



EMPLOYMENT TRIBUNALS

BETWEEN

JEFFERSON JOHN VANDERMAN

Claimant

AND

BRAMSHOTT HILL GOLF CLUB

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT SOUTHAMPTON BY VHS ON

8 to 9 August 2022

EMPLOYMENT JUDGE H Lumby

Representation

For the Claimant: In person

For the Respondent: Mr. Stuart Davison of the Respondent

JUDGMENT

The judgment of the tribunal is that

1. The claimant's claim for unfair dismissal is dismissed
2. The claimant's claim for breach of contract succeeds and the respondent is ordered to pay the claimant a net sum equal to eight weeks' pay, amounting to £712.64

REASONS

1. In this case the claimant Mr Vanderman claims that he has been unfairly dismissed and brings another claim of breach of contract for his notice pay. The respondent contends that the reason for the dismissal was

conduct including gross misconduct, that the dismissal was fair, and denies the claims.

2. This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was by Video Hearing Service. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in two bundles, one provided by each of the claimant and the respondent, the contents of which I have recorded. In addition, I received a number of character references for the claimant. I also received and considered witness statements from the claimant, and from Patricia Vanderman, Robert Allinson and Tony Welland on behalf of the claimant and from Stuart Davison and Stephen Price on behalf of the respondent.

3. I have heard from the claimant, and from Mr Davison on behalf of the respondent.

4. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in giving evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

5. The issues I am determining are whether the claimant has been unfairly dismissed and whether he has in addition being wrongfully dismissed.

Facts

6. The respondent is a private members golf club and is an unincorporated entity. It is run by volunteers and is clearly a small organisation with limited resources and only one, part time, employee.

7. The claimant began employment with the respondent on 1st June 2013, as part time club secretary. He worked between 17 and 20 hours a week, fulfilling a number of roles at the club. He has been a long time member of the club and held various officer roles in the past, including club captain.

8. The role of club secretary had a broad range of responsibilities. As club secretary, the claimant himself described it as "pivotal role and a central point for leadership in the hierarchy of the Club management". Mr Allinson referred to it as the hub. There was a key need to be able to work across all groups within the club, in particular the general committee. I find that his key relationship and report was to the other officers and the general committee.

9. It is agreed that the claimant was an employee and has over two years continuous service for the purposes of the Employment Rights Act 1996. It is also agreed that he has been dismissed and the reason for dismissal is not automatically unfair for the purposes of that act.

10. On 21 December 2020 the general committee of the club received a letter of complaint from the Ladies Section at the club in relation to the behaviour of the claimant. An informal investigation was held and as a result the claimant agreed to comply with a performance improvement notice. This complaint was the first formal employment issue brought to the Tribunal's attention, although we also saw reports from July 2020 of some members cold-shouldering or ignoring him.

11. At a meeting of the general committee on 1 February 2021, the claimant read a statement expressing his relief at bullying and other claims not being found against him or being found to be misdirected. This caused much upset amongst the committee, a number of whom subsequently threatened to resign as a result, calling for the claimant to resign. Following a meeting with the club president and captain the following day an apology by the claimant was issued but this was clearly insufficient for many.

12. A further meeting of the committee was held on 5th February, without the claimant present. That meeting resolved to appoint an external HR professional to investigate the position. A member of the committee, Susan Lewis, had HR expertise and warned against predetermining the outcome. She recommended the appointment of a contact of hers, Joanne Pearson. The claimant has suggested that the connection between Mrs Lewis and Ms Pearson cast doubt on her independence, but I find nothing to question her independence or impartiality.

13. A formal investigation was carried out by Ms Pearson, with the claimant interviewed on 23 March 2021; the claimant was accompanied by Robert Allinson. He was informed that this was to investigate four specific allegations.

14. The investigation comprised four other interviews. Excerpts of the comments of the others were provided to the claimant in the investigation report. This report was issued on 10th April 2021 and found three of the four allegations suitable for a disciplinary hearing. A fourth allegation was added, a breakdown of trust and confidence in the claimant. I find that the appointment of an external HR consultant and the investigation carried out meant this stage of the process was fair.

15. There followed a series of invitations to disciplinary hearings which for various reasons the claimant declined to attend – invitations were issued on 20 April, 4th May, 21st June and finally on 30th June 2021. The claimant chose not to attend that hearing, although Mr Allinson did go.

16. The disciplinary hearing was chaired by Stuart Davison, the club vice-captain. It was felt by the committee that it should not be chaired by the club captain, given animosity between the club captain and the claimant. Mr Davison was new to the club and the committee and was not involved in past events such as the Ladies Section complaint. The claimant alleged that the appointment of Mr Davis was unfair because he had also lodged a complaint against him; I do not accept this, considering the complaint was simply a tactical move by the claimant. I find Mr Davison's appointment and approach to be fair and unbiased. I also find that the approach taken by the claimant throughout the process, including the making of complaints and his approach, compounded the breakdown of the relationship between the claimant and the committee and the loss of trust and confidence in him.

17. Mr Davison found against the claimant on all allegations, in particular finding the breakdown of trust and confidence amounted to gross misconduct, so concluding that the claimant should be dismissed without notice. This occurred on 1st July 2021.

18. The claimant alleges that the dismissal should have been carried out by the club captain in accordance with the club's constitution. However, given the perceived bias issues, I find that passing this to the vice-captain was an appropriate response and not procedurally irregular.

19. The claimant appealed the decision, with the appeal heard by Mr Stephen Price on 15th and 23rd July 2021. The claimant has questioned why Mr Price rather than the club president carried out the appeal, but I find that, given the relationship between the claimant and the president, Mr Price was an appropriate independent choice. I have been pointed to an email comment he made after the 1st February meeting as a reason to disbar him but I do not accept this. I find the appointment of Mr Price to carry out the appeal fair as was the process ran by him.

20. He upheld the dismissal.

21. The claimant has made various other complaints in relation to the investigation process, including the lack of provision of HR support for him, the lack of provision of meeting minutes, the choice of witnesses, a perceived failure to follow ACAS guidelines and the pressure applied to him. I find that none of these individually or as whole rendered the process unfair. I have considered each aspect of the dismissal process as well as the process as a whole and, although there were imperfections, find it be fair throughout, especially given the size of the respondent's undertaking.

22. I have also considered whether there had been a loss of trust and confidence in the claimant by the respondent. It is clear that the claimant's conduct had given rise to strong reactions within the general committee. There clearly were major concerns arising from the Ladies Section complaint which were exacerbated by the claimant's comments at the 1st February committee meeting. His conduct was found by the investigation to be in breach of his performance improvement notice and his behaviour in challenging the investigation and disciplinary process only made matters worse. The fact that so many members of the committee were threatening to resign, effectively decapitating the club, amounted to a very real threat to the ongoing running of the club.

23. All of this meant that there had been an irretrievable breakdown in the relationship between the club's sole employee and its general committee, with a loss of trust and confidence in the claimant by the committee. It is clear that when relations have irretrievably broken down between the officers and committee of a club and their sole employee, and that employee plays a pivotal role in its running, the situation cannot continue. Both the claimant and Mr Allinson acknowledged that this breakdown had occurred, at least from the perspective of the committee.

24. I have considered whether there were other options open to the committee other than dismissal, but this is small club with no other sites or roles. There were simply no alternatives available.

25. Finally, I have considered the claimant's suggestion that the result of the process was predetermined. I find no evidence to support this; instead, the guidance from Mrs Lewis, the appointment of Ms Pearson and the selection of Mr Davison and Mr Price suggest that the club was doing its best as a small undertaking to ensure a proper and fair process was followed with no predetermination of the outcome.

Law

26. Having established the above facts, I now apply the law.

Unfair dismissal

27. Section 94(1) of the Employment Rights Act 1996 (“the Act”) gives an employee a right not to be unfairly dismissed by his employer. It is common ground that the claimant was an employee, that the respondent was his employer and that he was dismissed. In addition, he has over two years continuous employment. He can therefore rely on the protection of Section 94(1).

28. The reason for the dismissal was either conduct and/or some other substantial reason (referred to as SOSR). Conduct is a potentially fair reason for dismissal under section 98 (2) (b) of the Act. The reason of some other substantial reason may also be a fair reason for dismissal. This is defined in section 98(1)(b) as ‘some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held’

29. I have considered which is the most appropriate here. The process was followed as a disciplinary process and it was the claimant’s conduct which was the subject of the investigation. However, the conduct issues did not of themselves amount to a finding of dismissal at the end of the disciplinary hearing. Although the claimant was said to be dismissed for gross misconduct, this was not the case. Instead, it was the loss of trust and confidence that led to the dismissal decision. The claimant’s conduct had caused the irretrievable breakdown in the relationship and so I conclude that the dismissal was on the grounds of SOSR, some other substantial reason.

30. Having established the reason for the dismissal, we must consider both whether it was fair and whether a fair process was followed.

31. I have considered section 98 (4) of the Act which provides “... 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”.

32. Applying Iceland Frozen Foods Limited v Jones, the starting point should always be the words of section 98(4) themselves. In applying the section, the tribunal must consider the reasonableness of the employer’s conduct, not simply whether it considers the dismissal to be fair. In judging the reasonableness of the dismissal, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee’s conduct within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band, it is unfair.

33. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances.

34. It is clear that there had been an irretrievable breakdown of the relationship between the officers and committee on the one hand and the claimant on the other, as a result of their loss of trust and confidence in him. His conduct leading up to, at and subsequent to the 1st February 2021 meeting all contributed to this from their perspective. This was not a trivial or frivolous matter but one that threatened the ongoing running of the club.

35. The case of McFarlane v Relate Avon Ltd, emphasised the importance of identifying why the employer considered it impossible to continue to employ the employee – here it is the potential loss of officers, the entire or most of the general committee of the club and the ladies section.

36. Alternatives were not available and the breakdown amounted to a substantial reason to dismiss.

37. We need to consider whether the decision to dismiss fell within the range of reasonable responses that a reasonable employer might adopt. Bearing in mind the size of the organisation and the key nature of the role, I consider that it could. A reasonable employer would consider mitigating factors, such as the claimant's long and largely unblemished track record and many years of service to a club he clearly feels passionate about. But the clear breakdown, the underlying conduct issues, the lack of alternatives and the consequences mean that dismissal could lie within the band of reasonable responses.

38. When considering the fairness of a dismissal, the Tribunal must consider the process as a whole (Taylor v OCS Group Ltd). A sufficiently thorough re-hearing on appeal can cure earlier shortcomings, see Adeshina v St George's University Hospitals NHS Foundation Trust and Ors.

39. We do therefore need to look at the process to consider whether it was fair. The claimant clearly has issues about this but I have referred above to the procedure followed and found it to be fair. This includes the introduction of the trust and confidence issue at the disciplinary hearing stage, as a result of the investigation.

40. The case of Burchell requires us to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances. Taking all of this together and bearing in mind the size and administrative resources of this employer I find as a result that the claimant's dismissal was fair and reasonable in all the circumstances of the case.

41. Accordingly, I do find that the claimant was fairly dismissed and the claimant's claim for unfair dismissal does not succeed.

Wrongful Dismissal

42. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.

43. In order to find gross misconduct, the tribunal must be satisfied on the balance of probabilities that there has been wilful conduct by the employee that amounts to a repudiatory breach of the employment contract, permitting the employer to accept that breach and to dismiss the employee summarily, see Wilson v Racher and the decision of Lord Jauncey in Neary v Dean of Westminster.

44. The respondent has relied on the loss of trust and confidence (and the related irretrievable breakdown of the relationship) as the ground of gross misconduct, as considered above.

45. I have said that I find that the reason for the dismissal was in fact SOSR. The claimant's conduct had contributed to that, but that conduct did not amount to gross misconduct. It was incorrect for the respondent to rely on that part of the employment contract to dismiss the claimant.

46. Accordingly, I do not find the dismissal is for gross misconduct and the claimant was therefore entitled to contractual notice. By dismissing the claimant without notice, I determine that he has been dismissed in breach of contract and so wrongfully dismissed. He is therefore entitled to be paid a net amount equal to his notice period, by way of damages.

47. The claimant's contract of employment entitled the claimant to one month's notice or the statutory minimum if longer. That period is determined by section 86 of the Act, which entitles the claimant to a minimum of one week's notice for every completed year of employment, up to a maximum of 12 weeks. As he was employed for eight full years, his entitlement is eight weeks' notice.

48. Damages for breach of contract are paid net and it is agreed that the claimant's pay was £386 net per calendar month. Net pay is assessed based on the tax position at the time of dismissal and so does not take account of subsequent changes.

49. By grossing up and then dividing by 52, this gives a weekly rate of £89.08, eight weeks net pay therefore amounts to £712.64.

Employment Judge H Lumby
Date: 7 September 2022

Judgment sent to Parties: 14 September 2022

For the Tribunal Office