



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Reynard

**Respondent:** Mr C R Heslop, trading as T H Heslop and sons

**Heard at:** Leeds Employment Tribunal (hybrid hearing)

**On:** 4 April 2022

**Before:** Employment Judge K Armstrong

**Representation**

Claimant: Mrs J Reynard (claimant's mother)

Respondent: In person

## JUDGMENT

1. The claimant was unfairly dismissed. The respondent shall pay to the claimant the sum of **£3,880**.
2. The respondent shall pay to the claimant the sum of **£20.33** in respect of outstanding holiday pay.

## REASONS

### Claims

1. The claimant claims unfair dismissal arising out of his employment with the respondent.
2. The claimant also brings a claim for unpaid holiday pay. This had in large part been resolved prior to the hearing save in respect of an outstanding payment of £20.33 in regard to pension contributions, which the respondent agreed at the outset of the hearing to pay direct to the claimant.

### Conduct of the hearing

3. This was a hybrid hearing. I was present at Leeds Employment Tribunal, as were Mr C Heslop, his father Mr M Heslop who gave evidence, and his mother Mrs P Heslop who assisted Mr C Heslop with some documentation. The respondent's two witnesses, Mr Leaf and Mr Williamson, attended by telephone.

4. The claimant attended via CVP, together with his mother Mrs Jane Reynard who appeared as a witness and also represented the claimant, and Miss J Cooper, the claimant's partner, who also gave evidence.

### Issues for the tribunal to decide

5. The issues for the Tribunal to decide were identified in the case management order of EJ Knowles on 23 November 2021, and confirmed with the parties at the outset of the hearing as follows:

1. Unfair dismissal:

- 1.1. Was the claimant dismissed? The parties agree the claimant was dismissed.
- 1.2. What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
- 1.3. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will decide, in particular, whether:
  - 1.3.1. There were reasonable grounds for that belief;
  - 1.3.2. At the time the belief was formed the respondent had carried out a reasonable investigation;
  - 1.3.3. The respondent otherwise acted in a procedurally fair manner;
  - 1.3.4. Dismissal was within the range of reasonable responses.

2. Remedy:

- 2.1. The claimant does not seek an order for re-instatement or re-engagement.
- 2.2. If there is a compensatory award, how much should it be? The Tribunal will decide:
  - 2.2.1. What financial losses has the dismissal caused the claimant?
  - 2.2.2. Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
  - 2.2.3. If not, for what period of loss should the claimant be compensated?
  - 2.2.4. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
  - 2.2.5. If so, should the claimant's compensation be reduced? By how much?
  - 2.2.6. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
  - 2.2.7. Did the respondent or the claimant unreasonably fail to comply with it?
  - 2.2.8. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
  - 2.2.9. If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?

2.2.10. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

2.3. What basic award is payable to the claimant, if any?

2.4. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

## **Evidence**

6. I have considered a bundle of documents comprising 98 pages, including witness statements, plus oral evidence from the witnesses identified above. Page references in bold refer to this bundle. I also considered a witness statement from Phil Thompson on behalf of the respondent in the format of an email dated 21 September 2021. He could not attend the hearing due to work commitments. As he could not be asked questions and there was no statement of truth attached to his statement I placed limited weight on his evidence.
7. It was agreed at the outset that there would be no need for any oral evidence relating to remedy. I heard representations from the parties regarding remedy. The claimant sought the basic award, compensation for one week loss of earnings and compensation for loss of statutory rights (**8**). The respondent's position was that as the claimant was paid for 2 weeks holiday on termination, he had no loss of earnings. There was no argument that he could have found alternative employment earlier. The parties agreed that a week's wage for the claimant was £450.

## **Background / findings of fact**

8. I record at the outset that I found that all the witnesses I heard in oral evidence to be honest. I am satisfied that they were all giving their true recollections of events and none were attempting to mislead me.
9. The respondent is a small family farming business which consists of Mr Christopher Heslop operating as a sole trader t/a TH Heslop and Sons. He also works alongside his father Mr Marmaduke (Duke) Heslop. His mother works on the administrative side of the business. They current employ just one permanent member of staff.
10. The claimant commenced employment with the respondent as an arable farm worker on 15 August 2011, following some previous work on a seasonal basis since 2009.
11. It is not disputed that by late 2020, the claimant's timekeeping was poor. He regularly attended at work late. I am satisfied and find that this is the case. The claimant does not really dispute it and at that time his partner Miss Cooper was in communication with the respondent about the difficulties the claimant was having getting up and to work on time. There was some dispute about what time the claimant was meant to start work but he himself acknowledged that he knew that other workers started at 7.30am and that he should really have been at work much earlier than he was. On

some occasions he would arrive in the middle of the day and take the morning as annual leave.

12. It is not disputed that at least part of the reason for the claimant's lateness was due to his mental health difficulties. He suffers from anxiety and depression and was seeking treatment for this in late 2020.
13. The claimant underwent some counselling sessions and his attendance improved in early 2021. He was offered a pay rise and increased responsibilities, on the proviso that he attended work by 8.30am. I pause at this point to observe that the respondent and their witnesses were at pains to emphasise that they never raised any issue with the claimant's quality of work. The issues they raised before the Tribunal were his timekeeping in terms of when he arrived at work and whether he had 'lapses' in time when he would go missing during the day, and suspicions that he was consuming alcohol whilst at work.
14. Mr Reynard was unclear in his evidence as to whether the problems with lateness persisted into the spring of 2021. The respondent says that they did. His partner accepted that the pay rise had been expressed as on the condition that he attended at 8.30am. Mr Chris Heslop explained that the pay rise was not implemented until April 2021 because Mr Reynard's punctuality had not improved. In his ET1 Mr Reynard refers to messages from December 2020 to April 2021 between his partner and Mr Chris Heslop, which Mr Reynard was aware of, expressing concern about his well-being and that 'I struggled to get up and go to work every day' (18). I am therefore satisfied that Mr Reynard's punctuality was still unreliable up until April 2021.
15. The respondent discussed the claimant's lateness on a few occasions with his mother and partner. Mr M Heslop attempted to discuss it with the claimant on one occasion, on the farm, but the claimant walked away from the conversation as he felt that it was being held in a public place where it could be overheard by other workers.
16. Around mid-April 2021 there was a telephone conversation between Mr Reynard and Mr C Heslop. This is not set out in detail in the witness statements, but I heard oral evidence about it. The conversation was not disputed. There had been a disagreement between Mr Reynard and Mr Heslop's cousin's son. Mr Reynard telephoned Mr Heslop and confronted him about this. He accepts making various threats including saying '*if you don't bring that little twat up in that field and tell him to wind his neck in and apologise I'm going to rip him out of that tractor and if his father wants to get involve I'll rip his fucking great nose off.*' Mr Heslop terminated the call and nothing further was said.
17. On 26 April 2021 Mr Kevin Williamson reported to Mr Chris Heslop that he has smelt alcohol on Mr Reynard on 22 April 2021 and previously on a date in late November / early December 2020. Mr Johnathan Leaf also reported to Mr Heslop that he had smelt alcohol on Mr Reynard on 8 March 2021. Mr Leaf was unable to confirm when he told Mr Heslop about this and whether it was before or after Mr Reynard was dismissed. I also have a written statement from Mr Thompson stating that on one occasion in winter 2020 Mr Reynard smelt of alcohol. He does not say when he told Mr Heslop

about this. In their oral evidence, all the witnesses including Mr C Heslop and Mr M Heslop were clear that they had never actually seen Mr Reynard drinking whilst at work.

18. I am not satisfied that Mr Reynard ever drank alcohol whilst he was at work, or that he attended on site whilst under the influence of alcohol. The evidence of Mr Leaf and Mr Williamson, whilst I accept their honesty, is a matter of opinion. Mr Reynard was never given the opportunity to respond to detailed allegations at or near the time as to when the incidents were supposed to have taken place and to provide any explanation. Therefore on the balance of probabilities I am not satisfied that he has consumed alcohol at work or been under the influence of alcohol whilst at work.
19. On Friday 14 May 2021 the claimant was at work spreading fertiliser. At around 10.00/10.15pm Mr Chris Heslop contacted the claimant to see if he was getting on OK, as they had expected him back at the farm much earlier. He said that he was about 5 minutes away from the farm. He explains in his claim form that there had been delays for various reasons including that he had to return to the farm to collect the loader from the farm, that he had to return another member of staff to the yard, that some of the fields were too wet to spread, that some objects had to be removed from the spreader before he could continue, and that he had some fertiliser left over that he stopped in a further three fields to spread on his return.
20. The respondent's witnesses do not accept these explanations, but it is accepted that Mr Reynard did not have an opportunity to give those explanations before his dismissal.
21. When the claimant returned to the farm, shortly after speaking to Mr C Heslop, he was confronted by Mr Duke Heslop. It is accepted by both individuals that the discussion became heated and voices were raised. Mr Heslop said words to the effect of '*you're not getting any fucking thing done*'. Whether he swore or not, he accepted and I find that he chastised Mr Reynard for not working efficiently. He also accepts and I find that he told Mr Reynard not to bother coming back to work.
22. The following day Mr Reynard contacted the respondent to ask if he still had a job. He sent an email to similar effect on Sunday 16 May and his mother also sent a text message.
23. Mr Chris Heslop and Mr Duke Heslop over the course of the weekend discussed the situation and decided to dismiss Mr Reynard as a result of the reports of him smelling of alcohol, the times that they felt he had not accounted for his time at work, and for his poor timekeeping.
24. A meeting was arranged for Monday 17 May 2021. There is a chronology prepared by the claimant's mother at **61** which states an email was sent to Mr Reynard by Mr C Heslop on 16 May at 19.15 as follows:

*'Good evening. This isn't a matter I feel appropriate to discuss over message or email so I would appreciate it if you could attend a meeting in my kitchen at 9.15am on Monday 17 May, Many thanks Chris Heslop.'*

25. Mr Heslop did not substantially dispute this and I accept that this accurately reflects the email that was sent. There was no notification to the claimant that a possible outcome of the meeting was dismissal. Mr Heslop accepted this, and he also accepted that the decision to dismiss the claimant had been taken prior to the meeting on 17 May 2021.
26. On 17 May 2021 there was a meeting which was attended by Mr C Heslop, Mrs Helsop, the claimant and his mother. The minutes are at **63-64**. They were taken by the claimant's mother. The claimant did not speak in the meeting. Mr C Heslop told the claimant that they had '*no other option than to terminate [his] employment.*' The reason given was that three people were saying that Mr Reynard had been under the influence of drink, and also '*time laps when working*'. Mrs Reynard asked for specific dates / times and who the individuals were. This information was not provided either during or after the meeting.
27. The claimant was paid two weeks holiday pay on termination of his employment.
28. On 21 May 2021 the claimant requested written confirmation of his dismissal.
29. On 24 May 2021 he received a dismissal letter. This is at **66-67** in the bundle. It is dated 22 May 2021. It states that the reason for dismissal is that:
- '1. You have been reported by various people on more than one occasion of being under the influence of alcohol at work.[...]  
2. Poor time keeping and performance. We have discussed this matter with you and your mother on numerous occasions, to no avail.'*
30. The letter goes on to state that the dismissal is effective immediately and the claimant's final day of employment is 21 May 2021.
31. The claimant appealed against his dismissal on 28 May 2021 (**69**). This was never actioned by the respondent. Mr M Heslop emailed on 11 June stating that due to '*exceptionally heavy workload we have not been able to progress this matter*' (**72**).

### **Relevant law and conclusions**

32. Section 98 ERA 1996, in so far as relevant, provides:

*(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*

*(a) the reason (or, if more than one, the principal reason) for the dismissal, and*

*(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

(2) A reason falls within this subsection if it—

[...]

(b) relates to the conduct of the employee,

(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.

33. I have considered the principles set out in *BHS v Burchell* [1978] IRLR 379 which provides guidance on the matters to consider when dealing with a dismissal for conduct. The principles are set out in the issues identified above.

34. I am mindful that I must take care not to substitute my decision for that of the employer, but to consider whether or not the employer's actions fall within the range of actions which are open to a reasonable employer.

35. I have also considered the ACAS code of practice on disciplinary and grievance procedures, which provides guidance that an employer should follow when handling disciplinary procedures – including investigating the allegations, giving the employee the opportunity to respond, inviting them to a formal disciplinary hearing, notifying them in writing of the charges against them, and providing a right of appeal.

36. In *Polkey v AE Dayton Services Ltd* 1988 ICR 142, HL, the House of Lords established that a fair procedure will involve a full investigation of the conduct, and a fair hearing to hear what the employee wants to say in explanation or mitigation.

## Conclusions

37. Considering the list of issues:

**1. What was the reason or principal reason for dismissal – did the respondent genuinely believe that the claimant had committed misconduct?**

38. I am satisfied that the reason for the claimant's dismissal was conduct. I am satisfied that the respondent did genuinely believe that he had committed the conduct alleged – namely consuming alcohol at work and poor timekeeping. No ulterior motive for the dismissal was put forward by

the claimant and I accept the evidence of Mr C Heslop that this was the reason for his dismissal.

**2. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?**

**2.1. Were there reasonable grounds for that belief? And**

**2.2. At the time the belief was formed had R carried out a reasonable investigation?**

39. I am satisfied that there were prima facie reasonable grounds for the belief – the respondent had been approached by third parties to say that they had honestly believed that the claimant smelt of alcohol while working. The claimant accepts that there were issues with his timekeeping. I am not however satisfied that there were reasonable grounds for their belief in his ‘lapses’ whilst at work, without any further investigation into the claimant’s version of events.

40. Nonetheless, the respondent had not carried out a reasonable investigation and this is where the respondent’s case falls into difficulties. They had not given the claimant an opportunity to explain any of the alleged incidents. They had not properly discussed his timekeeping and they did not give him the dates and times of his alleged alcohol consumption or ‘lapses’ in work time. Therefore there was no reasonable investigation.

41. In light of this, taking the two points together, the respondent did not have a reasonable belief in conduct, based on a reasonable investigation.

**2.3. Had the respondent acted otherwise in a procedurally fair manner?**

42. The respondent did not act in a procedurally fair manner. There was no proper disciplinary procedure applied. The claimant was not invited to an investigatory meeting. He was not given notice that he may be dismissed at the meeting on 17 May 2021. He was not given full details of the allegations against him. He was not given a proper opportunity to appeal his dismissal. It cannot be said that the respondent carried out a full investigation of the conduct, or that the claimant was given a fair hearing to put forward his explanation or mitigation.

43. I have considered the fact that the respondent is a small family run business and a small employer. I accept that the respondent had previously acted leniently towards the claimant in allowing him to attend late to work, and had shown some sympathy towards his mental health problems. However, not even the basic procedures for a fair dismissal were followed and therefore the dismissal was not procedurally fair.

**2.4. Was dismissal in the range of reasonable responses?**

44. Because the dismissal was procedurally unfair and there was no reasonable investigation, it was not open to a reasonable employer to dismiss the claimant for the reasons given, and the dismissal is unfair

**Remedy**



## 1. Compensatory award

45. In his schedule of loss, the claimant includes a sum for pay in lieu of notice of 4 weeks at £450 = £1,800. There is no claim for wrongful dismissal (i.e. dismissal in breach of contract or without notice pay) included in the claimant's claim form, and this was not identified as an issue at the case management hearing or when the issues were identified at the start of this hearing. Therefore I award no separate amount for this part of the schedule of loss. The claimant's losses are as set out below.
46. The claimant claims one week's pay at £450. I accept this is appropriate. The claimant could not have secured a job any earlier. This is not compensated for by the holiday pay as this was accrued and payable in any event.
47. The claimant claims £500 in respect of loss of statutory rights. I am satisfied that £350 is the appropriate figure and award this amount.
48. Total compensatory award before adjustments: £800
49. I then considered whether there is a chance that the claimant would have been dismissed in any event had a fair procedure been followed? There was a complete lack of procedure so it is difficult to speculate. However, I am not satisfied that he might have been dismissed for the alleged alcohol use because the evidence is very slim – it is based on hearsay of how he smelt on a number of occasions. I am also not satisfied that he might have been dismissed for reasons related to 'lapses' as this might have been explained. However, there may in my view have been a fair dismissal for the claimant's timekeeping issues. Therefore I reduce the compensatory award by 20%
50. The ACAS code of practice on disciplinary and grievance procedures applied. For the reasons set out above, I am satisfied that the respondent unreasonably failed to comply with this, and I increase the compensatory award by 25%.
51. The claimant had been persistently late. Whatever the reason for that, it was blameworthy conduct in the sense that it was conduct which could ultimately lead to dismissal. He was also confrontational with Mr M Heslop on 14 May 2021 and previously with Mr C Heslop in April 2021, which likely contributed to his dismissal by reducing the respondent's tolerance of any further incidents. I therefore am satisfied it is just and equitable to reduce the compensatory award by 20%.
52. Applying the adjustments in the order I have to produces a figure of **£640**
53. I accept the claimant's calculation of his basic award, being 9 weeks service at £450 = £4050
54. For the same reasons given above relating to the compensatory award, I am satisfied that it is just and equitable to reduce the basic award by 20% for conduct of the claimant before his dismissal. Therefore the Basic Award is **£3,240**

55. This gives a total for unfair dismissal of: **£3,880**

56. I also make an order for **£20.33** in respect of holiday pay

Employment Judge **K Armstrong**

Date: 5 April 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

Date: 28 April 2022