



## EMPLOYMENT TRIBUNALS

**Claimant:** Ian Paisley  
**Respondent:** Royal Mail Group PLC  
**Heard at:** London (South) via Cloud Video Platform  
**On:** 9 December 2021  
**Before:** Judge of the First-tier Tribunal T Lawrence, acting as an Employment Judge

**Representation**  
**Claimant:** In person  
**Respondent:** Reehan Chaudhry Solicitor-Advocate, Weightmans LLP

## JUDGMENT

1. The Claimant was not unfairly dismissed by the Respondent.

## REASONS

### Introduction

1. The Respondent dismissed the Claimant for alleged gross misconduct relating to the Claimant's alleged behaviour towards railway employees and avoidance of payment for travel on trains on dates between 1 January 2019 and 14 April 2020.
2. The Claimant complains that the dismissal was unfair.

### The Hearing

3. The hearing was conducted on Cloud Video Platform. The Claimant joined the hearing from the London (South) hearing centre at Croydon, where he attended with a friend who played no part in the proceedings.
4. I confirmed with the Claimant and Mr Chaudhry that the documents for consideration were as follows:

- 4.1. Trial bundle of 242 numbered pages.
  - 4.2. Statement by the Claimant (in the form of a letter to a Charlie Collins).
  - 4.3. Witness statement by Jason Harvey.
  - 4.4. Witness statement by Julie Forde.
  - 4.5. Respondent's written submissions dated 9 December 2021.
5. I noted in preliminary discussion that one version of the ET1 Claim Form the Claimant had indicated that he claimed to have been discriminated against on the grounds of race, but that the claim had apparently not been particularised. However, the Claimant stated that he had never intended to make such a claim and that he did not pursue such a claim at this time.
  6. The Claimant was given time to re-read his statement and the witness statements by Mr Harvey and Ms Forde, after which he confirmed that he was fully prepared.
  7. Oral evidence was heard from Mr Harvey, Ms Forde and the Claimant.
  8. Mr Chaudhury relied on the Respondent's written submissions dated 9 December 2021 without further comment.
  9. The Claimant made brief oral submissions.
  10. I reserved judgment to follow in writing.

**Issues for determination**

11. There is no dispute between the parties that the Claimant was dismissed and that he has brought his claim of unfair dismissal within time.
12. The issues for determination are therefore:
  - 12.1. What was the reason or principal reason for the dismissal?
  - 12.2. Having regard to that reason, was the dismissal fair or unfair?
  - 12.3. If the dismissal was unfair, what is the appropriate remedy?
13. The Respondent relied on a fair reason for dismissal, namely gross misconduct.
14. Section 98(2)(b), Employment Rights Act 1996 ('ERA 1996') provides that the dismissal of an employee for a reason that relates to the conduct of the employee is potentially a fair reason.
15. The question of fairness is determined by section 98(4) of the ERA 1996, which is as follows:
  - '(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(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.'

16. In determining the issue of fairness, the Tribunal should have regard to the ACAS Code of Practice on Discipline and Grievance Procedures 2015, and take account of the whole process including any appeal: **Taylor v OCS Group Ltd [2006] IRLR 613**.

17. Applying **British Home Stores v Burchell [1980] ICR 303**, and **Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23**, the questions for the Tribunal are often as follows:

17.1. Did the respondent genuinely believe that the claimant was guilty of misconduct?

17.2. If so, was that belief based on reasonable grounds?

17.3. Had the employer carried out such investigation into the matter as was reasonable?

17.4. Did the employer follow a reasonably fair procedure?

17.5. If all those requirements are met, was it within the band of reasonable responses to dismiss the claimant rather than impose some other disciplinary sanction such as a warning?

### **Consideration and findings**

18. The Claimant was employed by the Respondent continuously from 29 November 2004 until his dismissal in July 2020, which was upheld in an internal appeal that was concluded by the Respondent in September 2020.

19. The Respondent's decision to dismiss the Claimant was said to be based on three matters of alleged misconduct, being:

19.1. Abusive behaviour towards railway employees at Gatwick Airport while wearing Royal Mail uniform between 1 January 2019 to 14 April 2020.

19.2. Abuse of position as a Royal Mail employee and key worker status due to the coronavirus pandemic to avoid payment for travel on trains.

19.3. Abusive behaviour towards railway employees at Gatwick Airport while wearing Royal Mail uniform in the morning of 15 April 2020

20. The Claimant accepted during his oral evidence that those matters could, if true, be considered to be gross misconduct under the Respondent's conduct policy.
21. The Claimant's alleged misconduct was referred to Mr Alan Lovelock, an employee of the Respondent, following a complaint by railway staff about the Claimant's conduct. The complaint was initially made on 29 April 2020 in an email by Mr Paul O'Brien, a Team Leader at Gatwick Airport Station, to Mr Gary Lomas, an employee of the Respondent who had managed the Claimant. Mr Lomas forwarded the complaint to other employees of the Respondent on 2 May 2020, one of whom on that same date referred the matter to Mr Lovelock to investigate.
22. On 4 May 2020, Mr Lovelock engaged in discussion with the Claimant regarding the complaint, during which the Claimant denied misconduct. A summary of the discussion was provided by Mr Lovelock in an email to another employee of the Respondent on 5 May 2020, which is included in the bundle. The Claimant has not disputed the accuracy of that summary.
23. By letter dated 14 May 2020 and 21 May 2020, the Claimant was invited to a fact-finding meeting with Mr Lovelock that was initially scheduled for 27 May 2020 which was varied to 28 May 2020 by the later invitation. The later invitation set out the three matters of alleged misconduct.
24. By a letter of 15 May 2020 by a Mr Nick Chant, a manager employee of the Respondent, the Claimant was notified of his precautionary suspension from work with pay pending further investigations into inappropriate behaviour towards railway staff at Gatwick Airport while wearing Royal Mail uniform.
25. Prior to the 28 May 2020 meeting with the Claimant, Mr Lovelock took witness statements from three members of railway staff, including Mr O'Brien, who claimed to have witnessed the alleged behaviour by the Claimant. Mr Lovelock also obtained a handwritten statement by another member railway staff who claimed to have witnessed the alleged behaviour by the Claimant and he obtained a photograph of a note taken by a police officer on a handheld digital device of a report by Mr O'Brien on 15 April 2020 alleging verbal abuse by the Claimant after he was challenged for attempting to travel without a ticket. Mr Lovelock also interviewed three employees of the Respondent.
26. The Claimant attended the fact-finding meeting accompanied by a trade union official Mr Bob Griffiths. The Claimant has not disputed the accuracy of the notes of the meeting, which are included in the bundle. The notes record that the Claimant declined the invitation to read the statements by the three members of railway staff and that he denied that he had behaved inappropriately and that he was wearing a uniform that identified him as an employee of the Respondent.
27. By a letter of 3 June 2020 by Mr Chant, the Claimant was notified of his continuing precautionary suspension from work with pay pending further investigations into the three matters of alleged misconduct.

28. On 5 June 2020, the Respondent notified the Claimant by letter that his case had been referred to Mr Harvey, because Mr Lovelock considered the potential penalty was outside of his level of authority.
29. On 10 June 2020, Mr Harvey wrote to the Claimant inviting him to a formal conduct meeting on 15 June 2020, providing all the statements obtained from the investigation and stating that the case could lead to the Claimant's dismissal. The Claimant attended that meeting accompanied by Mr Griffiths. The Claimant has not disputed the accuracy of the notes of the meeting, which are included in the bundle.
30. After the 15 June 2020 meeting, Mr Harvey interviewed Mr Lovelock, Mr Chant, and the Claimant's night shift manager Mr Shazad Hussan.
31. By letter dated 7 July 2020, the Claimant was notified of Mr Harvey's decision that he was guilty of the three matters of alleged misconduct, that he would be dismissed without notice, and of his right to appeal. The letter enclosed a report by Mr Harvey, dated 2 July 2020, giving reasons for the decision. By a further letter dated 7 July 2020, the Respondent invited the Claimant to a decision meeting scheduled for 10 July 2020, which was subsequently rescheduled to 13 July 2020 in a letter dated 10 July 2020.
32. The Claimant appealed on the 13 July 2020 and attended an appeal meeting on the 30 July 2020 that was conducted by Ms Forde. The Claimant again attended with Mr Griffiths and has not disputed the accuracy of the notes of the meeting, which are included in the bundle. The notes record that Mr Griffiths made several points challenging the decision. The Claimant has not denied that points were addressed in Ms Forde's appeal report, which describes her investigation of the matters by email correspondence with Mr Harvey and Mr Lovelock, and by a telephone interview with Mr O'Brien; the emails and a note of the interview with Mr O'Brien are included in the bundle.
33. I consider that the report by Mr Harvey dated 2 July 2020 provides cogent reasons for the Respondent's claimed belief that the Claimant was guilty of the three matters of alleged misconduct. I consider that those reasons are adequately supported by the evidence gathered during the investigation by Mr Lovelock. I also consider the alleged misconduct to be plausible. I consider that the report by Ms Forde cogently and adequately addresses the Claimant's grounds of appeal against the decision that was reached by Mr Harvey on behalf of the Respondent.
34. There were, in particular, several witnesses who provided consistent and adequately detailed accounts of the three matters of alleged misconduct by the Claimant, or of the Claimant's behaviour soon after such incidents that was consistent with the allegations.
35. There was evidence that Mr O'Brien made a report to a police officer of the Claimant's alleged behaviour on 15 April 2020.
36. I consider that the absence of body worn camera or closed-circuit television video footage of the Claimant's alleged behaviour would not reasonably have

undermined the weight of the evidence obtained by the Respondent during its investigation.

37. I consider that the allegations were dealt with in a timely fashion in the circumstances of coronavirus pandemic nor that the time taken, approximately two and a half months, undermined the quality of the investigation.
38. I do not consider that there was any procedural impropriety in the allocation of the investigation to Mr Lovelock. The Claimant has complained that Mr Lovelock was involved in a previous disciplinary investigation relating to alleged conduct by the Claimant, but there is no indication of actual nor any reasonable perception of bias in that or in the fact that the Claimant had been subject to previous disciplinary investigation.
39. The Claimant was designated as a leaver on the Respondent's data management system by Mr Harvey before the Claimant was informed of the decision to dismiss him. The Respondent has rightly apologised for what it describes as a regrettable error of procedure, but the evidence is that the designation was initiated by Mr Harvey on advice from other employees after he had made the decision to dismiss the Claimant. Therefore, I do not consider that the timing of the designation is indicative of any lack of propriety in the investigative and decision-making procedure leading to the Claimant's dismissal.
40. I find no evidence to support the Claimant's assertion in his statement that Mr Lomas abused his position or used subterfuge to procure the Claimant's dismissal. Mr Lovelock noted in his 5 May 2020 email that Mr Lomas had informed him that there had been one occasion when he and the Claimant 'had words in the canteen', but there was nothing indicative of impropriety in Mr Lomas's action in offering to receive a complaint about alleged misconduct by the Claimant from Mr O'Brien. The alleged misconduct was reasonably and fairly investigated thereafter in any event in my consideration.
41. Ms Forde wrote in the 10 September 2020 decision that, in deciding that dismissal was the appropriate sanction for the Claimant's misconduct, she had had regard to the he Claimant's length of service and previously clear record of conduct.
42. Ms Forde wrote that she considered whether it would have been appropriate to have given a lesser penalty. However, she wrote that she considered the Claimant's threatening, racist and abusive behaviour while being identifiable as a Royal Mail employee was gross misconduct.
43. Ms Forde noted that the Royal Mail Conduct Code provided that there were some behaviours that are so serious to warrant dismissal for a first offence and wrote that she considered the Claimant's behaviour towards the rail employees fell within that category.
44. Ms Forde noted that the current Royal Mail Code of Business Standard included a statement that the Respondent considered unacceptable behaviour that damages service to customers, the Respondent's reputation or efficiency, and

that such behaviour included dishonesty, violent or disorderly behaviour and abusive language. Ms Forde wrote that she believed that the Claimant's behaviour was far from those expected of the Respondent's employees, having caused upset and offence to several rail employees and by his attempts to use his key worker status to avoid paying rail fares. She wrote that, because the Claimant had been identifiable as an employee of the Respondent, it was likely he had damaged the reputation of the Respondent in the eyes of the rail employees he was abusive towards and anyone else who may have been passing through Gatwick station at the time of his abusive outbursts.

45. Ms Forde wrote that she considered that the Respondent needed to rely on its employees to behave appropriately, but that the Claimant's actions had led the Respondent to lose trust in the Claimant's ability to carry out any role within the Respondent's organisation without engaging in similar conduct again.

46. I find that it was within the band of reasonable responses for the Respondent, considering those factors in the round, to dismiss the Claimant rather than impose some other disciplinary sanction.

### **Conclusion**

47. The Claimant was not unfairly dismissed by the Respondent.

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**Judge of the First-tier Tribunal T Lawrence,  
acting as an Employment Judge  
3 January 2022**