



EMPLOYMENT TRIBUNALS

Claimant: Miss C Townsley

Respondent: Eden Mobility

Heard by: CVP

On: 16 March 2022

In Chambers 23 March 2022

Before: Employment Judge Shulman

Members:

Representation

Claimant: Mrs H Legras, Mother of the Claimant

Respondent: Mr W Bailey, IT Manager

RESERVED JUDGMENT

The Tribunal finds that the claimant was unfairly dismissed, but that she was 100% to blame for her dismissal and was in breach of contract and so her claim for breach of contract is hereby dismissed.

REASONS

1. Claims

- 1.1. Unfair dismissal.
- 1.2. Breach of contract.

2. Issues

The issues in this case related to:

- 2.1. What was the reason for the dismissal?
- 2.2. Was it fair?
- 2.3. If unfair, to what extent, if any, did the claimant contribute to her dismissal.
- 2.4. If an unfair dismissal, was the claimant entitled to notice or pay in lieu of notice.

3. The law

The Tribunal has to have regard to section 98(1)(2) and (4) of the Employment Rights Act 1996.

4. The facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it, finds the followings facts (proved on the balance of probabilities):

- 4.1. The claimant was employed by the respondent as the branch manager of the respondent's store in Huddersfield. The respondent was in the mobility business. The claimant was employed by the respondent from on or about 7 May 2013. She was a very good employee, with no written warnings, up to the incident leading to her dismissal. She was one of 110 employees in the respondent's organisation, although they did not employ a human resources person, delegating employee issues to the person in charge of wages.
- 4.2. The respondent carries out extensive checks on the takings at each of its 32 stores. Cash can be reconciled immediately but where credit cards are involved it can take as long as one month for reconciliation to take place and therefore the accounts department always operates behind. The accounts department closes the accounts on the 16th of the month following the previous month and it is only then that the respondent gets a full monthly statement, checking each and every transaction, cash, cheque or credit card.
- 4.3. As part of these checks accounts discovered £843.46 had not been banked in the previous month. The banking slip filled in by the claimant was found in drawer of her desk dated 9 September 2019.
- 4.4. There were two transactions which led to an investigation, one involved a Mr Hill and was a combination of credit card and cash, amounting to £595.00 in total.
- 4.5. There was photo evidence, shown to the Tribunal, which showed Mr and Mrs Hill and the claimant in the Huddersfield shop. It was a screenshot from CCTV on 18 July 2019. The Tribunal finds as a fact that there was no one else in the shop on that date when Mr and Mrs Hill were there, other than the claimant.
- 4.6. The respondent subsequently spoke to Mr Hill who agreed that he had given £500.00 in cash to "the lady" in the shop. He had paid another £95.00 by credit card. The respondent was of the view that the claimant encouraged the credit card transaction because she knew it would not be traced for three to four weeks.
- 4.7. It should be noted that there was another member of staff in the shop called Bev, who was not in the store when Mr and Mrs Hill did their transaction.
- 4.8. The claimant stated that she did not know if the person in the photo was Mr Hill and indeed did not know Mr Hill.
- 4.9. However the claimant did accept that Mr Hill paid £500.00 in cash and £95.00 by card.

- 4.10. The other transaction involved a Miss Watson, with whom the Tribunal finds was with the claimant and no-one was in the shop when the transaction was done. Miss Watson also paid cash, this time on 1 August 2019 in the sum of £300.00. Bev was working that day but the respondent's investigation showed that she was out of the shop on promotional matters at the time of the Watson transaction. The respondent said that they knew this was because they could trace Bev on a GPS tracker at the relevant time. The respondent did make a phone call to Miss Watson, who confirmed that she had paid £300.00 in cash. This was a deposit before the balance of £585.00 was due to come.
- 4.11. The claimant said that she did not recall the Watson transaction and that it was a lie that she was not the only person in the store.
- 4.12. On 16 September 2019 the accounts department discovery was made that there was money missing in the accounts. Included in the money missing was the £500.00 paid by Mr Hill and the £300.00 paid by Miss Watson. The claimant told us that if money was missing it was not her fault.
- 4.13. Prior to any investigation involving the claimant, the respondent knew that the claimant was on anti-depressants, was having problems with her daughter and was very stressed. However the respondent when speaking to the claimant she said that everything was fine.
- 4.14. The investigation, which started on 16 September 2019, found that two sums that never made it to the bank amounted to £843.46 and £365.51. The respondent formed the view that there was overwhelming evidence pointing to the claimant having had the money.
- 4.15. A Mr Jagger of the respondent went to see the claimant on 16 September 2019. The claimant was alone in the shop. Mr Jagger explained to the claimant that there was money missing and he had with him invoices and receipts relating to the Hill and Watson transactions. The claimant said that if there was money missing it was her responsibility as manager and she would pay it back.
- 4.16. The next day the claimant did not come to work because she said her daughter was ill and that she was in hospital, but she told the respondent in a text "hy", which they took to mean yes she would be in the next day but she did not come in the next day (18 September 2019). That day she said she was having a nervous breakdown. In another text on 18 September 2019 she said that money owed could be deducted from her October wage.
- 4.17. The respondent discovered that the claimant came into the Huddersfield shop around about 6.30am on 18 September 2019. This was captured on CCTV. It was discovered that some money missing from the float had been put back. The claimant dropped in the keys of the shop and removed some personal items.
- 4.18. Before us the claimant denied that she said she would pay the money back, despite the conversation with Mr Jagger and the text. She also told us that she left some personal items in the store. She further said in a text that she was going to self-certify sick for one week.

- 4.19. The claimant's explanation for the missing money before the Tribunal was that there was a fault on the Sage system but some of it was due to service at head office doing transactions, but she did not accuse Bev.
- 4.20. Between 16 and 18 September 2019 extensive investigations were going on. This included an interview with Bev, but for some reason minutes were not taken of that interview. Then in the middle of the texts between the respondent and the claimant, Mr Jagger stated that it had come to light after their meeting on 16 September 2019 that there was a lot more money missing (totalling £3,300.00) including petty cash and float and based on that they had no choice but to dismiss the claimant on the grounds of theft, that they were reporting matters to the police and that the claimant had been unable to explain how the money was missing. A dismissal letter followed dated 19 September 2019, which alleged a failure to offer any explanation for missing monies, having failed to attend work as the matter came to light, confirming that the respondent was contacting the police on the grounds of theft and dismissing her from her position with immediate effect.
- 4.21. The respondent told the Tribunal that they were familiar with the respondent's disciplinary rules and procedures, which give an employee an opportunity to present their side of the case and the right to be accompanied. The respondent admitted that they did not give the claimant this opportunity. They subjected her to disciplinary action without a hearing. They accepted that they did not follow their own disciplinary procedures. While it seemed that Mr Hughes, the joint managing director of the respondent, was running the investigation, but a group manager of the respondent, Mr Jagger, took it upon himself to dismiss the claimant without consultation with colleagues, especially Mr Hughes. The claimant was never suspended even though Mr Battersby, who would have done so, an area manager, did not understand that a suspension could take place over the telephone rather than face to face. Whatever the claimant's side of the story, apart from a brief interview on 16 September 2019, outside the disciplinary process, the claimant did not get the opportunity.
- 4.22. The claimant appealed against her dismissal and the respondent wrote back to her and offered her a meeting but this was never taken up.

5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. With regard to the matter of conduct the claimant offered to repay the money on two occasions. Why would she do this if she had not had the money? The claimant then proceeded in the Tribunal to deny that she had offered to repay the money. It is true that the evidence of her offer depends on the evidence of Mr Jagger, but the other offer is in writing. There is no doubt that monies did not reach the bank. There is further no doubt that the claimant was responsible for the two cash transactions for Mr Hill and Mr Watson. It is not for us to substitute our view for that of the respondent. The respondent's view must be within the band of reasonable responses. The respondent found no other

explanation than in its view when it carried out an investigation, that the claimant was responsible for the missing monies. I find that the respondent believed the employee was guilty of misconduct, in this case theft, and that it had in mind reasonable grounds upon which to sustain that belief and that it had carried out as much investigation into the matter as was reasonable in the circumstances.

- 5.2. Unfortunately however the respondent was met with a brick wall as far as the claimant was concerned and it is there that it failed in its duty, no matter what the outcome would have been. It did not share the detail of a key witness (Bev) with the claimant, it did not start a disciplinary process, including suspension, and then a hearing which could easily have been postponed until the claimant was in good health that of her daughter. The respondent manifestly ignored its disciplinary rules and procedures even though they knew that they existed and then the deed was done by text, an ill-advised manner of going about this. The Tribunal has mentioned failure to suspend. If the respondent had suspended then appropriate opportunities could have been made.
- 5.3. It is because there is a manifest failure to follow procedure by not invoking the disciplinary rules and procedures that the Tribunal has no option than to find that the claimant was unfairly dismissed, fair procedures not having been followed.
- 5.4. Having said that the Tribunal is of the view that the conclusion to which the respondent came namely that the claimant had committed theft was a reasonable conclusion. This is on the balance of probabilities, which is a different standard of proof to that in respect of criminal matters and this judgment has nothing to do with criminal matters. However the decision of the respondent as to the claimant's culpability is within the band of reasonable responses and we find it reasonable that the claimant should not benefit from her wrong doing, as found by the respondent and in the circumstances the Tribunal finds that the claimant is 100% to blame for her own dismissal and therefore should receive no compensation.

- 5.5. The respondent also has a claim for breach of contract but again as the respondent is of the view that the claimant has stolen money and that being the case the claimant is herself in breach of contract and we therefore are unable to make an award in the case of the breach of contract claim.

Employment Judge Shulman

Date 29 March 2022