



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Baskakovs  
**Respondent:** Staffline Recruitment Limited  
**Heard at Leeds**  
**On:** 19 and 20 April 2022 and  
in chambers 10 May 2022  
**Before:** Employment Judge Shulman  
**Representation:**  
**Claimant:** In person  
**(Interpreter:** Mr I Dashinsky (Russian Language))  
**Respondent:** Mr J Symons, Solicitor

## RESERVED JUDGMENT

The claim of unfair dismissal is hereby dismissed.

## REASONS

### 1. Claim

1.1. Unfair dismissal

### 2. Issues

The issues in this case are as follows:

2.1. What was the reason for the claimant's dismissal? (The respondent relies on conduct.)

2.2. If the claimant was dismissed by reason of his conduct, was his dismissal fair or unfair applying section 98(4) Employment Rights Act 1996 (ERA)?

2.2.1. Did the respondent have a genuine belief that the claimant had committed misconduct?

2.2.2. Did the respondent have reasonable grounds to substantiate that belief?

2.2.3. Did the respondent undertake a reasonable investigation?

2.2.4. Was dismissal within the range of reasonable responses?

2.2.5. Did the respondent undertake a fair procedure?

### **3. Matters occurring in or relevant to the hearing**

3.1. There was a degree of conflict on the evidence. Having heard the witnesses give evidence the Tribunal preferred, wherever there was conflict, the evidence of the respondent and its witnesses to that of the claimant.

3.2. The claimant was not represented. His evidence and other aspects of oral communication were translated by an interpreter. Taking into account the claimant's lack of representation, his conduct during the hearing was unsatisfactory. As I pointed out to him he did himself a disservice by reason of his conduct. I explained the process to him in the usual manner but he did not appear to wish to either listen or otherwise take notice. He refused to answer two very straightforward questions, despite being given every opportunity to answer them. He tried to introduce new documentation well into the hearing and several times. He told me that the documentation was one and a half years old. I took him through the case management orders at bundle page 90 and pointed out the time limits to list documents and then agree them (paragraphs 5 and 6 of the case management orders). A serious transgression, which was continued, was to seek to introduce evidence which was not relevant to the case, which I continually tried to explain to the claimant that he should not do. He was argumentative with the Tribunal. The claimant produced a witness statement, a substantial part of which contained irrelevant material. He was not cross-examined on any of his statement.

3.3. The claimant had a high opinion of himself, describing his "personal culture" as always showing exemplary behaviour, non-aggression and respectfulness.

3.4. The claimant made personal remarks in the direction of the Tribunal. One minute he said he was not allowed to open his mouth and quite the contrary was true. The Tribunal was exercising its duty under the Overriding Objective to ensure that the parties stuck to the point and did not introduce irrelevant material. The next minute the claimant said that he did not doubt the Tribunal's fairness and professionalism.

### **4. The law**

4.1. The Tribunal has to have regard to the provisions set out in sections 98(1)(a), 98(2)(b) and 98(4) ERA.

4.2. Mr Symons referred the Tribunal to some authorities. Having read them the Tribunal is not of the view that they make any difference to the determination of the issues, which are set out at paragraph 6. For that reason we do not find it necessary to recite and deal with those authorities.

## 5. Facts

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

- 5.1. The respondent employed the claimant as an agency worker from 15 August 2018 until his dismissal on 2 February 2021.
- 5.2. Nothing untoward appears to have happened in the relationship between the claimant and the respondent until 7 June 2020. On that date the claimant parked on a pedestrian walkway. He also did not pick up a cage carrier correctly. These issues were recorded by the respondent in what are known as care cards.
- 5.3. In an investigatory meeting on 15 June 2020 it was noted that the claimant had a very bad attitude when others were talking to him, that the claimant talked over people and did not admit when he was wrong. The claimant was told that his dignity at work needed to improve very fast or there may be repercussions. It was also recorded that the claimant was argumentative. The claimant signed the notes of the investigatory meeting recording these matters as true.
- 5.4. After the meeting the claimant recorded his unhappiness. He asked to return to his old department (clothing and home) but was told that it was not possible. He raised his voice to Aleka Patel's face, an account manager, who gave evidence before us. Such was the claimant's behaviour, his aggression and his refusal to listen that security had to be called to escort the claimant away.
- 5.5. This necessitated a disciplinary hearing on 19 June 2020, dealing with the care card issues, being a breach of health and safety and the claimant's aggressive behaviour.
- 5.6. The claimant accepted that he parked on the pedestrian walkway and that he did not pick up the cage carrier properly, but he refused to sign the care cards. A Dan Kellett had issued the care cards and the claimant told the Tribunal, referring to Mr Kellett, that the claimant had to deal with a young impertinent team leader, meaning Mr Kellett.
- 5.7. The meeting then dealt with the alleged attitude and conduct of the claimant. During this part of the meeting the claimant was accompanied by Jess Szczambura to "lower the tone". The claimant denied that on 15 June 2020 he raised his voice. At the outset of the meeting its purpose was explained to the claimant and the claimant signed the notes at the end as being true. Nevertheless the claimant described to the Tribunal that there was a horrible provocation against the claimant because his behaviour was good.
- 5.8. The outcome of the hearing was a written warning for the card care issues and a final written warning for the claimant's conduct. The warning letter dated 24 June 2020 gave the claimant a right of appeal. The claimant appealed in time but for some unknown reason the appeal was never dealt with.
- 5.9. On 7 December 2020 CCTV footage showed failure by the claimant to observe Covid-19 social distancing rules.

- 5.10. On the same date the claimant attended the canteen, when it was closed and asked for breakfast. The canteen operative, Nicola Dunn, explained that the canteen was closed. The claimant became angry and shouted at Ms Dunn. The claimant was very aggressive and demanded Ms Dunn to go into the kitchen and make food. The shouting continued and Ms Dunn's manager, Matt Gomersall, intervened. The claimant continued to demand food and then the claimant walked off shouting. Ms Dunn was very upset and felt threatened.
- 5.11. On the very next day the claimant appeared at the canteen but was told by Mr Gomersall that he, the claimant, would not be served that day. The claimant walked over to Ms Dunn and said "Get me breakfast." Ms Dunn said she could not and asked the claimant to step away. The claimant started to call Ms Dunn a racist (the claimant is of Russian origin) and the claimant accused Ms Dunn of discrimination. The claimant demanded to see Ms Dunn's boss. Mr Gomersall came round and the claimant asked not for him but for the boss in the office. Again Ms Dunn was upset, being spoken to in such an aggressive manner, being accused of racism and being intimidated. The claimant made Ms Dunn feel uncomfortable in her workplace and she felt unsafe to deal with the claimant again.
- 5.12. A disciplinary hearing was convened on 2 February 2021 and was held by Kelly Flavell, a recruitment lead, who gave evidence before us. Again the purpose of the hearing was explained to the claimant, who was accompanied and he signed the minutes as being true.
- 5.13. The claimant denied aggression and denied anti-social distancing. The claimant said the kitchen did sabotage and discrimination.
- 5.14. Ms Flavell told us that during his employment the claimant quite often used the term "racist" when things were not going his way and that she had witnessed him being argumentative and aggressive, although this was not the case when the claimant first started.
- 5.15. The claimant admitted to the Tribunal that he did speak to Ms Dunn, but that Ms Dunn did discriminate against the claimant.
- 5.16. The outcome of the disciplinary hearing was that the claimant received a final written warning for breach of health and safety guidelines during the Covid-19 pandemic, by not following social distancing rules on site. Further, the claimant breached the behaviour/conduct policy by displaying aggressive behaviour, being unable to follow instructions and failing to comply with the Dignity at Workplace policy. Taking into account the final written warning dated 24 June 2020 the claimant was dismissed on 2 February 2021. This was not a summary dismissal.
- 5.17. The claimant appealed to Simon Ogden, regional director, who heard the appeal on 1 April 2021 and gave evidence before us. Mr Ogden told us that the meeting frequently became heated and that the claimant did not consider he had done anything wrong as regards the alleged conduct. No explanation was given on the matter of social distancing. The claimant signed the notes of the appeal meeting and was accompanied at it.

- 5.18. Mr Ogden considered the claimant's conduct on 7 December 2020 and 8 December 2020 amounted to gross misconduct. He considered it likely that the claimant had been rude and aggressive to Ms Dunn. He felt it unnecessary to take the final written warning of 24 June 2020 into account and that the conduct of the claimant on 7 and 8 December 2020 was sufficient to justify a dismissal. This was confirmed in writing on 13 May 2021.
- 5.19. The disciplinary policy of the respondent was not produced to the Tribunal and in its absence the Tribunal could not find as a fact that an appeals officer could increase the penalty on appeal.
- 5.20. What was produced to the Tribunal was the Dignity at Work policy which gave everyone the right to be treated with dignity and respect and to work without harassment. The claimant told us that he could not remember signing it but we find as a fact that his signature is not necessary for the purposes of this hearing.

## **6. Determination of the issues**

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

- 6.1. Referring to the first issue (see paragraph 2 above) the Tribunal finds that the reason for the claimant's dismissal was the conduct of the claimant in the canteen on 7 and 8 December 2020. It appears that the dismissing officer did take into account the earlier final written warning (24 June 2020).
- 6.2. Was the dismissal fair or unfair applying section 98(4) ERA?
  - 6.2.1. Did the respondent have a genuine belief that the claimant had committed misconduct? The respondent had the evidence of Ms Dunn and Mr Gomersall for the events of both 7 and 8 December 2020. The respondent took into account at the time of dismissal the evidence supporting the final written warning dated 24 June 2020. The appeals officer did not. There was in the conduct leading up to that final warning sufficient grounds to sustain that belief. The grounds supporting the final written warning were supplemental to the conduct for which the claimant was finally dismissed. In any case for whatever reason from and after 7 June 2020 there was what we will describe as unpleasant and aggressive conduct, which incidentally the claimant would not accept, either during the process whilst he was still employed or in this Tribunal.
  - 6.2.2. Did the respondent have reasonable grounds to sustain that belief? The evidence of Ms Dunn was of itself very troubling. For a man to behave in such an aggressive way to a woman, so as to frighten her, goes to the reasonableness of the respondent's belief. Indeed in the earlier incident, giving rise to the final written warning the claimant displayed aggressive behaviour, by raising his voice into Aleka Patel's face necessitating in that case the calling of security. The behaviour for which the claimant was dismissed was witnessed additionally by Mr Gomersall.

- 6.2.3. Did the respondent undertake a reasonable investigation? This comprised the evidence of Ms Dunn and Mr Gomersall. There was an investigatory meeting which preceded the final written warning. There was a full disciplinary meeting in relation to the final conduct for which the claimant was dismissed.
- 6.2.4. Was the dismissal within the range of reasonable responses? The Tribunal has no hesitation in finding that the unacceptable nature of the claimant's conduct to Ms Dunn in particular fell clearly so as to allow dismissal of the claimant to be within the range of reasonable responses. This was supplemented by the earlier conduct and the continued refusal by the claimant to come to terms with it, both in the disciplinary hearing and in the Tribunal.
- 6.2.5. Did the respondent undertake a fair procedure? The Tribunal says yes, except that the appeal procedure following the final written warning seems somehow to have not happened, due to no fault of the claimant. However the Tribunal is of the view that the lack of this would not have made any difference to the incidents which occurred on 7 and 8 December 2020, which were the principle reasons for his dismissal.
- 6.3. We have dealt with all of the issues, which overwhelmingly show that the respondent has proved conduct on the balance of probabilities and that it has discharged the onus upon it with regard to fair procedure, whereas the claimant has not shown that the dismissal was unfair. In all the circumstances the claimant's complaint of unfair dismissal is hereby dismissed.

**Employment Judge Shulman**

Date 13 June 2022

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