



EMPLOYMENT TRIBUNALS

Claimant: Mr G Coleman

Respondent: Geyer Electronic UK Limited

Heard at: Nottingham Employment Tribunal (remotely via CVP)

On: 26, 28 and 29 July 2021

Before: Employment Judge K Welch (sitting alone)

Representation

Claimant: In person

Respondent: Mr P Sangha, Counsel

RESERVED JUDGMENT

The Claimant's claim of unfair dismissal is not well founded and fails.

Employment Judge Welch

Date: 4 August 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

RESERVED REASONS

1. This is a claim brought by the Claimant against his former employer Geyer Electronic UK Limited for unfair dismissal.
2. The Claimant was employed by the Respondent from 1 March 2014 until his dismissal on 18 September 2019.
3. The hearing was a remote public hearing conducted using the Cloud Video Platform (“CVP”) under Rule 46.
4. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. No members of the public attended. The parties were told that it was an offence to record the proceedings.
5. From a technical perspective, I experienced some minor difficulties in connecting to the hearing, and there were some incidences with connectivity during the hearing, but these were quickly resolved and the hearing was completed without further incident.
6. The Claimant brought his claim on 6 January 2020 following a period of ACAS early conciliation from 7 October to 7 November 2019.
7. There was a preliminary hearing for case management purposes on 19 August 2020, at which the case was listed for a final hearing in Lincoln Magistrates Court on 22, 26, 28 and 29 July 2021. Unfortunately, due to Tribunal resources, the hearing was unable to commence on 22 July 2021 and was converted into a remote hearing via CVP commencing on 26 July 2021 for 3 days, with the first morning being designated as reading time.
8. I had been provided with an agreed bundle of documents of over 500 pages and page numbers referred to in this Judgment refer to page numbers within that

bundle. I was also provided with witness statements for all witnesses attending the Tribunal hearing.

9. I heard from the following witnesses:

- a. Mr J Reichmann, MD of the Respondent's parent company;
- b. Ms W Stewart, the Claimant's line manager;
- c. Ms R Boston, dismissal officer;
- d. Ms R Hancock, appeal officer; and
- e. The Claimant himself;

10. The Claimant accepted that he had been dismissed, although contended that his dismissal was unfair. The Respondent relied upon some other substantial reason ('SOSR') for the Claimant's dismissal due to the breakdown of the relationship between the Claimant and his line manager. The issues were agreed by both parties prior to the start of the hearing:

LIST OF ISSUES

Unfair dismissal

11. Was the Claimant dismissed for a potentially fair reason pursuant to s98(1)(b) of the Employment Rights Act 1996 ('ERA'), namely irreconcilable differences between colleagues which is some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held?

12. Did the Respondent act reasonably in treating the irreconcilable differences between the Claimant and Ms Stewart as a sufficient reason for dismissing the Claimant, in that:

- a. Did the Respondent form a genuine belief that there were irreconcilable differences between the Claimant and his manager, Miss Stewart?
 - b. Did the Respondent have reasonable grounds for that belief?
13. Was the dismissal of the Claimant fair in all the circumstances? In particular, was the dismissal within section 98(4) ERA and the band of reasonable responses available to the Respondent?
14. Did the Respondent follow a fair procedure when dismissing the Claimant?
15. Did the Respondent follow the ACAS code when dismissing the Claimant?
16. If the Claimant's dismissal is found to be unfair, which is denied by the Respondent, did the Claimant's conduct cause or substantially contribute to his dismissal? If so, by what proportion would it be just and equitable to reduce the compensatory award?
17. If the Respondent failed to follow a fair procedure, can the Respondent show that following a fair procedure would have made no difference to the decision to dismiss? If so, by what proportion would it be just and equitable to reduce the compensatory award?
18. If the Respondent failed to comply with the ACAS Code, was its failure reasonable? If the Respondent's failure to comply with the ACAS code was unreasonable, is it just and equitable to increase any award made to the Claimant?
19. Has the Claimant complied with the ACAS Code? If no, should any compensatory award made to the Claimant be reduced to take into account the Claimant's unreasonable failure to comply with the ACAS Code? If so, by what proportion should the compensatory award be reduced?
20. To what extent, if any, has the Claimant mitigated his losses?

21. To what, if any, compensation is the Claimant entitled?

Findings of fact

22. The Claimant was employed by the Respondent as a Field Sales Executive ('FSE') from 1 March 2014 until his dismissal which took effect on 18 September 2019, having been placed on garden leave for his notice period.

23. The Respondent is a manufacturer and distributor of small electronic components employing 2 employees (although at the time of the Claimant's dismissal this was approximately 5 employees) at one site within the UK.

24. The Claimant worked remotely; based at home but was required to travel to customers' or prospective customers' premises around the country and attend exhibitions on behalf of the Respondent. Originally there were two FSEs, but one had left in early 2015 and was not replaced until February 2019, which meant that the Claimant covered the whole of the UK until the replacement arrived. I accept that the Respondent always intended to replace the FSE who left in 2015.

25. At all material times, the Claimant reported into Ms Stewart, his line manager, who was an Internal Sales Administrator (ISA) and office manager in the Respondent's UK office. Another ISA, Ms Wieland, joined the Respondent in November 2017; she did not line manage the claimant but was responsible for sourcing appointments for the Claimant, including cold calls, and arranging his diary.

26. It is clear that the Respondent decided to take greater control over the Claimant's diary and frequency of visits to customers or prospects, which the Claimant did not welcome, as he was a very experienced salesperson and considered the travel expected of him was excessive.

27. The German parent company, and Mr Reichmann in particular, was closely involved in the UK subsidiary in which the Claimant worked.

28. There was a requirement for the Claimant to have 2 to 3 days a week 'on the road' sending back reports about visits/ cold calls which were shared with Germany by the ISAs, but not always Mr Reichmann.
29. The Respondent believed that it was losing contact with some of its customers following the departure of the other FSE and, therefore, in 2018, the UK office, and Ms Stewart in particular, was tasked with increasing the number of visits that the Claimant made. There was a change implemented such that when a visit to a client was arranged, the ISA and the Claimant would identify new potential clients in the vicinity of the customer with a view to cold calling them whilst in the area. The Claimant did not consider this was something which would work in the particular industry in which they operated.
30. The Claimant's evidence, which I accept, was that he made more visits during 2018 than 2017, despite 6 weeks of sickness absence, but in any event, despite this evidence, there was a perception within the Respondent that the Claimant was not making as many visits as he should.
31. This caused friction between the Claimant and the ISAs, including his line manager Ms Stewart.
32. There was evidence of emails between the Claimant, Ms Stewart and Ms Wieland which showed that the relationship between the Claimant and Ms Stewart was difficult.
33. The Claimant considered that there was clear evidence of lies and derogatory emails being sent to Mr Reichmann about him. I accept that the Claimant's perception was that lies were being told about him and that he was being painted in a negative way to Mr Reichmann, but I do not accept from the emails I have seen within the bundle that this was, in fact, the case.
34. In emails where the Claimant is alleging that lies have been told [for example pages 282-284] I do not consider that there was evidence that Ms Wieland "ha[d]

blatantly lied about a specific fact in an email to [Mr Reichmann]”. I find that there was some justification for what had been relayed in the email and I therefore cannot accept the Claimant was correct in his assertion, although I have no doubt that he genuinely believed it to be the case.

35. It was also clear that the Claimant’s email style, which he says was due to being busy with work or travelling, could be seen as “short and direct at best, unhelpful and provocative at worse...” and “...highlight an inflexible attitude by [the Claimant] towards [the Respondent]” as found by Miss Clements, the external HR consultant undertaking an investigation into a grievance raised by Miss Stewart, referenced below [page 331].
36. The Claimant submitted a grievance on 13 July 2018 [page 168] on the basis that there had been a breach of mutual trust and confidence, breach of contract and discrimination.
37. As the Respondent is a small business, it does not have an internal HR function, but instead uses an external HR firm, Emphasis HR, to provide assistance, and, where necessary, deal with grievances, appeals and disciplinary procedures.
38. Ms Jones from Emphasis HR was therefore appointed by the Respondent to hear the Claimant’s grievance. Following a hearing with the Claimant on 1 August 2018, a grievance outcome letter was sent to the Claimant partially upholding his grievance on 20 August 2018 [pages 248 to 249]. The parts upheld were that there was evidence that Ms Stewart had shouted at the Claimant and that the Respondent had agreed to match the Claimant’s former salary package.
39. A report relating to the Claimant’s grievance dated 20 August 2018 [pages 190-209] was sent to the Respondent. This concluded [page 208] that the Claimant was unhappy with the way that Ms Stewart and Ms Wieland interacted with him. It said that, “the relationship between [the Claimant] and [Ms Stewart] would appear to have fundamentally broken down; and this needs to be addressed and

rectified as a matter of urgency.” It went on to say that Ms Stewart had found it difficult to manage the Claimant and, when frustrated, raised her voice and shouted at him.

40. The report went on to give actions and recommendations at page 209, which the Claimant considered had largely been ignored. However, on looking at what happened following the grievance, I am satisfied that the Respondent actioned some of the proposals, although not necessarily exactly as expressed in the report. For example, the Respondent arranged for Ms Stewart to go on some management training; it asked Emphasis HR to carry out some mediation between the Claimant and Ms Stewart; also, it held a UK Sales Meeting referred to as a “Special Meeting” on the 22 August 2018 to “reintroduce procedures, to move forward so that we each know what is expected in order for us to handle clients and increase customer base in the most effective way.”
41. The Claimant appealed his grievance outcome and the appeal was considered by Ms McGarvey at Emphasis HR, who rejected his appeal by letter dated 24 September 2018 [pages 269-271].
42. The mediation session was arranged with Ms Michel of Emphasis HR on 25 October 2018. Ms Michel had arranged the session with Ms Stewart, but I am satisfied that there was nothing wrong in this. The Claimant was sent an email by Ms Michel on 3 October 2018 [page 274] which highlighted that both the Claimant and Ms Stewart would be given the opportunity to express their views and discuss their points in a constructive manner, but that, the “focus [would] be on how it’s going to work looking forward. [Ms Michel did] not want to review what has happened but look at your future plans.”
43. The Claimant replied to this on 11 October [page 274] to say that he was disappointed, as he did not consider that it was possible to move on without resolving his ongoing issues.

44. At the mediation, I am satisfied that the Claimant wished to revisit his grievance and ultimately did not consider that the mediation was going to prove successful and so left after approximately 40 minutes. The Claimant gave evidence that in light of the emails between Miss Stewart and Ms Michel prior to the mediation [pages 266-268 and 287], he considered it was a “stage managed” event which made a mockery of the mediation process. I do not accept this. In any event, the mediation was not successful and the relationship between the Claimant and Ms Stewart remained difficult.
45. In or around November 2018, the Claimant was informed that he could no longer claim expenses for calls made on the Respondent's behalf. He was told that he should be using his work mobile for telephone calls to clients, rather than his landline. It appeared that the Respondent was offering to pay 80% of the Claimant's bill for his landline/ broadband but would require an itemised bill should he wish to claim more. There was correspondence over this issue, which again suggested difficulties between the Claimant and Ms Stewart.
46. On 4 December 2018, the Claimant attended a review meeting with Mr Reichmann and Ms Stewart [page 296 to 297]. The notes of the meeting state, “[Mr Reichmann] said that there had been a significant reduction in Graham's work, with too much time spent on the grievance claim and subsequent appeal in recent months, adding that this had cost office staff considerable time also.” The meeting also refers to there being no pay increase at this time.
47. The notes were made available to the Claimant who said that there were many comments which he found to be incorrect. He was told to insert any comments in the Comments box.
48. The Claimant considered that Mr Reichmann had said that he would not get a pay rise for raising his grievance, which was denied. I can understand why the Claimant might have thought this from the notes of the meeting but I do not

accept that the Claimant was told that he would not get a pay rise on the grounds that he raised a grievance.

49. On 15 February 2019 the Respondent arranged for a follow up appointment for a BT engineer to attend the Claimant's property in order to complete the installation of a business line for the Respondent in the Claimant's home. Ms Stewart arranged the appointments and had informed the Claimant that it was a morning appointment. An earlier email for an earlier appointment had made clear that to the Claimant that the appointment was between 8:00am until 1:00pm. The Claimant considered that a morning appointment was only up to 12 noon.
50. The Claimant was due to take his partner to hospital and had booked time off from 3pm to do this. Due to a change in circumstances, the Claimant left his home shortly after 12 noon to go to the hospital, which he considered was his lunch hour. He did not inform the Respondent of the BT engineer's failure to attend before leaving home or check whether the engineer was still due to attend. The BT engineer was therefore unable to gain access and therefore Ms Stewart called the claimant to find out what had happened.
51. There was a difference in evidence concerning the conversation between the Claimant and Ms Stewart. Ms Stewart had prepared a typed note of the conversation the same day [pages 312-313] and the Claimant's partner provided a written statement on 28 July 2019 [pages 426 to 427]. It was clear in both versions that this was a heated conversation, although Ms Stewart denied raising her voice, which a witness in the office later confirmed.
52. Ms Stewart raised a grievance against the Claimant on 16 February 2019 [page 314]. This included a claim that the Claimant had continuously bullied and been insubordinate to her. The Claimant honestly admitted in evidence, as he had in the grievance hearing [page 329], that he had shouted at Ms Stewart, had accused her of writing derogatory comments about him to Mr Reichmann, blamed Ms Stewart for his inability to send in reports due to not having

broadband, told her that he would “see her in Court” and when she got upset, said that she was crying ‘crocodile tears’ and was the architect of her own problems. The Claimant, however, as reflected in his partner’s statement said that Ms Stewart “screamed at him” although this was denied by Ms Stewart.

53. Ms Stewart raised a grievance against the Claimant on 16 February 2019 [page 314] alleging continual bullying and insubordination by the Claimant and included her notes of the telephone conversation the previous day. Emphasis HR were again requested to deal with Ms Stewart’s grievance. Ms Clements was appointed to consider the grievance.

54. On 18 to 19 February 2019 a training meeting was held with the new FSE. The Claimant was not invited, despite having informed the Respondent that he was happy to train the new recruit. It was clear that this meeting discussed sales, which was the focus of the Claimant’s role.

55. The grievance report [pages 322 to 334] established that the “relationship between [Ms Stewart] and [the Claimant] has irrevocably broken down”, and that, having admitted the comments made during the conversation on 15 February 2019, the Claimant showed no “remorse or understanding this is an inappropriate way to speak to his line manager”. The report found that there was a consistent pattern in emails where the Claimant was dismissive, challenging and demonstrated a poor attitude towards Ms Stewart. It also said that Ms Stewart would like to try and work together but the Claimant believed that the only resolution was for one of them to leave.

56. The grievance report identified a number of actions and recommendations at page 334 highlighting that there were different approaches which could be considered; one of which was to commence a separate and independent disciplinary process with the Claimant which itself could have a number of possible outcomes, although dismissal was not stated to be one of them.

57. On 3 May 2019, the Claimant sent a second grievance to Ms Stewart [page 354]

on the following grounds:

- a. Unlawful deductions from wages;
- b. Malicious grievance from Ms Stewart;
- c. Ongoing bullying and harassment;
- d. Victimisation; and
- e. Attempts to change his contract of employment without consultation.

58. The Claimant did not wish to attend a hearing to discuss his grievance.

Emphasis HR were once again instructed to consider the grievance and Ms Hankinson was tasked with investigating the Claimant's grievance.

59. The outcome was sent to the Claimant on 3 July 2019 [pages 390 to 391] and partially upheld two of the allegations; namely:

- a. there were some evidence of bullying; being inappropriate comments captured in the Respondent's electronic system from Ms Wieland questioning the Claimant's activity and why meetings had not taken place; and
- b. the failure to invite the Claimant to the training meeting was partially upheld as victimisation.

60. All other allegations, including the claim that Ms Stewart's grievance was malicious, were not upheld.

61. The report into the grievance from the Claimant [pages 376- 389] concluded that there had been, "significant difficulties between [the Claimant] and his line manager [Ms Stewart] over the last two years resulting in two previous grievances. As a result the relationship has broken down."

62. The grievance outcome was sent to the Claimant on 3 July 2019 [pages 390-391] and gave the right of appeal, which the Claimant did on 7 July 2019 [pages 392-393]. Ms Boston from Emphasis HR was appointed to hear the grievance appeal. It was agreed that there would not be a face to face meeting. The

original decision was upheld and the outcome sent to the Claimant on 18 July 2021 [pages 410 – 411].

63. On 24 July 2019, the Claimant was invited to attend a disciplinary hearing to be chaired by Ms Boston of Emphasis HR [page 420] to discuss the grievance raised by Ms Stewart which showed evidence of continual bullying and insubordination by the Claimant which had resulted in a breakdown of the employment relationship. The investigation report was included (without the actions and recommendations page). The Claimant was offered the right to be accompanied and was told that, depending on the facts established at the hearing, the outcome could be dismissal for SOSR.
64. It was agreed that that were some settlement discussions with the Claimant so the disciplinary hearing scheduled to take place on 29 July 2019 was postponed until 14 August 2019.
65. The minutes of the disciplinary hearing [pages 430 to 439] show that the Claimant agreed that there was a breakdown in the relationship between himself and Ms Stewart. The Claimant requested an independent HR company deal with the disciplinary since he believed emphasis HR had a vested financial interest in the outcome.
66. The Claimant was sent a disciplinary outcome letter on 15 August 2019 [pages 442 to 443]. Ms Boston concluded that the relationship between the Claimant and the Respondent, particularly Ms Stewart, had irretrievably broken down and therefore gave notice of dismissal to the Claimant on the grounds of SOSR. He was placed on garden leave for his notice period, so that his employment ended on 18 September 2019.
67. The claimant appealed against his dismissal on 21 August 2019 [pages 444 – 445] saying that the behaviour of the Respondent towards him over the last two years had been orchestrated to force him out of the company. He also said that

there had been a failure to take into account the fact that Ms Stewart “repeatedly shouts and screams at me”. He also considered that the HR company had not been impartial.

68. The Claimant was invited to attend an appeal hearing by letter dated 27 August 2019 [pages 446-7]. The appeal hearing, which took place on 5 September 2019 [pages 450 – 456] was chaired by Ms Hancock. Whilst she is subordinate to Ms Boston, I am satisfied that she would have overturned the decision had she considered it inappropriate.

69. Ms Hancock undertook further investigations following the appeal hearing, by speaking with Mr Reichmann, Ms Stewart and Ms Michel (who undertook the mediation). She upheld the decision to dismiss the Claimant for SOSR and the decision was conveyed to the Claimant by letter dated 19 September 2019 [pages 481 – 490]. This was a very detailed outcome going into all of the issues raised by the Claimant.

Submissions

70. Both parties addressed me on the case and I set out brief details below.

71. The Claimant considered that the decision to dismiss him was taken much earlier than the disciplinary hearing, and had in fact been taken in August 2018. The Grievance from Ms Stewart was malicious, and the investigation had taken into account emails which he would not have seen due to having been on sick leave. The timing of the decision to dismiss him was suspicious since it waited until the new FSE has been recruited and trained (which had taken 4 years to recruit). He had never been subjected to disciplinary action during his entire career. The decision to dismiss him was not within the recommendations of Ms Stewart’s grievance report.

72. The Respondent contended that there was no predetermined decision to dismiss the Claimant. Ultimately, the Respondent was left in situation where there was

an irretrievable breakdown in the relationship; further mediation was seen as futile. As the Claimant did not accept his wrongdoing, disciplinary warnings would not resolve the situation.

73. It was a massive jump to say that the Claimant's dismissal had been orchestrated. There were repeated references to the recruitment of a new FSE throughout bundle.

74. The Claimant did not appeal to dispute that the relationship was broken down. The Respondent had a genuine belief that there was a breakdown, entitling them to dismiss for SOSR.

Law

75. The employer has to prove the reason for the dismissal and that it was one of the potentially fair reasons provided by section 98(1) and (2) ERA 1996. The Respondent relies upon the reason in s 98(1)(b) namely, "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held."

76. Once an employer has shown a potentially fair reason for dismissal, "the determination of the question whether the dismissal is fair or unfair ... (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case."

77. Substantial means 'more than whimsical or capricious'.

78. It is necessary for the tribunal to be satisfied that dismissal was, in all the circumstances, within the range of reasonable responses of a reasonable employer and that a fair procedure had been followed by the employer from Iceland Frozen Foods Ltd v Jones [1983] ICR 17, as subsequently approved by

the Court of Appeal in other cases. This is authority for the well-known proposition that a tribunal must not substitute its own decision on the reasonableness of a dismissal for that of the employer; rather the tribunal must decide, objectively, whether the decision to dismiss was within the range of reasonable responses of a reasonable employer.

79. I was referred to no authorities by the parties.

Conclusions

80. I am satisfied that there was a significant breakdown in the relationship between the Claimant and Ms Stewart, such that it was reasonable for the Respondent to consider that it was not possible for both of them to remain in the Respondent's employment. The outcomes of all of the grievances had found a breakdown in the relationship, and the Claimant appeared to accept that one of them had to go.

81. Whilst the Claimant's earlier grievance had been partially upheld showing that the Claimant had been shouted at by Ms Stewart, the later grievance by Ms Stewart was the catalyst for the Claimant being requested to attend a disciplinary hearing to consider his dismissal for SOSR.

82. I considered whether the decision to invite the Claimant to a disciplinary hearing over Ms Stewart was within the range of reasonable responses open to an employer in these circumstances, and was satisfied that it was in light of the outcomes from the grievances and the mediation.

83. I therefore considered that the Respondent had showed a potentially fair reason for the Claimant's dismissal, namely some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

84. I do not consider that the Claimant's dismissal was orchestrated, nor that the decision had been taken some months prior to his actual dismissal.

85. Having found a potentially fair reason for the dismissal, I have to go on to consider whether the dismissal was fair in accordance with section 98(4) ERA, including whether a fair procedure was followed and whether the Respondent followed the ACAS code of practice.
86. I took into account the size of the Respondent in coming to my decision, and considered that it had acted reasonably in treating this as a sufficient reason to dismiss the Claimant.
87. I am satisfied that the procedure followed was reasonable and was in accordance with the ACAS code of practice.
88. The Respondent had instructed an external HR company, and I am satisfied that the individuals who conducted the disciplinary hearing and the appeal against dismissal were not acting on instructions from the Respondent to dismiss the Claimant. Whilst Ms Bostock had considered the Claimant's first grievance appeal, I do not consider that this made it inappropriate for her to hear the Claimant's disciplinary hearing. Also, Ms Hancock was subordinate to Ms Bostock in Emphasis HR, but I am satisfied that she would have overturned the decision if she saw fit to do so.
89. It is not for me to give my decision on what I would have done in these circumstances. I have to consider whether the decision to dismiss the Claimant was within the range of reasonable responses open to an employer acting reasonably. I am satisfied that it was and therefore, the Claimant's claim for unfair dismissal fails.
90. The claim is therefore dismissed and the remedy hearing scheduled for 8 October 2021 will be vacated.

Case No: 1400045/2020

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