



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Goodale

**Respondent:** BKP Waste & Recycling Ltd

**Heard at:** Southampton

**On:** 27-28 September 2021

**Before:** Employment Judge Reed

**Representation**

**Claimant:** Mr M Dhariwal, solicitor

**Respondent:** Ms R Jones, counsel

**JUDGMENT** having been sent to the parties on 13 October 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. In this case the claimant Mr Goodale said he had been unfairly dismissed by his former employer BKP Waste & Recycling Ltd (“the Company”). He also claimed his dismissal was an unlawful act of age discrimination and that his summary dismissal was in breach of contract.
2. For the Company it was said that the reason for Mr Goodale’s dismissal related to conduct and was fair. Furthermore, it was said his dismissal had nothing to do with his age and since he had committed gross misconduct, he had disintitiled himself from notice.
3. I heard evidence from Mr Goodale himself and on his behalf from his former colleague Mr Whitehorn. I was also shown a statement of another former colleague Mr Gawn.
4. For the respondents I heard from Ms Dryden who took the decision to dismiss and Mr Tribe who undertook the investigation. On the basis of their evidence and the documents I was shown I reached the following findings of fact.

5. The Company is in the business of waste disposal and employs a number of drivers whose job it is to collect that waste. Mr Goodale was one such driver – in fact a lead driver – and had worked for the Company since 1997.
6. The events that led to Mr Goodale's dismissal occurred on 8 July 2020. On that day a trailer being used by a colleague of his, Mr Hicks, encountered a problem when trying to load crude oil. There was a blue isolator switch on the trailer he was using, that regulated the pressure in the system. If it was in the wrong position, then there would not be an air supply going through the system. It was indeed in the wrong position on this particular date and Mr Hicks did encounter problems. He noticed a pressure valve was going off on the top of the trailer, which it should not have been doing. The situation was resolved when he moved the blue switch into the correct position.
7. Mr Hicks brought this to the attention of Mr Tribe, the transport and operations manager. From what he said it appeared that someone had interfered with the blue switch and that interference must have taken place between the afternoon of the previous day when Mr Hicks had finished work and the morning when he collected his vehicle.
8. Mr Tribe looked at the relevant CCTV evidence and he found that Mr Goodale had actually attended the trailer T38 in that period. He considered that was somewhat suspicious and therefore suspended Mr Goodale and gave him a letter informing him of the suspicion that he had tampered with a truck of a colleague. At that stage that was as much as Mr Goodale knew about the allegation being made against him. However, in the course of a conversation between Mr Tribe and Mr Goodale later that day, Mr Goodale specifically referred, without prompting, to the blue switch.
9. Mr Tribe undertook an investigation. He interviewed Mr Hicks and Mr Goodale and produced a report. Mr Goodale was called to a disciplinary hearing on 23 July. He stormed out of that hearing and resigned but then withdrew his resignation and was called to a further meeting on 4 August. On that occasion he acted in a threatening manner towards Ms Dryden and indeed threatened to write off a company vehicle. The meeting was further adjourned to 5 August by telephone.
10. In the light of what she had read and heard, Ms Dryden concluded that Mr Goodale had interfered with the blue switch. She concluded that that was gross misconduct and in a letter dated 6 August she confirmed that he was being dismissed summarily. He was offered the opportunity to appeal against that dismissal but chose not to do so.
11. Under s98 of the Employment Rights Act 1996 there are five potentially fair reasons for dismissal. If I were to conclude that the Company had established one of those reasons, I would have to go on to consider whether the it acted reasonably in treating that reason as justifying dismissal.

12. An employer who terminates the contract of an employee is obliged to give notice of such termination, unless the employee is guilty of gross misconduct.
13. Under s13 of the Equality Act 2010 a person (A) discriminates against another (B) if, because of a protected characteristic, such as age, A treats B less favourably than A treats or would treat others.
14. Addressing firstly the claim of unfair dismissal I was obliged to look to the Company to establish a potentially fair reason for dismissal. The Company said the reason was conduct. It was suggested for Mr Goodale that the real reason he was dismissed was that the Company knew he was likely to be dismissed in any event by reason of redundancy and that this would save a substantial redundancy payment. That seemed very unlikely to me.
15. It was clear to me that Ms Dryden decided to dismiss because she considered Mr Goodale had interfered with a trailer belonging to the Company and that the reason was therefore Mr Goodale's conduct.
16. The next question was whether the Company acted reasonably in treating that conduct as sufficient reason for dismissal.
17. It was suggested that the Company's investigation was inadequate. Mr Goodale contended that there was an explanation for the blue switch being in the wrong position that did not involve his agency. He asserted that the switch was sensitive and could have moved simply as a result of vibrations as the trailer was driven along. He was entitled to suggest that Mr Tribe should have interviewed other drivers to see if there was support for his contention. In fact, Mr Tribe asked for tests to be carried out on the trailer to see how likely Mr Goodale's story was. Those tests indicated that it was not likely.
18. Mr Goodale suggested that an independent report might have been produced, rather than the internal one that was. However, the obligation on the Company was not to carry out an exhaustive enquiry but an adequate one. In my view it was reasonable for the Company to limit its investigation in that regard to an internal report.
19. In the course of his evidence Mr Goodale suggested that in the conversation with Ms Tribe on 8 July and the subsequent disciplinary meetings he suggested to the Company that on previous occasions he had submitted defect reports alerting them to the fact that the blue switch was sensitive. The Company did not seek any such reports. If he was telling the truth and he did so alert them, that failure would have been a serious one.
20. However, there was no support for that contention in the contemporaneous documents. More significantly, no reference was made to it in Mr Goodale's witness statement. The only explanation for its absence from his statement, it seemed to me, was that it was untrue. It was a matter that emerged in Mr Goodale's oral evidence. I concluded he was simply making it up to bolster his case.

21. The CCTV images clearly showed Mr Goodale accessing the control box where the blue switch was. His explanation for doing so was that he was recovering a spanner that he wanted to use it to tighten up certain pipes in the course of his work. Ms Dryden viewed CCTV footage from the site where he then worked which appeared to indicate he had not used a spanner in the way he said. That footage was never shown to Mr Goodale so he was not in a position to take issue with it. While this was not pivotal evidence, Ms Dryden can be criticised for failing to show it to Mr Goodale.
22. In short, there were grounds on which the Company could be justifiably criticised for the steps it took to investigate the allegation. However, taken in the round I concluded that they were not so serious as to render the dismissal unfair.
23. The next question was whether on the basis of the evidence it had, it was reasonable for the Company to conclude that Mr Goodale had interfered with the blue switch. It was reasonable for the Company to conclude that the switch had been moved before Mr Hicks took the trailer out. The CCTV images showed Mr Goodale accessing the control box where the blue switch was at the relevant time.
24. Ms Dryden was also bound to take into account Mr Goodale's statement when he spoken to on 8 July. Without any prompting, he raised the blue switch as being in some way related to his suspension. Frankly, the only sensible explanation for his doing so is that he knew there had been an issue with the switch, and the only way he could know that is if he had been responsible for it.
25. In short and despite the shortcomings in the investigatory process referred to above, Ms Dryden was reasonably entitled conclude that Mr Goodale had indeed deliberately moved the blue switch.
26. I then had to consider whether dismissal was a reasonable sanction. Mr Dryden reasonably concluded that Mr Goodale had deliberately sabotaged the trailer and exposed Mr Hicks and others to physical danger. A clearer example of gross misconduct would be difficult to imagine.
27. It is correct that Mr Goodale had lengthy service with the Company. Notwithstanding, I concluded that dismissal was a sanction reasonably open to the Company. It followed that Mr Goodale's dismissal was fair.
28. Turning then to wrongful dismissal, Mr Goodale was not given notice. That would amount to a breach of contract unless he had actually committed gross misconduct. I had to take a view as to whether he had.
29. The matters I have referred to above are evidentially relevant in this context. Mr Goodale accessed the control box at the relevant time and it appeared very unlikely that the switch could have moved without human intervention. He had invented evidence before me. I was satisfied he had never alerted the Company to the existence of defect forms in relation to the switch. He also raised another matter for the first time in cross examination, namely that he had urinated to the side of the trailer at the time of the events in the CCTV footage.

30. There was, in my view, overwhelming evidence that Mr Goodale had indeed interfered with the trailer in precisely the way alleged against him. I concluded that he had indeed committed gross misconduct and that therefore the Company did not breach his contract by failing to give notice of dismissal.
31. Finally, I turn to the age discrimination claim. Mr Goodale was aged 57 when he was dismissed. He asserted that younger employees had carried out acts of equal or greater gravity but had not been dismissed. He therefore said his dismissal was an act of age discrimination.
32. Mr Goodale referred to a 35 year old driver who had used his mobile phone on the site of a customer and a 37 year old who had crashed a Company vehicle. Neither had been dismissed. There was also a reference to an employee who had bullied another.
33. The acts of these former colleagues were simply not comparable to a deliberate sabotaging of Company property, putting the physical safety of others at risk. Insofar as Mr Goodale sought to rely on a hypothetical comparator, it was difficult to see how any employer, confronted with his acts and regardless of his age, would have acted differently.
34. I therefore accepted the evidence of the Company to the effect that Mr Goodale's age had nothing to do with his dismissal and it followed that his claim of unlawful discrimination failed.

Employment Judge Reed

Date: 10 December 2021

Reasons sent to the parties: 29 December 2021

FOR THE TRIBUNAL OFFICE

Note - 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.

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