



# EMPLOYMENT TRIBUNALS

**Claimant:** Soufiane Amajane

**Respondent:** Metroline Travel Limited

**Heard at:** Watford Employment Tribunal by CVP      **On:** Thursday, 1<sup>st</sup> July 2021

**Before:** Employment Judge Mr. M. Salter

**Representation:**  
Claimant: Mr. R. Anderson, counsel  
Respondent: Ms. C. Nicolaou, solicitor

## JUDGMENT

It is the judgment of the tribunal that it does not have jurisdiction to hear the Claimant's claim of unfair and or wrongful dismissal.

## REASONS

*References in square brackets below are unless the context suggests otherwise to the page of the bundle. Those followed by a with a § refer to a paragraph on that page and references that follow a case reference, or a witness' initials, refer to the paragraph number of that authority or witness statement.*

*References in round brackets are to the paragraph of these reasons or to provide definitions.*

### INTRODUCTION

1. These are my reasons that were given orally at the final hearing on Thursday, 1<sup>st</sup> July 2021.
2. These reasons have been prepared at the request of Claimant, made by on 24<sup>th</sup> July 2021
3. The Employment Tribunal is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions>. The Employment Tribunal has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or

reasons from the register once they have been placed there. If you consider that these documents should be anonymised in any way prior to publication, you will need to apply to the Employment Tribunal for an order to that effect under Rule 50 of the Tribunal's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness.

## **BACKGROUND**

### The Claimant's case as formulated in his ET1

4. The Claimant's complaint, as formulated in his Form ET1, presented to the tribunal on 22<sup>nd</sup> June 2020, is in short, he was unfairly dismissed, and that that dismissal was wrongful. The Claimant's Claim Form identifies he had a solicitor's firm acting for him.

### The Respondent's Response

5. In its Form ET3, the Respondent accepted the Claimant was an employee and that he was dismissed, but denied that that dismissal was unfair, contending it was for a potentially fair reason, namely a reason related to the Claimant's conduct and that that dismissal occurred after a reasonable investigation and was within the band of reasonable responses open to it.
6. The Respondent's response does refer to the Claimant's resignation [25 §5] but does not raise the issue of whether the Claimant was employed at the time he says he was dismissed.

### Relevant Procedural History

7. The matter was made the subject of automatic directions and listed for Final Hearing on Thursday, 1<sup>st</sup> July 2021 [28]

### List Of Issues

8. The parties had produced an agreed list of issues.

#### *Unfair dismissal*

1. *What was the reason, or principal reason, for C's dismissal? R asserts that C was dismissed for conduct pursuant to section 98(2)(b) ERA. C alleges that the reason for dismissal was R's personal dislike for him, and that C's manager fabricated a claim of gross misconduct in an attempt to justify dismissal;*
2. *If C was dismissed for conduct did R, in the circumstances, act reasonably in treating it as a sufficient reason for dismissing C, including consideration of the following questions from the leading case of British Home Stores limited v Burchell [1978] IRLR 379:*
  - a. *Did R genuinely believe that C was guilty of the misconduct with which he was charged?*
  - b. *Did R have reasonable grounds upon which to sustain that belief? C alleges not because the belief, if genuinely held, was based upon the testimony of the official, which was not*

*a reasonable ground given the existence of CCTV footage which contradicted his evidence.*

- c. Did R carry out as much investigation into the matter as was reasonable in the all the circumstances of the case? In this regard C alleges that R ought to have:*
      - a. Sought out any witnesses to the incident;*
      - b. Obtained the police report; and*
      - c. Considered in more detail the CCTV.*
- 3. Was C's dismissal within the band of reasonable responses available to a reasonable employer? In this regard C says:*
  - a. C's conduct was not sufficiently serious to justify dismissal;*
  - b. R did not take C's length of service into account;*
  - c. R did not take into account the circumstances that led to C's dismissal; and*
  - d. R failed to consider sanctions short of dismissal.*
- 4. If the decision to dismiss C was substantively unfair, what is the likelihood that C would have been dismissed in any event had C acted fairly, and when?*
- 5. If C's dismissal was unfair to what extent, if at all, did C contribute to his dismissal?*
- 6. Did R adopt a fair procedure in dismissing C? If not, what is the likelihood (expressed in percentage terms) that, absent any unfair procedure, he would have been dismissed in any event, and when? C argues that R ought to have applied its capability procedure, or, at worst, treated C's conduct as misconduct rather than gross misconduct. C also says that C should not have been suspended, and when he was, he was not provided with updates as to the review of his suspension.*
- 7. Did R follow the applicable requirements of the ACAS Code? C argues that C's suspension was not in accordance with the Code.*
- 8. If C was unfairly dismissed, is C entitled to compensation and if so, how much, having regard to factors such as whether C to reasonable steps to mitigate his losses.*

*Wrongful dismissal*

- 9. Was C entitled to notice pay? In this regard, R argues that it was entitled to dismiss C for gross misconduct without notice or pay in lieu of notice.*

## **THE FINAL HEARING**

### General

9. The Claimant was represented by Mr Anderson of counsel, and the Respondent was represented by Ms Nicolaou, solicitor.
10. This was a remote hearing which was not objected to by the parties, being conducted entirely by CVP video platform. A face-to-face hearing was not held because it was not practicable and no-one requested the same it was conducted using the cloud video platform (CVP) under rule 46.
11. The parties agreed to the hearing being conducted in this way.
12. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no significant difficulties.
13. The participants were told that it was an offence to record the proceedings.

### Particular Points that were Discussed

14. From my reading into the papers it appeared to me there was an issue that had not been identified by the parties: namely, whether, at the time of the dismissal which he complains about, the Claimant was employed by the Respondent at all: he having resigned some time before hand, and that resignation having been accepted.

## **DOCUMENTS AND EVIDENCE**

### Witness Evidence

15. I had been provided with a witness statement from the Claimant which I had read in advance of the hearing.
16. I also had witness statements from the from the following witnesses on behalf of the Respondent:
  - (a) Joannis Evlogimenos, who conducted the disciplinary hearing; and
  - (b) Ian Dalby, who conducted the Claimant's appeal against dismissal.
17. From reading all the statements it appeared that the core factual matters relevant to the issue of jurisdiction did not appear to be in dispute, and when I raised the jurisdictional issue with the parties there was no objection to this point being taken on the grounds there was a relevant factual dispute.

### Bundle

18. To assist me in determining the matter I have before me today an agreed bundle consisting of some 135 pages prepared by the Respondent and a further 5 pages of Claimant's additional disclosure. I refer to this bundle by reference to the relevant page number.

## **MATERIAL FACTS**

### General Points

19. I made the following finding of fact. I make my findings after considering all of the evidence before me, taking into account relevant documents where they exist, the accounts given by the witnesses in their written evidence.
20. Matters on which I make no finding, or do not make a finding to the same level of detail as the evidence presented to me, in accordance with the overriding objective reflect the extent to which I consider that the particular matter assisted me in determining the identified issues. Rather, I have set out my principle findings of fact on the evidence before me that I consider to be necessary in order to fairly determine the jurisdictional issue.

### The Parties

21. Is a bus company, it runs routes through North London. The Claimant was employed by it as a bus driver. He was employed from 11<sup>th</sup> December 2017 [53].

### The Contract of Employment

22. The Claimant's contract of employment provides that:

12.2 You are required to give the Company one week's notice to terminate your employment. Notice should be in writing and given to your line manager.

[60 §12.2]

### The Background incidents

23. The Claimant was working on 11<sup>th</sup> January 2020. Whilst at work he had an interaction with a man the Claimant now knows to be Mr Cleveland Clarke, a Bus Controller. Bus Controllers are employed to ensure that drivers are complying with the Respondent's policies and practices when driving. It is not disputed that Mr Clarke requested the Claimant remove his hoody he was wearing whilst driving, as is required by the Respondent.
24. A similar incident occurred again the next day on the 12<sup>th</sup> January 2020, this incident is said, by Mr Clarke, to have resulted in a verbal altercation.

## **The Agreed Facts**

25. The following appear to not in dispute.
26. On the 12<sup>th</sup> January 2020, as a result of his interactions with the Claimant, Mr Clarke provided Information Reports concerning the Claimant wearing his hoodie and for the alleged confrontation that occurred. The Claimant complained about Mr Clarke's conduct.
27. The next day, 13<sup>th</sup> January 2020, the Claimant attends an investigatory meeting [73] and is told the matter will proceed to a disciplinary hearing [SA17-20]. He received a letter to that effect [79]
28. On the 15<sup>th</sup> January 2020 Claimant resigned from his employment [SA22], and returns his uniform, badge, locker key, photo card bus pass, bus engine starter key [81]. He did not attend work any time after this, and the

Respondent's Leaving Notice form records this date as the date Notice was given [105]

29. On the 17<sup>th</sup> January 2020: Respondent accepts Claimant's resignation [SW23][82]
30. On 22<sup>nd</sup> January 2020 the Claimant queries why he is being called to a disciplinary hearing when he has resigned. The Respondent, in error, stated the Claimant had to provide two weeks' notice of termination of his employment. The Claimant is paid his salary until this date, but not after this date.
31. The Claimant attended the disciplinary hearing on 27<sup>th</sup> January 2020, and is dismissed on this date. At the meeting the Claimant has union representation [102].
32. On 28<sup>th</sup> January 2020: Claimant seeks to retract his resignation in order to appeal dismissal [SA34][87] his letter states:

Subject: Withdraw a resignation and appeal dismissal decision

Due to unfair dismissal on 27-01-2020 and been chased and forced to attend disciplinary hearing by kings cross operations manager after I have resigned without having chance to find the right union representative in purpose of destroying my reputation and reference

I am cancelling my resignation and I am appealing the dismissal decision

33. The Claimant's appeal was unsuccessful.
34. The Claimant's ET1 was presented on 22<sup>nd</sup> June 2020 [2] it contains a claim for actual (as opposed to constructive) unfair and wrongful dismissal. It does not refer to the Claimant's resignation, and does not claim any shortfall in pay for the period after the Claimant's resignation. It contends his employment ended on 27<sup>th</sup> January 2020 [14 §1]

#### THE LAW

35. So far as is relevant the employment Rights Act 1996 states:

**94 The right**

- (1) An employee has the right not to be unfairly dismissed by his employer.

36. The Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 contains various references in the Order to a claim being brought by an employee, in particular Article 3(c) states:

**3. Extension of Jurisdiction**

Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—

...

- (c) the claim arises or is outstanding on the termination of the employee's employment.

My Conclusion

37. I conclude that at the date he was dismissed the Claimant was not an employee of the Respondent. I arrive at this conclusion as:

- (a) the claimant was suspended from work from 12<sup>th</sup> January 2020;
- (b) all parties agree the Claimant resigned from his employment on 15<sup>th</sup> January 2020;
- (c) upon his resignation the Claimant surrendered all his equipment;
- (d) the Respondent accepted the Claimant's resignation on the 17<sup>th</sup> January;
- (e) the Respondent is wrong when it says the Claimant had to give two weeks' notice of termination, he had to give one week;
- (f) his contractual notice period expired on 22<sup>nd</sup> January 2020, some 5 days before the Claimant's disciplinary hearing;
- (g) the Claimant was paid up to and including the 22<sup>nd</sup> January 2020;
- (h) after his dismissal, the Claimant refers to retracting his resignation in order to appeal;
- (i) in his claim form:
  - (i) the Claimant did not present a claim of constructive dismissal arising out of his resignation on the 15<sup>th</sup> January, either alone or in the alternative to his claim relating to the 27<sup>th</sup> January; and
  - (ii) the Claimant does not bring a claim for wages he says he was owed after the 22<sup>nd</sup> January 2020.

38. I conclude, therefore that as the Claimant was not an employee of the Respondent at what he says was the effective date of termination (the 27<sup>th</sup> January 2020), his employment ended no later than the 22<sup>nd</sup> January 2020 and so the tribunal does not have jurisdiction to hear the claim. Any breach of contract did not arise out of, nor was it outstanding at, the termination of his employment.

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Employment Judge Salter

Thursday, 30<sup>th</sup> September 2021

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON  
30<sup>th</sup> September 2021

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THY

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.