



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Charlesworth

**Respondent:** Buttershaw Lane Working Men's Club

**Heard at:** Leeds      **on:** 25 to 27 April 2022

**Before:** Employment Judge Cox

**Representation:**

**Claimant:** Miss Cheetham, counsel

**Respondent:** Ms Linford, counsel

## JUDGMENT

1. The Claimant was unfairly dismissed.
2. The Respondent must pay the Claimant £2,511.55 in compensation for his unfair dismissal.
3. For the purposes of Regulation 4(3) of the Employment Protection (Recoupment of Benefits) Regulations 1996:
  - a. the monetary award is £2,511.55
  - b. the amount of the prescribed element is £1,422.82
  - c. the dates of the period to which the prescribed element is attributable are 3 December 2020 to 27 May 2021
  - d. the monetary award exceeds the prescribed element by £1,088.73.

4. The claim for damages for breach of contract by failure to give notice of termination of employment fails.

## REASONS

1. Mr Charlesworth worked for the Club as steward from 1 November 2018 until 2 December 2020, when he was dismissed with immediate effect. He brought a claim to the Tribunal alleging that his dismissal was unfair and that he was owed notice pay.
2. At the Hearing, Mr Charlesworth applied to amend the basis of his unfair dismissal claim. The Tribunal refused that application, for reasons given to the parties at the time.

### Unfair dismissal: the things the Tribunal needed to decide

3. The first thing for the Tribunal to decide was what the Club's reason, or, if there was more than one reason, the main reason, for dismissing Mr Charlesworth was. The Club said that it was a reason relating to his conduct, namely, that he had come in to work on the Club premises on 28 to 30 October 2020 after his wife had tested positive for COVID and he had been told by the Club to stay at home. A reason relating to an employee's conduct is a potentially fair reason for dismissing them (Section 98(2)(b) of the Employment Rights Act 1996 – the ERA).
4. If the Tribunal accepted that Mr Charlesworth was dismissed for a reason relating to his conduct, it then had to decide whether, in all the circumstances of the case, the Club acted reasonably in treating his conduct as a sufficient reason for dismissing him. That involved considering what was fair and the merits of the case. In particular, the Tribunal had to decide whether the Club had a genuine belief that Mr Charlesworth was guilty of the misconduct for which it dismissed him, based on reasonable grounds after a reasonable investigation (British Home Stores Ltd v Burchell [1978] IRLR 379). Then the Tribunal needed to decide whether the decision to dismiss Mr Charlesworth, rather than given him a lesser disciplinary sanction like a warning, was within the range of possible responses that a reasonable employer might have made in the circumstances (Post Office v Foley [2000] IRLR 827). In assessing the reasonableness of the Club's decision, the Tribunal needed to bear in mind the Club's size and administrative resources (Section 98(4) ERA).

### The agreed facts

5. At the Hearing, on behalf of Mr Charlesworth the Tribunal heard oral evidence from Mr Charlesworth himself and Mr Womersley, who at the relevant time was a member of the Club's management committee and the Club's Secretary. On behalf of the Club, the Tribunal heard oral evidence from four members of its management committee: Mr Pearson, the Acting President at the time; Mr Wilson, who carried out a preliminary investigation into Mr Charlesworth's conduct; Mr Power, who was one of the panel of three members of the committee who decided to dismiss Mr Charlesworth; and Mr Hayhurst, who chaired the panel of three members of the committee who decided that Mr Charlesworth's appeal against his dismissal should not be upheld.
6. Most of the relevant facts of the case were agreed. The overall responsibility for the running of the Club lies with its management committee. In the main, the committee members were volunteers, but Mr Womersley was paid £413 a month as an "honorarium" to cover his work as Secretary. He was the person who liaised between the committee and Mr Charlesworth and gave him any instructions the committee had for him, although Mr Charlesworth was to a large degree left to his own devices in how he did his day-to-day work. The Tribunal was given no evidence on whether Mr Larvin, the Club's Treasurer at the relevant time, was given any payment for his work.
7. Mr Charlesworth began working as a steward for the Club in 2008. He had been a Club member and a member of the management committee for several years before that. His job involved ensuring that the day-to-day operation of the Club ran smoothly, with the assistance of his wife. That included maintaining the Club premises as a safe environment for the members. He and his wife lived in accommodation next door to the Club.
8. The Club is a small employer. It stated in its response form that it has 10 employees. It has nobody "in-house" to advise it on personnel or legal matters.
9. In October 2020, several of the Club's members contracted COVID 19. As a result, the Club arranged with one of its members for the use of a deep-clean machine on 28 October to clean the premises. At around 4pm on Tuesday 27 October 2020, when he had been at work for an hour or so, Mr Charlesworth received a 'phone call from his wife telling him that she had tested positive for COVID. Mr Charlesworth 'phoned Mr Womersley for advice about what he should do. Mr Womersley told him to stay put and he would get back to him. Around an hour later, Mr Womersley arrived at the Club with Mr Larvin and Mr Pearson to talk with Mr Charlesworth about what should happen next. The parties do not agree about what was said during that discussion.

10. Mr Charlesworth arranged by 'phone for someone to cover his duties and, once that person had arrived at the premises, which was at around 6pm, he went home.
11. Mr Charlesworth came back into the Club on 28 October 2020 to clean the lines for the beer supply, a task he always did on a Wednesday, and used the machine to begin a deep clean of the premises. On 29 October he came back into the Club to complete the deep clean. Mr Womersley and Mr Larvin were also on the premises, upstairs in the office, for some time on both these days, but the Club was closed to members.
12. In the evening on 29 October, Mr Charlesworth went for a COVID test, which had been arranged for him by his daughter.
13. At some point before this, Mr Charlesworth had arranged to go away on holiday with his family on 31 October. On 30 October, he came into the Club to do a handover to Mr Womersley, who had agreed to take over his duties while he was away. As Mr Charlesworth was having a smoke in the smoking shelter with Mr Womersley after completing the handover and just before leaving work, he received a text telling him that he had tested positive for COVID. He told Mr Womersley what the text said. The following day, he went away on holiday with his family.
14. Under the law as it stood at the time, a person who had tested positive for COVID after 28 September 2020 or had had close contact after that date with someone who had tested positive was under a duty to remain at home for 14 days. Failure to do so was a criminal offence (Regulations 2 and 3 of the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020) – “the COVID Regulations”).

#### **Did the Club have a genuine belief?**

15. In reaching its conclusions on the reason for Mr Charlesworth's dismissal and the reasonableness of the Club's decision to dismiss him, the Tribunal looked at what happened during the entire disciplinary process, that is, not just the initial investigation and disciplinary hearing but also the appeal hearing. The Tribunal also took into account that all those involved in the process on the Club's side were management committee members, all of whom were volunteers with no training or experience in handling disciplinary matters. The people who made the decision to dismiss were Mr Power, Mr Worsley and Mr Moon, the panel who conducted the disciplinary hearing. The disciplinary panel was chaired by Mr Moon. The people who decided not to allow Mr Charlesworth's appeal were Mr Hayhurst, Mr Wilson and Mr Wolstencroft. Mr Hayhurst chaired the appeal panel. At the Tribunal Hearing, Mr Power and Mr Hayhurst gave evidence on how the

two panels made their decisions. The Tribunal also read transcripts of what was said at the two hearings.

16. On the basis of that evidence, the Tribunal accepts that both panels held a genuine belief that Mr Charlesworth had come into the Club on 28 to 30 October 2020 when he had been under a legal obligation to self-isolate because of his wife's positive COVID test result and had been told by Mr Pearson on 27 October that he needed to stay at home.

### **Did the Club have reasonable grounds for that belief?**

17. Taking into account the overall disciplinary process and the very limited size and administrative resources of the Club, the Tribunal accepts that it had reasonable grounds, based on a reasonable investigation by Mr Wilson and the appeal panel, for its belief that Mr Charlesworth had attended the Club when under a legal duty to stay at home. The decision-makers knew that Mr Charlesworth lived with his wife. She had tested positive for COVID. It was reasonable for the Club to assume that he had been in close contact with her and was under a legal duty to stay at home as a result.
18. During cross-examination at the Tribunal Hearing Mr Charlesworth said that he had told Mr Womersley when he called him for advice on 27 October that he "had been nowhere near his wife", implying that the Club knew that he had not been in close contact with her. The Tribunal does not believe that evidence. Mr Charlesworth did not say it in his witness statement and nor did Mr Womersley refer to any such comment in his evidence to the Tribunal. Mr Charlesworth did not mention it at any stage in the disciplinary process. There was nothing to alert the decision-makers that Mr Charlesworth might not have been in close contact with his wife.
19. The Tribunal also accepts that the decision-makers had reasonable grounds for believing that Mr Pearson had told the Claimant to go home on 27 October. Mr Pearson said in a written statement he sent to Mr Wilson during the initial investigation that he had told Mr Charlesworth that he would have to leave the premises and isolate at home with his wife. He repeated that in person at the appeal hearing. The decision-makers also knew that Mr Charlesworth had in fact arranged cover and gone home, which was consistent with him having been told to do so.
20. On the other hand, the Tribunal does not accept that the decision-makers had reasonable grounds for believing that Mr Pearson had expressly said to Mr

Charlesworth that he needed to “self-isolate” or that he needed to stay at home for a specified number of days. In Mr Pearson’s written statement to Mr Wilson, he said that he had “explained the government guidelines” to Mr Charlesworth and that he would have to “leave the premises and isolate at home”. At the appeal hearing, on the other hand, Mr Pearson did not say that he had explained the Government guidelines to Mr Charlesworth. He said that he had asked Mr Charlesworth to leave the premises and self-isolate with his wife. When asked whether he explicitly told Mr Charlesworth that he had to isolate for 14 days and whether he explained why, he did not say that he had. His response was: “After finding out that his wife had covid we had a discussion that he had [to] leave the premises and go home as well.” Mr Larvin, who had not been interviewed in the initial investigation, told the appeal hearing that he had not heard Mr Pearson telling Mr Charlesworth that he had to “self-isolate” with his wife. Mr Womersley also told the appeal hearing that he had not heard Mr Pearson telling Mr Charlesworth this either. Mr Charlesworth himself denied that Mr Pearson had said he should “self-isolate” or explained the Government guidance.

21. The Tribunal accepted that this amounted to patchy and inconsistent evidence in relation to what Mr Pearson said on 27 October. Neither Mr Power nor Mr Hayhurst could explain to the Tribunal why they accepted that Mr Pearson had expressly said to Mr Charlesworth that he needed to stay at home for a particular length of time. None of the decision-makers appear to have considered the implications of the fact that Mr Womersley and Mr Larvin acknowledged that they were in the Club on the days when Mr Charlesworth was said to have been given clear instructions that he should remain at home, and whether that might call into question whether Mr Pearson had in fact given a clear instruction.
22. Regardless of whether Mr Pearson gave clear instructions to Mr Charlesworth to self-isolate at home for 14 days, the decision-makers believed that Mr Charlesworth was himself aware that the law required him to stay at home for a period of time if someone he was living with had tested positive for COVID. This belief emerged particularly clearly from the questions that Mr Wolstencroft posed to Mr Charlesworth at the appeal hearing. The Tribunal accepted that the decision-makers had reasonable grounds for that belief. There was extensive government publicity at the time that people in close contact with those who had tested positive should self-isolate. Mr Charlesworth’s wife had tested positive. Rather than self-isolate, Mr Charlesworth had continued to come into the Club on three successive days when there was a risk that he was himself infected with COVID.

**Was dismissal a reasonable sanction in all the circumstances?**

23. In summary, the Tribunal accepted that the decision-makers believed, and had reasonable grounds for concluding, that Mr Charlesworth knew that he was

breaking the law when he came into the Club. On the face of it, that amounted to serious misconduct that justified a serious disciplinary sanction. The Tribunal did not accept, however, in the unusual circumstances of this case, that the Club acted reasonably in deciding to dismiss Mr Charlesworth. The decision-makers knew that at least two members of the Club's management committee, Mr Larvin and Mr Womersley, were on the Club premises when Mr Charlesworth was there, and they had allowed him to continue carrying out essential work which was for the benefit of the Club. Neither man had taken any steps to stop Mr Charlesworth doing that work or insisted that he went home. One of those people, Mr Womersley, had specific responsibility for giving Mr Charlesworth instructions from the management committee. The decision-makers also knew that Mr Pearson had been told that Mr Charlesworth had been in the Club. The Tribunal heard no evidence that the decision-makers took into account in any way when deciding that Mr Charlesworth should be dismissed that members of the management committee itself had also been culpable. They should reasonably have done so and, had that happened, it would not have been reasonable for them to conclude that Mr Charlesworth should lose his job.

24. For that reason, and for that reason alone, the Tribunal concluded that the decision to dismiss Mr Charlesworth fell outside the range of possible reasonable responses in all the circumstances and that his dismissal was unfair.

### **Notice pay**

25. In relation to Mr Charlesworth's claim for notice pay, the Tribunal had to decide whether it was more likely than not that Mr Charlesworth had seriously, or fundamentally, broken his duties under his contract of employment. If he had, then the Club was released from its obligations under the contract too, including its obligation to give him notice if it wanted to terminate his contract.
26. On the evidence it heard, the Tribunal was satisfied that, for the purposes of the COVID Regulations, Mr Charlesworth was in fact in close contact with his wife after 28 September 2020 and was under a duty to remain at home for 14 days. He said in his evidence to the Tribunal that he had not been sleeping in the same room as her for two or three weeks before she got her test result, but he accepted that he was still sharing the rest of their home, including the kitchen and bathroom. It is more likely than not that this involved close contact within the definition in the Regulations, that is, face-to-face contact with the infected person at a distance of less than 1 metre or spending more than 15 minutes within 2 metres of them.
27. From the evidence it heard, the Tribunal concluded that during the discussion on 27 October it was Mr Pearson and Mr Charlesworth who did most of the talking. Mr Womersley and Mr Larvin made little if any contribution. Mr Charlesworth

explained the tasks that needed to be done, including the line cleaning and deepclean. Nobody expressly agreed that he should be the person who did them, although Mr Charlesworth and Mr Womersley assumed that he would be. Mr Pearson told the Claimant that he needed to go home to self-isolate with his wife and that cover needed to be arranged so that the Club could stay open that evening. After that, he left it to Mr Womersley to sort out how the other tasks would be covered.

28. The Tribunal was unconvinced by the evidence of Mr Charlesworth and Mr Womersley that Mr Pearson also agreed on 27 October that Mr Charlesworth would be coming back into the Club to do the tasks he had said needed doing. Mr Womersley appeared unsure of his position on this even when the Tribunal expressly invited him to clarify it at the Hearing. Mr Charlesworth's position on what was said during the discussion was inconsistent. In the investigatory interview with Mr Wilson, he said that Mr Womersley and Mr Larvin had told him that it was "ok to come in as usual to sort usual tasks". At the Tribunal Hearing, he accepted that they had not in fact said this. The notes of the investigatory interview do not record him as saying that Mr Pearson had also agreed that he should come in. When asked about this at the Tribunal Hearing, Mr Charlesworth said that this was a "glaring error" in the notes, he had 'phoned Mr Wilson to ask him to put it right and Mr Wilson had produced an amended draft. The Tribunal did not believe this evidence. Mr Charlesworth made no mention of it in his witness statement and there was no documentary evidence to support it.
29. The Tribunal was satisfied that Mr Charlesworth was aware, both from what Mr Pearson said on 27 October and from what he already knew himself, that he needed to go home and remain at home for several days because of his wife's COVID test result. There was a huge amount of publicity at the time about the rules on staying at home. From Mr Charlesworth's evidence to the Tribunal, it was apparent that he was in close touch with his daughter, who was actively managing the family's COVID status, arranging tests for Mrs and Mr Charlesworth and checking the rules on the internet on behalf of the whole family. Further, in his evidence to the Tribunal Mr Charlesworth accepted that his wife had in the past sent home a member of staff because she had come into contact with someone with COVID. The Tribunal did not believe Mr Charlesworth's evidence that he was unaware of his obligations under the law and that he did not think he needed to self-isolate because he had been sleeping in a different room to his wife.
30. The Tribunal accepted that, in coming into the Club premises when he knew he should be self-isolating, Mr Charlesworth was in breach of his duty under his contract of employment to take reasonable care for the health and safety of others. The Club may have been closed to members on 28 and 29 October, but there were at least two other people present on the premises. On 30 October he



spent time with Mr Womersley doing the handover. It was striking that, even at the Tribunal Hearing, Mr Charlesworth did not acknowledge that there was anything inappropriate about a person who may himself be COVID positive carrying out cleaning work to remove COVID traces from the Club premises, although he accepted that it was “possibly dangerous” for him to have been cleaning lines through which drink would be passing.

31. The Tribunal also accepted that Mr Charlesworth’s conduct in coming in to the Club when he should have been self-isolating and then going on holiday when he had himself tested positive for COVID amounted to a breach of his fundamental implied duty not, without reasonable and proper cause, to act in a way that was likely to destroy or seriously damage the relationship of trust and confidence between himself and the Club. Mr Charlesworth was well-known to the Club’s members as the person responsible for the day-to-day running of the Club. News no doubt travels fast amongst members of the Club and the wider community outside it. There was therefore a very real risk that Club members or members of the wider community would find out that, at a time when he should have been self-isolating because of his own COVID positive status or that of his wife, the Club steward had come into the Club and then gone on holiday. Mr Charlesworth’s actions had the potential to cause serious damage to the reputation of the Club and there is no doubt that they were likely to destroy or seriously damage the Club’s trust and confidence in him as steward. Even if two members of the management committee did not appear to be concerned about his presence on the Club premises, the six other members of the management committee involved in the disciplinary process certainly were.
32. These were fundamental breaches of Mr Charlesworth’s contract of employment. The Club was therefore entitled to dismiss him without notice. His claim for damages for its failure to give him notice of his dismissal therefore failed.

### **Remedy for unfair dismissal**

33. By the stage of the Hearing at which the Tribunal considered remedy, Mr Charlesworth was seeking an award of compensation, not an order for reemployment.
34. The parties agreed the basic calculation of the basic award at £5,093.64. In relation to the basic calculation of the compensatory award, the parties agreed that compensation for loss of statutory rights should be £350 and loss of earnings should be the £7,114.12, incurred in the period from 3 December 2020 until 27 May 2021, on which date the Claimant secured new and better-paid employment.
35. The Club argued that Mr Charlesworth should not be compensated for his loss of earnings for the whole of this period because he had failed in his duty to

minimise his loss by taking reasonable steps to find another job. On the basis of the evidence Mr Charlesworth gave and the documents included in the Hearing file, the Tribunal did not accept that argument. During the early part of the period in which Mr Charlesworth was unemployed, there was a national lockdown. The sector in which he had recent experience, hospitality, had been and continued to be severely affected by COVID restrictions. Even when the national lockdown was lifted in March 2021, there continued to be restrictions that inevitably affected job opportunities. With the assistance of his daughter, Mr Charlesworth signed on with job search sites soon after his dismissal and also made applications for at least three jobs, with Tesco, Bradford Council and another working men's club. After six months, he found work through an agency. This amounted to taking reasonable steps to replace his lost earnings.

36. The Club argued that it would be just and equitable for the Tribunal to reduce Mr Charlesworth's basic and compensatory awards to reflect his culpable and blameworthy conduct. In the case of the compensatory award, this had to be conduct that caused or contributed towards his dismissal (Sections 122(2) and 123(6) ERA).

37. As is apparent from the Tribunal's findings in relation to the claim for notice pay, the Tribunal accepted that Mr Charlesworth was guilty of culpable and blameworthy conduct by coming into the Club on 28 to 30 October when he knew he should have been staying at home. The fact that Mr Charlesworth went on holiday when he should have been self-isolating was not the main reason for his dismissal. From the evidence it heard, however, the Tribunal accepted that that too was blameworthy conduct that played a part in the decision-makers' assessment of whether he should be dismissed and therefore contributed towards his dismissal.

38. The Tribunal did not consider it fair to reduce Mr Charlesworth's compensation by 100% on account of this conduct, as the Club argued. At least two members of the management committee were on the Club premises when he was working there and did nothing to stop him doing so. The Tribunal does not consider that it would be just and equitable to award Mr Charlesworth no compensation for his dismissal in those circumstances. On the other hand, the Tribunal considered a 5% reduction, for which Mr Charlesworth argued, to be far too small to reflect the gravity of Mr Charlesworth's conduct. The Tribunal concluded that 80% was a fair reduction.

39. On that basis, the Tribunal reduced the basic award to  $£5,093.64 \times 20\% = £1,018.73$ . It reduced the compensatory award to  $£[7,114.12 + 350] \times 20\% = £1,492.82$ . That meant it made a total award of compensation of  $£1,018.73 + £1,492.82 = £2,511.55$ .

40. Mr Charlesworth was in receipt of Universal Credit during the period for which he was awarded compensation for loss of wages. The Judgment sets out the details required by the Employment Protection (Recoupment of Benefits) Regulations 1996.

Employment Judge Cox  
Date: 29 April 2022