissed the claimant, and Mr Simon Carroll who heard the appeal.
2. The claimant was employed by the respondent from 15<sup>th</sup> January 2013, initially as a tyre fitter and working up to becoming Centre Manager of Bristol Bedminster Centre on 10<sup>th</sup> December 2018. The claimant's Operations Manager, to whom he reported was Mark Noble, until Mr Keeler took over at the beginning of 2020. In January 2020 Ryan Etherington transferred from London and became the Assistant Manager. The claimant essentially submits that the matters for which he was dismissed were factually the responsibility of Ryan Etherington who concocted the evidence which appeared to implicate the claimant.
3. The events which led to his dismissal began in March 2020. Mr Keeler was informed during a meeting with Ryan Etherington in relation to some missing fleet tyres that the claimant had told him to "bin" paperwork for some jobs. At a meeting on 6<sup>th</sup> March 2020 Ryan Etherington informed Mr Keeler that the claimant had carried out work on a relative's BMW car on 5<sup>th</sup>

February 2020 for which Mr Etherington had booked some parts but in relation to which there were no records, and of concerns about two other vehicles who had their own tyres fitted and for which there were no records. On the same day Mr Keeler spoke with Mr Kevin Lloyd the manager of another Bristol branch who told him of allegations of work being carried out on a vehicle for cash for which there were no records. He subsequently informed Mr Keeler that the allegation was that this occurred on 1st March 2020 with £250 being paid in cash.

4. On 9<sup>th</sup> March he spoke to Shane Barrett who confirmed that he had helped the claimant with work on the BMW. It later transpired that the day the work was carried out was the 4<sup>th</sup> February 2020 not the 5<sup>th</sup> as originally thought. That same day he interviewed the claimant. In respect of the BMW he accepted that the work had been carried out but that the glow plugs that had been ordered had not been fitted and that he had ordered a timing tool to carry out the job as the centre did not have one and needed one in any event. He said Mr Noble had given him permission to do this before Mr Keeler had taken over. During the meeting he produced four glow plugs which he said were the ones that had been ordered but not used. However the records showed that the glow plugs that had been ordered were recorded as being fitted a zero cost to petrol VW Polo on 8<sup>th</sup> February 2020, although the job card was dated 23<sup>rd</sup> January 2020. Mr Keeler concluded that this was impossible as the parts were for a diesel BMW and that this had been done to disguise the fact that the purchases had been paid for by the respondent but used by the claimant for a private job that had not gone through the books. In addition the claimant stated that Shane Barrett was on a day off and helped with the vehicle but the records show that it was a working day to which the claimant had added overtime. The claimant stated that he had recorded the wrong day as authorised absence.
5. During a break in the meeting Mr Keeler discovered that the glow plugs provided by the claimant had different part numbers to those recorded and bought for the BMW. He contacted the suppliers who told him that those parts had in fact been bought for cash that morning. Mr Keeler concluded that they had been bought that morning and produced in an attempt to fool him into thinking that they had not been fitted to the BMW. In addition gaskets ordered for the BMW which the claimant said he could not recall fitting, were booked out on a Ford Fiesta on 6<sup>th</sup> February 2020. The claimant alleged that this had been done by Ryan Etherington although the job was booked out by the claimant.
6. Mr Keeler subsequently interviewed Ryan Etherington who denied any knowledge of booking the parts out on other vehicles.
7. On the 11<sup>th</sup> March 2020 he interviewed Mr Noble who said that he had not authorised the work, nor given any blanket authorisation.

8. The claimant had been suspended on 9<sup>th</sup> March 2020 and on 16<sup>h</sup> March 2020 he was invited to a disciplinary hearing to consider allegations of gross misconduct:-
  - i) Fraud – Specifically:
    - a) Fitting company parts to a family members car without payment and booking the items onto other customers invoices;
    - b) Fabricating the clock report system to show a member of staff working on their day off.
  - ii) Theft in the removal of company property without payment or authorisation;
  - iii) Breach of Retail Centre Operating procedure in fitting customer supplied parts;
  - iv) Failure to follow company procedure for processing the sale of goods.
  - v) Breach of trust and confidence;
  - vi) Lack of management control.
9. The hearing was conducted by Mr John on 20<sup>th</sup> March 2020 and the claimant was accompanied by a work colleague.
10. The claimant repeated much of what he had said to Mr Keeler. He had permission to carry out the work; he had not fitted any parts bought by the company to the vehicle; and the parts that were not used being logged to other vehicles had been done by Ryan Etherington, not him. The work had been carried out on Saturday 8<sup>th</sup> February which was Shane Barrett's day off.
11. After the meeting Mr John clarified with Shane Barrett via Mr Keeler that the work was carried out on Tuesday 4<sup>th</sup> February and that he had helped the claimant carry it out.
12. Mr John concluded that the claimant had carried out the work without authorisation, that he had fitted parts paid for by the respondent and had disguised that by fraudulently billing them to other customers. He had fabricated the clock reports for Shane Barrett. In consequence he was guilty of all the allegations outlined above. Given the seriousness of the allegations he concluded that dismissal was the only appropriate sanction.
13. The claimant appealed and the appeal was heard by Mr Carroll. As the Covid 19 lockdown had by then begun no face to face hearing was possible and the claimant agreed to have it determined on paper. Mr Carroll asked a number of questions of Mr Keeler to clarify. Mr Keeler confirmed that he had not authorised the work; that Mr Barrett had been paid for the day during which he had worked for the claimant on the BMW and that the claimant had adjusted the clock to authorise overtime for Mr Barrett; that the glow plugs given to him by the claimant had not been sold to the respondent but had been bought for cash on the morning of the meeting at which the claimant had produced them; and that there was no evidence that Ryan Etherington had falsely recorded the glow plugs and gaskets being fitted to the other vehicles, Mr Carroll concluded that nothing had been presented by the claimant that cast any doubt on Mr John's conclusions and dismissed the appeal.

Conclusions

14. The claimant was dismissed for misconduct which is a potentially fair reason for dismissal. The first question is whether that was the genuine reason for dismissal. No suggestion has been made that Mr John or Mr Carroll had any other reason for dismissal and having heard the evidence of both I am satisfied that a belief in the misconduct was the genuine reason for dismissal, and for the dismissal of the appeal.
15. The claimant's challenges relate to Mr Keeler. Before dealing with them this gives the claimant a difficulty as I accept that Mr Keeler did not make the decision to dismiss. However, for completeness sake, the claimant alleges that Mr Keeler bore him some animosity and wanted him to be dismissed because the claimant had revealed that he suffered from mental health problems. Mr Keeler denies this and there is no evidence to support it, but in any event the difficulty for the claimant is that he alleges that a number of people gave dishonest information to Mr Keeler. In my judgment on the information provided to him Mr Keeler simply had no alternative to the conclusion that here was a disciplinary case to answer.
16. Looked at overall I am satisfied that the claimant was genuinely dismissed because of a belief that he had committed the misconduct alleged.
17. The next questions are the well-known Burchell questions. Did the respondent conduct a reasonable investigation; did it draw reasonable conclusions as to the misconduct; and was dismissal a reasonable sanction. The range of reasonable responses test applies to each of those questions.
18. Before dealing specifically with them the claimant's fundamental challenge to the fairness of the conclusion that he was guilty of misconduct is that he should have been believed when he denied the allegations. Ryan Etherington had previously been at least alleged to have behaved in the way the claimant alleged he had; that no evidence of him fitting tyres for cash had ever been found and it should therefore have been concluded that he was the victim of false allegations being made against him; and that Mr Noble and Shane Barrett had reason to lie about their conduct or were at very least mistaken in their recollections.
19. In terms of the investigation in my judgement it clearly falls within the range reasonably open to the respondent. Mr Keeler obtained all the necessary information and interviewed all the relevant people. It is hard to see any further step that could have been taken.
20. The critical question is that of the conclusions. The allegations were of deliberate fraud and then of further fraud to disguise the original events. As set out above the claimant's central proposition is that he should have been believed and the others all disbelieved. The difficulty for him is that whilst it may be true that he was innocent of the charges the question is whether it fell within the range reasonably open to Mr John and Mr Carroll

to conclude that he was guilty on the basis of the information before them. In my judgement it was clearly open to them to do so. There was a wealth of evidence pointing to the claimant's guilt which it was open to them to accept and in my judgement it is not possible to conclude that their conclusions were in any way unreasonable. To give just one example the evidence was that the glow plugs given to Mr Keeler by the claimant which he asserted were those obtained for, but not fitted to the BMW, had been purchased that morning. The obvious conclusion is that the claimant was deliberately intending to mislead Mr Keeler. If that is correct all of the rest of his defence to the charges effectively falls away. It follows that in my judgement the conclusions drawn were at the very least reasonably open to Mr John and Mr Carroll. which

21. In terms of sanction in my judgement dismissal is clearly a sanction reasonably open to an employer for an employee with management responsibility who has been found to have engaged in fraud and the theft of company property; and further fraud to attempt to disguise having done so.
22. As those questions have all been answered the respondents favour the claim for unfair dismissal must be dismissed.

**Employment Judge Cadney  
Date: 15 August 2021**

Sent to the Parties: 24 August 2021

FOR THE TRIBUNAL OFFICE