



# EMPLOYMENT TRIBUNALS

**Claimant:** Michael Bunker

**Respondent:** Royal Mail Group Ltd

**Heard: by CVP**

**On: 12 & 13 May 2022**

**Before:** Employment Judge Taylor

## **Appearances**

For the claimant: In Person

For the respondent: Mr Foster

Reasons having been given orally and a judgment having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# WRITTEN REASONS

## **Introduction**

3. This is the Judgment in respect of the Claimant's claim for unfair dismissal against the Royal Mail Group Ltd heard on 12<sup>th</sup> and 13<sup>th</sup> May 2022. I will hereinafter refer to Royal Mail Group Ltd as Royal Mail for ease.

## Claims and Issues

4. The correct name of the respondent is the Royal Mail Group Limited and the claim shall be amended to reflect this.

5. A list of issues was agreed at the outset of the hearing as follows:

(i) What was the reason or principal reason for dismissal?

(ii) Was it a potentially fair reason?

(iii) Whether the respondent genuinely believed the claimant had committed misconduct.

(iv) Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?, in particular, whether:

a. there were reasonable grounds for that belief;

b. at the time the belief was formed the respondent had carried out a reasonable investigation;

c. the respondent otherwise acted in a procedurally fair manner;

d. dismissal was within the range of reasonable responses.

(v) If the dismissal was procedurally unfair, if a fair procedure had been followed, would this have resulted in dismissal anyway.

(vi) Did the claimant's conduct contribute to the dismissal.

(vii) Was the ACA|S procedure followed and if not should there be any adjustment in any compensation to take that into account.

(viii) What would be an appropriate remedy.

## Procedure, Documents and Evidence Heard

6. The hearing was conducted via CVP to which neither party objected.

7. I had before me a bundle of 189 pages. The claimant's witness statement of just over one page, Mr Barry Aldridge's witness statement of 7 pages and Ms Clare Tebbutt's witness statement of 6 pages. All parties were also in receipt of this documentation. In reaching my decision I considered all of the documentation before me, the oral evidence and the submissions made.

8. There were initial difficulties with the Claimant joining the hearing, these issues were resolved and the hearing commenced at 11am on 12<sup>th</sup> May. The respondent's representative was temporarily unable to join the hearing after the lunch break on 12<sup>th</sup> May, this issue was resolved swiftly and there were no further issues.

9. I heard evidence from the Claimant, and Mr Barry Aldridge and Ms Clare Tebbutt for the respondent.

### **Relevant findings of fact**

10. Much of the factual basis of this claim is not disputed. The Claimant was an employee of the respondent from May 1996, his role included driving responsibilities from 2018 and he was dismissed on 07 August 2020. ACAS received the Early Conciliation notification on 05 October 2020 and the Early Conciliation Certificate was issued on 21<sup>st</sup> October 2020. The Claim was received on 8<sup>th</sup> November 2020 and was in time.

11. The respondent's dismissal resulted from an incident occurring on 3<sup>rd</sup> July 2020 whereby the Royal Mail van he used was parked, on his case with the handbrake on, with the keys in the ignition and the drivers door open, the van rolled back approximately 5 car lengths into a hedge causing damage to the driver's door.

12. A discussion had taken place between the Claimant and his manager Mr Barrie Curtin on 1<sup>st</sup> July 2020 about the need to minimise idling. Mr Curtin confirmed in an email of 24<sup>th</sup> July that in that discussion he specified to the claimant Royal Mail's company policy and the rules of the road require the engine of the van to be turned off whenever unattended.

13. Royal Mail have a number of policies, security rules for drivers and standards of required behaviour. These are contained within documents in the bundle. Those relevant to this matter are that

- On leaving your vehicle the passenger window must remain closed. Wherever practical the drivers window must remain closed although it is accepted that the drivers' window may be left open for ventilation. Driver to ensure passenger and driver doors are locked.
- On exiting the vehicle remove the ignition key. Vehicle keys should remain with the driver or shared van partner at all times.
- Deliberate disregard of health safety and security procedures or instructions may constitute gross misconduct which may result in dismissal without notice or pay in lieu of notice.

14. Royal Mail also has a policy to prevent rollaways that when parked all vehicles must be left with the handbrake on, in gear with the wheels turned.

15. The Claimant reported the incident of 3<sup>rd</sup> July and was suspended on full pay pending an investigation. A fact finding investigation was conducted by Mr Jones. As part of this investigation

the handbrake and brakes of the van were tested by a mechanic and no faults were found. A fact finding meeting took place on 8<sup>th</sup> July 2020. The written record of this meeting is at p 127 of the bundle is signed by the claimant as a true record of the interview.

16. In the fact finding meeting the claimant confirmed at least some knowledge of Royal Mail procedures in that he described the H.I.T process as pull up, lock the doors, apply the handbrake and on a slope I would have locked the door and put in gear. In this meeting the claimant also confirmed that he was aware of the security rules for drivers and mail integrity.

17. A conduct meeting took place on 29 July 2020. In that meeting the Claimant confirmed that that he was aware of the requirement to pull up the handbrake and leave vehicles in gear, but not about turning wheels into the kerb. The Claimant asserted that he was carrying out his duties as trained to do. Following the conduct meeting the claimant was dismissed. The Claimant appealed, his appeal was heard on 28<sup>th</sup> August 2020 and ultimately the dismissal was upheld.

## **Law**

18. An employee has the right, under section 94 ERA, not to be unfairly dismissed, subject to certain qualifications and conditions set out in ERA.

19. When a complaint of unfair dismissal is made, it is for the employer to prove on the balance of probabilities that it dismissed the employee for a potentially fair reason, namely a reason falling within section 98(2) ERA or some other substantial reason.

20. A reason relating to the claimant's conduct or capability is a potentially fair reason falling within section 98(2).

21. Where an employer alleges that its reason for dismissing the claimant was related to the claimant's conduct, the employer must prove that, at the time of dismissal, it genuinely believed that the claimant had committed the conduct in question; and that this was the reason for dismissing the claimant.

22. The test is not whether the Tribunal believes the claimant committed the conduct in question, but whether the employer believed the claimant had done so.

23. If the respondent proves that it dismissed the claimant for a potentially fair reason the Tribunal must then decide if the employer acted reasonably in dismissing the employee for that reason, applying the test in section 98(4) ERA.

24 .Section 98(4) ERA provides that: "...the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) 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 shall be determined in accordance with equity and the substantial merits of the case."

25. The Employment Appeal Tribunal (EAT) set out guidelines as to how this test that should be applied to cases of alleged misconduct in the case of British Home Stores v Burchell [1980] ICR 303. The EAT stated that what the Tribunal should decide is whether the employer had reasonable grounds for believing the claimant had committed the misconduct alleged and had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

26. The concept of a reasonable investigation can encompass a number of aspects, including: making proper enquiries to determine the facts; informing the employee of the basis of the problem; giving the employee an opportunity to make representations on allegations made against them and put their case in response; and allowing a right of appeal.

27. The Tribunal must take into account all relevant provisions of the Code of Practice on Disciplinary and Grievance Procedures. when assessing the reasonableness of a dismissal on the grounds of conduct (section 207(3) of the Trade Union and Labour Relations (Consolidation) Act 1992.

28. Even where procedural safeguards are not strictly observed, a dismissal can be fair. This can be the case where specific procedural defects are not intrinsically unfair and the procedures overall are fair. The Tribunal must determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision maker, the overall process was fair notwithstanding any deficiencies at the early stage.

29. In applying section 98(4) I must ask myself whether the dismissal was a fair sanction for the employer to apply in the circumstances. The test is an objective one. It is irrelevant whether or not I would have taken the same course had I been in the employer's place.

30. Similarly it is irrelevant that a lesser sanction may be reasonable. Rather, section 98(4) requires me to decide whether the employer's decision to dismiss the employee fell within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted. This "range of reasonable responses" test applies equally to the procedure by which the decision to dismiss is reached (Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23).

31. The Employment Appeal Tribunal has emphasised the importance of length of service and past conduct as being factors to take into account when considering whether the sanction imposed fell within the band of reasonable sanctions (Trusthouse Forte (Catering) Ltd v Adonis [1984] IRLR 382).

32. Relevant factors in the overall assessment of reasonableness under s.98(4) include, amongst other matters going to the equity of the case overall: the conduct of an employee in the course of a disciplinary process, including whether they admit wrongdoing and are contrite or whether they deny everything and go on the offensive.

33. Disparity may arise where an employer has led an employee to believe that certain categories of conduct will either be overlooked or at least not be dealt with by the sanction of dismissal.

34. Mitigating factors, including length of service and disciplinary record are relevant.

### **Conclusions**

35. The reason for dismissal was the claimant's conduct, namely the incident on 3<sup>rd</sup> July 2020. This has not been challenged by the claimant and there is no evidence to suggest that the dismissal was the result of any other reason.

36. The claimant admitted the conduct in question, namely leaving his van parked, with the engine running, the keys in the ignition and the door open. Although the claimant asserted that he had properly applied the handbrake, in circumstances where an inspection of the vehicle showed no fault with the handbrake or brakes, it was the respondent's genuine belief that the handbrake had not been properly applied.

37. The conduct of the claimant was in breach of Royal Mail policies in respect of both health and safety and mail integrity. The claimant admitted at least some knowledge of these policies in the disciplinary process. This is a potentially fair reason under section 98(2)(b) of the Employment Rights Act 1996.

38. In considering whether the respondent acted reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant I consider whether there were reasonable grounds for holding that belief. Given the admissions made by the claimant through the investigative process from the fact finding to the conduct meeting and the appeal, his knowledge of the H.I.T process as he understood it, his confirmed knowledge of the security rules for drivers and mail integrity rules, which the respondent was entitled to take at face value, coupled with the report on the brakes of the vehicle, I find that this belief was reasonably held.

39. I find that the respondent carried out a reasonable investigation. There was an initial fact finding stage where a report on the brakes of the vehicle was obtained, the claimant was asked to explain events. Points the claimant raised during the process were followed up and investigated. Firstly, the conversation with Barry Curtin, raised in the conduct meeting was followed up. The question put to Mr Curtin was whether anything more than what was in the discussion record was discussed on 1<sup>st</sup> July 2020. The respondent was entitled to take the response, that the requirement for the engine to be turned off whenever a vehicle was left unattended was discussed, at face value.

40. In the appeal process Ms Tebbutt spoke with Mr Parnon, who had driven the van before the claimant, although Mr Parnon did note problems with the van's handbrake historically, the respondent was entitled to rely on the mechanic's report from the time of the incident that neither the brakes nor the handbrake were faulty at that time. Ms Tebbutt contacted Mr Johnson about comments made to the claimant about resigning and spoke with Mr Andrew Knight who

was also at that meeting. This additional evidence was sent to the claimant to comment upon. Ms Tebbutt also considered the claimant's disclosed issues with his mental health.

41. Thorough consideration of the comparators provided by the claimant was undertaken during the appeal process. Specific enquiries as to the identity of the comparators and nature of any incidents were undertaken. There was no true comparator, in that there was no other situation where all of the elements of the current matter i.e. the engine being on, the keys in the ignition and the door open at the time the vehicle rolled away, were present.

42. The appeal was treated as a re-hearing. Whilst there is no evidence that Mr Johnson was involved in the earlier decisions of the respondent, even if he were, this would have been cured on the appeal, in which he had no input.

43. The length of service of the claimant and his clean disciplinary record was considered by both Mr Aldridge and Ms Tebbutt but neither felt this outweighed the seriousness of the conduct.

44. Throughout the investigation the claimant was provided with all relevant documentation to be discussed and was warned that the outcome of the process could be dismissal. The claimant was accompanied by a union representative who also made submissions on his behalf.

45. The respondent complied with their own policy for appeals and also the ACAS code of conduct and, I find, acted in a procedurally fair manner.

46. Turning to whether dismissal was in the range of reasonable responses, I remind myself that I am not substituting my decision for that taken by the employer, the test is neutral and objective. The question is not whether I think that dismissal was fair, but whether dismissal was within the range of reasonable responses.

47. There were in this matter breaches of two of the most fundamental policies of the Royal Mail, health and safety and mail integrity. The claimant confirmed at least some knowledge of the H.I.T process to the respondent and also confirmed knowledge of the driver security and mail integrity policy. In those circumstances it was open to the respondent to conclude that the claimant had not acted in accordance with his own knowledge of the policies in place and that resulted in the vehicle rollaway.

48. A driverless vehicle in motion is a clear risk to health and safety. The vehicle being left with keys in the ignition exposes the vehicle to the risk of being stolen. The ignition keys also allow access to the mail contained in the back and therefore exposed the mail to the risk of being stolen.

49. Whilst a lesser sanction than dismissal could have been reasonable, this is not a relevant consideration. Even when weighed against long service of 24 years and a clean disciplinary record, dismissal is within the range of reasonable responses in circumstances of conduct amounting to breach of integral and fundamental policies of the business, essential to the safe and proper performance of employees.

50. The dismissal was therefore fair and the claim is dismissed.

Employment Judge Taylor

08 July 2022

Sent to the parties on

12 July 2022

For the Tribunal