



EMPLOYMENT TRIBUNALS

Claimant: Mr Derrick Dent

Respondent: Harding Bros Electrical Ltd

Heard at: East London Hearing Centre (by Cloud Video Platform)

Before: Employment Judge Peter Wilkinson

On: 27th April 2021 and 3rd June 2021

Representation

Claimant: Gerard Airey of Ronald Fletcher Baker LLP

Respondent: Robert Kerr of Shield HR Ltd

JUDGMENT

1. **The Claimant's claim for unfair dismissal brought under Part X of the Employment Rights Act 1996 is not well founded and is dismissed.**

REASONS

1. The Claimant was employed by the Respondent on a self-employed basis from around 1997. He became an employee of the Respondent on 29 May 2007 and was continually employed as a foreman until his summary dismissal for gross misconduct, by way of a letter dated 23rd April 2020.

2. The Claimant claims that he was unfairly dismissed.

3. The case was listed for one day via CVP on 27th April 2021. There were issues with the bundle not having reached me, despite having been lodged in time. It was apparent that the matter was not going to be concluded in a day and it was relisted for a second day on 3rd June 2021, when evidence and submissions were completed. There was insufficient time at the conclusion of the hearing to give judgment and reasons which were formally reserved.

4. I heard oral evidence from the Claimant and from Brendan Gates, Simon Wrenn and Emma McNabola for the Respondent.
5. I considered the documents in the bundle, which ran to some 257 pages.
6. I do not intend to make reference to all the documents to which I was referred or to all the oral evidence that I heard but I have considered all the relevant evidence and weighed it in reaching my conclusions.

The Issues

7. It being the Respondent's case that the dismissal was for gross misconduct, the starting point is that the Respondent must satisfy the Tribunal as to the reason for the dismissal being misconduct, must show that there was an honest belief in such conduct, reasonably held, after a proper investigation.

8. The conduct complained of is set out in the minutes or notes of the investigatory meeting on 14th April 2020 by reference to numbered photographs which are said to evidence electrical installation work which was completed in a manner which was said by the Respondent to be dangerous and unprofessional.

9. The Claimant's position was that the dismissal was a result of existing animus toward him by his line manager, David Marchant, rather than as a result of misconduct. Further, that in any event, there was no proper investigation so that any belief in misconduct was not reasonably held.

10. I therefore formulate the issues as follows:

- 10.1 What was the reason (or if more than one, the principal reason) for dismissal? In the event that the Respondent does not persuade me that the conduct complained of was the reason for dismissal, that is the end of the enquiry, as the dismissal was automatically unfair, and the Tribunal can proceed straight to remedies.
- 10.2 If the reason relates to the Claimant's conduct, then I must consider the following questions:
 - a) Did the Respondent believe that the Claimant was guilty of the conduct relied on as the reason for dismissal?
 - b) Was that belief held on reasonable grounds, informed by the Respondent having carried out such investigation as was reasonable in all the circumstances of the case?
- 10.3 If I am satisfied that the Respondent dismissed the Claimant by reason of the conduct complained of, having a reasonable belief in the same after such investigation as was reasonable, did the Respondent act reasonably in treating that as a reason for dismissal, pursuant to s98(4) Employment Rights Act 1996?

The reason

11. I heard evidence from Mr Wrenn that the Respondent had a complaint about loss of power at a residential development (at Chamberlain Place in Walthamstow) at which they had recently done works, including the installation of 9 distribution boards. That evidence was supported by contemporaneous email exchanges relating to the complaint.

12. I have seen photographs of what are said to be a number of those distribution boards, with what appears to be accepted to be burns and evidence of poor installation (dealt with in more detail below).

13. The Claimant's evidence was that the installations were satisfactory when he left them. He relied on the fact that there were electrical installation reports, or test certificates signed off by the quality manager, apparently evidencing satisfactory completion of the works. I am unconvinced that this is in any way persuasive. Mr Wrenn's account of the completion of these certificates is at paragraph 12 of his witness statement and appears to be uncontested. The electrician completing the works completes an electrical installation report and signs to indicate proper completion of the works. The quality manager checks for proper completion of the certificate. He does not check the work. That is the electrician's job. As Mr Wrenn put it in evidence, the electrician is marking his own homework. Were this not so, the quality manager would have to follow all the electrician's around, signing off their work. I accept that this is the procedure and accordingly, I do not consider that the fact of there being satisfactory electrical installation reports indicates whether the work was or was not properly completed. This is particularly so as the Claimant admitted in his evidence that he had made mistakes in the completion of at least one of the reports.

14. I have also seen emails and heard evidence which would appear to show at best a poor working relationship between the Claimant and David Marchant and at worst a positive dislike for the Claimant on the part of Mr Marchant.

15. Given in particular the supporting contemporaneous evidence that the complaint of poor workmanship did happen, and that the Claimant did do work on that site involving the installation of those boards, on the balance of probabilities, I find that the reason for the Claimant's dismissal was the conduct complained of and not some other reason, related to Mr Marchant's poor view of the Claimant.

Belief in misconduct

16. As noted above, there is contemporaneous evidence that a complaint was made of loss of power. Mr Wrenn deals with the report in his witness statement at paragraph 14. His account of receiving the email from David Marchant does not appear to be in dispute. The email is at page 143 of the bundle. That email contains details of an emergency call out on 2nd April to a loss of power at Chamberlain Place. There are details of the faults said to have been found and a plea by David Marchant to Simon Wrenn to have "someone take this off me". There is a reference to a number of supporting photographs. Those photographs are in the bundle at page 164 onward and show a number of problems said to have been found on the site by the Quality Manager, Jamie Bailey, who was sent to respond to the complaint. Those photographs clearly

show burning on the neutral connections, bare wire protruding from the connectors, installation related litter (an old distribution board cover and RCDs as well as a cardboard box apparently from a distribution board) and other matters potentially giving rise to concern as to the safety and reliability of the electrical works done on the site.

17. It does not appear to be in dispute that the Claimant was responsible for the original work in fitting these distribution boards, nor does it appear to be in dispute that the work shown in the photographs is, at best, done to a very poor standard.

18. I have considered the evidence of the Respondent's witnesses and read the emails and notes of the investigative meeting of 14th April 2020. I also considered the Claimant's evidence and note his comments, recorded in the notes to the investigation and the disciplinary meetings.

19. The notes of the meetings demonstrate that the essential dispute between the parties is not whether this work was defective, nor whether it was carried out to a poor standard. Aside from some admissions of responsibility for the more minor issues (failing to fit busbar insulators, failing to remove litter, failing to remedy excessive wiring length, fitting connectors in a distribution board, leaving out blanks), the Claimant's case was that someone else must have been on the job after he left and that they had been responsible for what was seen in the photographs. His response is summed up by his handwritten note on the meeting notes of 14th April: "I didn't leave any of these works like this. Someone else has been there".

20. Given the fact that it is agreed that the Claimant was responsible in the first instance for this installation and given the lack of any evidence that there was some intervention between his work and these results (considered below), I have come to the conclusion that the Respondent did believe that the Claimant was responsible for the misconduct complained of.

Reasonable grounds following a proper investigation

21. The Claimant complains that the investigation was unfair, procedurally and substantively.

22. It appears to be common ground that the Respondent invited the Claimant to an investigatory meeting. The letter inviting him to that meeting is in the bundle at page 145 and is dated 6th April 2020. The meeting was to take place on 14th April 2020, some 8 days after the letter was sent.

23. It also appears to be agreed that the Claimant was not sent the photographs or details of the issues before the investigatory meeting, although he did examine them at that meeting and provide his responses. He was plainly given the opportunity to give his side of the story, although it has to be said that it would have been better if the photographs and the complaint had been sent to him in advance of the investigatory meeting. Mr Wrenn agreed that in terms in his evidence.

24. The most troubling aspect of the investigatory process is undoubtedly the appointment of Mr Marchant to deal with it. Given the management structure of the company and the need to separate the investigation from any resulting disciplinary

process, there may in practice have been little choice. It appears to be agreed that Harding Bros Electrical Ltd had approximately 25 employees in total, most of them electricians. There appears to have been a fairly flat management structure. Mr Marchant was the Claimant's line manager. The only management level above him would appear to have been director level, specifically Mr Wrenn.

25. The reason that having Mr Marchant dealing with the investigation is problematic is his recorded response to the allegations. In his email to Mr Wrenn telling him of the complaints, he said "if this was down to me, I would be calling him back this morning, telling him to remove his tools from the van and do one". I did not hear evidence from Mr Marchant, the Respondent having chosen not to call him, and the Claimant having not sought to have him attend. I have heard what Mr Wrenn had to say about this, however. He suggested that Mr Marchant was upset because the work was damaging to the company and dangerous. He said "if people are undertaking work which could have resulted in a fire, people are entitled to be upset about it". The report of faulty wiring came against a background of at least one previous complaint, dealt with by a warning letter. Had David Marchant been a party to the disciplinary process, or had the disciplinary process proceeded solely on the basis of a report from Mr Marchant, I may well consider that it was tainted by his having pre-judged the outcome. As it is, his only involvement beyond reporting the issue to Mr Wrenn was to interview the Claimant and record his version of events, which was set out in the notes of the meeting of 14th April. I note that when, after the investigatory meeting, Mr Marchant suggested it was all a bit of a waste of time, because he (the Claimant) "just denied all", the response from Mr Wrenn was that it was not a waste of time and they had to see what he had to say to the allegation that he left it all like that. Given that, I do not consider that this comment in an angry email undermines the propriety of the investigation to such an extent as to make it unfair or unreliable.

26. The Claimant alleges that the meeting lasted just a few minutes and was not completed because Mr Marchant lost his temper and told the Claimant "*as we are getting nowhere, you might as well fuck off*". I heard evidence from Mr Gates, who took the notes of that meeting. Mr Gates says that no such words were spoken. I have considered both accounts. I have looked at the notes of the meeting of 14th April. The Claimant has signed those notes as being accurate. It is apparent from those notes that there were in essence answers to the questions asked. The Claimant's response is recorded, and he initialed where he considered it was correct. He amended where he did not consider it to be correct. There is no mention of being told to "fuck off" and the fact that he responded to the allegations and agreed to sign his response suggests quite strongly that he was given an opportunity to take part on the meeting and to respond to the allegations put. I find as a fact that MR Marchant did not curtail the meeting by saying "*as we are getting nowhere, you might as well fuck off*" and I accept the evidence of Mr Gates that no such words were used.

27. Mr Wrenn was cross examined robustly by the Solicitor for the Claimant and agreed that, with hindsight, there were fair criticisms to be made of the way that the process was dealt with. He agreed that there were disclosure issues relating to the evidence produced for this tribunal. It would have been better, he agreed, if there had been a written report from Jamie Bailey, who took the photographs and reported to David Marchant on the faults with the installation. Mr Wrenn gave evidence of the steps that he took to investigate. He checked whether any other companies had done work on the

site since the Respondent. They had not. He checked whether the Respondent had done any work on the site since the installation. He was satisfied that the only visit by an electrician to that site since the installation was by an electrician who went to change some light bulbs. That would not, he said have involved accessing the cupboards where the distribution boards were housed.

28. The disciplinary meeting was held on 17th April, chaired by Mr Wrenn. The letter giving notice of that hearing was sent out on 14th April. The ambit of the hearing is made clear, as are the grounds and the fact that dismissal was a possible sanction.

29. There was a degree of contention about some reports which Mr Wrenn sought after the meeting of 17th April but before the appeal meeting. I have concluded that this is something of a red herring. The reports (three of them in total) appear to be relied on to demonstrate that the work complained of was not satisfactory or acceptable. In fact, the Claimant does not suggest for a moment that the work shown in the photographs is acceptable. He agrees that it is not. What he says is that what is shown in the photographs is not his work. The reports do nothing to illuminate the answer to that question.

30. Despite the suggestion by his representative that the photographs could have been of some other installation, the Claimant does not actively suggest that this is the case. Apart from new-builds, I believe I am entitled to rely on my own knowledge that each electrical installation is different. The setting in which the distribution boards are installed, the surrounding fitting, the materials used, all mark out an installation in a manner that will make it recognizable to the engineer who installed it, at least for a reasonable period after the installation has been completed.

31. Further, it is suggested that it is possible that there was nothing amiss with the works and that the faults could have been the result of faulty parts. The difficulty with this argument is that the photographs clearly show a shockingly poor standard of work, with exposed conductors, missing blanks, missing busbar covers, a blank left lying on the floor and litter in an electrical cupboard plainly relating to the installation. None of these result from faulty parts. Rather, all of them were taken by the Respondent to be evidence of poor workmanship. There does not seem to be any real contention that there is evidence of poor and possibly dangerous work. Also, the same faults, consistent with failure to tighten the connections, according to the Respondent, occurred on several distribution boards for the installation of which the Claimant was responsible.

32. It was also suggested that the Respondent should have commissioned some sort of independent report into the works, sending an outside expert to examine them before reaching conclusions. It seems to me that this is misguided. What the Respondent was faced with was a fire risk in residential premises which needed to be addressed. The only way in which they might have been able to have an expert inspection before the remediation works would have been to effect the evacuation of the premises whilst that work was carried out. That is plainly not practical or reasonable. In any event, as noted above, the central issue is whether the Respondent was entitled to conclude that it was work carried out by the Claimant.

33. It appears to me that there was a separate investigation meeting, at which the Claimant was able to respond to the allegations. Although the notice for the disciplinary

meeting was short, the Claimant knew what the allegations were and had before that meeting seen the photographs of the work. He knew what was said and he knew that his job was on the line. Mr Wrenn, who chaired the Disciplinary meeting had received Mr Marchant's note of the investigatory meeting and had caused checks to be carried out to see whether anyone else could have done work on the relevant distribution boards between the installation and the development of the faults. He concluded that they could not.

34. The appeal was heard on 19th May, having been adjourned on 7th May for reasons which do not seem to me to be germane to this Judgment. There is a complaint from the Claimant that the appeal was heard by an employee who reports to Mr Wrenn, one Emma McNabola, who is a Regional Manager at an associated company and who said in her evidence that she had dealt with numerous disciplinary matters in her career. It is difficult to see what other choice the Respondent had. Mr Wrenn had heard the disciplinary hearing, as Mr Marchant, who reported to him, had dealt with the investigatory hearing. Mr Wrenn was the managing director of the company. There was no one senior to him to hear the appeal and the company does not have a dedicated HR department or officer.

35. The Claimant's concern was that Ms McNabola could not be independent as she was junior to Mr Wrenn and reported to him. Ms McNabola gave evidence that she made her own decision and that she would have felt free to overturn the decision taken by Mr Wrenn if she felt that was the right thing to do. I accept her evidence in that regard.

36. It was put to Ms McNabola that the note taker, a Ms Iqbal, who was a regional manager with the associated cleaning company, had said she did not understand how there could be a fault and it not show up for 2 ½ months after installation. Ms McNabola gave evidence that she did not recall that being said. In any event, I note that Ms Iqbal is agreed not to be an electrician but a manager with a cleaning company and Mr Wrenn (also not an electrician) gave evidence that he was told by Mr Marchant, who *is* an electrician, that the poor wiring would not necessarily cause a burn out straight away and it could take a few months before a burn out occurred. If it is correct that Ms Iqbal queried how this could be so and Mr Marchant considered that it could, I prefer the view of the electrician in so far as I have to decide.

37. Taken as an overall process, I consider that the Respondent has carried out a proper investigation, provided the Claimant with an opportunity to be heard and put his side of things and has had an effective appeal hearing.

38. At the end of the investigation process, the Respondent was faced with evidence that the installation of the distribution boards was carried out by the Claimant. There was evidence that no other electrician had worked on the distribution boards since installation. There were some limited admissions by the Claimant in respect of some of the complaints, but he denied the more serious complaints, saying that someone else must have been there.

39. Accordingly, reminding myself that it is not for me to decide whether the Claimant is guilty of the conduct complained of, I consider that the Respondent was entitled to conclude that the Claimant had carried out the defective works and that such belief was held after a reasonable investigation, having regard to all the circumstances, including

the size of the Respondent company and its resources.

Fairness

40. The applicable test is whether the employer acted reasonably, not whether the tribunal would have come to the same decision itself. In many cases there will be a 'range of reasonable responses', so that, provided that the employer acted as a reasonable employer could have acted, the dismissal will be fair: **Iceland Frozen Foods Ltd v Jones** [1982] IRLR 439. That test recognises that two employers faced with the same circumstances may arrive at different decisions, but both of those decisions might be reasonable.

41. The conduct complained of was plainly serious and was viewed as such by the Respondent. Installing distribution boards in a manner which risked an electrical fire would not just damage the Respondent's business, it would potentially leave them open to liability for what could have been very serious consequences.

42. I am in no doubt that dismissal was within the range of responses open to a reasonable employer in all the circumstances.

43. Accordingly, the Claimant's claim for unfair dismissal is dismissed.

Employment Judge Wilkinson
Dated: 31st August 2021