



EMPLOYMENT TRIBUNALS

Claimant: Mr G Beardon
Respondent: The College of West Anglia
Heard at: Norwich Employment Tribunal
On: 15 November 2022
Before: Employment Judge Hutchings (sitting alone)

Representation

Claimant: in person
Respondent: Mr Francis of Counsel

RESERVED JUDGMENT

The complaint of unfair dismissal is not well founded. The claimant was not unfairly dismissed the respondent.

REASONS

Introduction

1. The claimant, Mr Gary Beardon, was employed by the respondent, The College of West Anglia (the 'College'), as a Course Director and Lecturer from 12 August 2015 (he says but the respondent states this is an error and that the claimant's start date was 18 August 2014) until his dismissal on 3 March 2022, the College stating the reason for his dismissal as gross misconduct. Early conciliation commenced on 11 April 2022 and concluded on 13 April 2022. The claimant has an ACAS certificate dated 13 April 2022.
2. By a claim form dated 13 April 2022 Mr Beardon claims that while the stated reason for his dismissal was breach of health and safety rules following a fire in a College workshop on 30 November 2021, the real reason for his dismissal was a difficult relationship he had with Mr Anthony Morse and that his *'excellent work record has been manipulated by Anthony Morse, many lies and untrue stories have been added to the investigation notes to destroy my unblemished record'*. Mr Beardon claims that the investigation process only took account of negative comments and did not consider his excellent work record. He also claims the process of his dismissal was unfair saying it took 4 months from the

fire to the decision to dismiss him. On the ET1 Mr Beardon also ticked the box claiming a redundancy payment.

3. The respondent is a College of Further and Higher Education with campuses in Cambridge, King's Lynn and Wisbech. By grounds of resistance dated 22 June 2022 the College contests the claim. It says that Mr Beardon was fairly dismissed without notice on 3 March 2022 by reason of gross misconduct relating to a fire incident in a workshop at the Wisbech Campus Technology Centre on 30 November 2021 and breaches of health and safety rules uncovered by the College following an investigation into the fire. The respondent submits it followed a full and fair procedure in treating the misconduct as a sufficient reason for Mr Beardon's dismissal.

Preliminary matters

4. At the beginning of the hearing, before I heard any evidence, I had to deal with a couple of preliminary matters:
 - 4.1. Mr Beardon said that he had sent the respondent some extra documents (photographs of an online course page and course description for the College) and a statement from Ashley Knott. Mr Francis confirmed these documents had been added to the bundle and that the respondent had no objection to the documents and statement being included as evidence.
 - 4.2. Mr Francis confirmed the respondent had received a reply to its request for further information dated 27 July 2022 and there were no outstanding matters on this.

Procedure, documents and evidence

5. Mr Beardon represented himself and gave sworn evidence. He called sworn evidence from:
 - 5.1. Mr Tony Edgley
 - 5.2. Mr S Marriot
 - 5.3. Mr Stuart Day-Coombes
 - 5.4. Mr Shannon Ward; and
 - 5.5. Mr James Back.
6. Mr Beardon told me his witnesses would not be attending the hearing. I explained that as the respondent's barrister would not be able to ask them questions about their statements, if their statements contained any facts that were in dispute with the facts presented by the College, when balancing the evidence, I would attribute less weight to their statements as the College had not had the opportunity to challenge what they have said.
7. The respondent was represented by Mr Francis of Counsel, who called sworn evidence from:
 - 7.1. Mr Paul Harrison, Vice Principal of Corporate Services and dismissing officer; and
 - 7.2. Mr David Pomfret, Principal of the College of West Anglia and appeals officer.

8. The College's investigating officer has retired from the College; she did not provide a witness statement or attend the hearing. Evidence was considered by the Tribunal on liability.
9. I considered the documents from an agreed 190-page Bundle of Documents which the parties introduced in evidence, together with the evidence accepted late. Mr Beardon and Mr Francis made closing statements.

Issues for the Tribunal to decide

10. The claimant was dismissed on 3 March 2022. The Tribunal must decide what was the reason or principal reason for his dismissal? The respondent states the reason was misconduct relating to the fire on 30 November 2021. The claimant states the reason was his relationship with Mr Anthony Morse and that, when deciding to dismiss him, the College was influenced by the statements made Mr Morse as part of the investigation into the fire. The Tribunal will need to decide whether the College genuinely believed Mr Beardon had committed misconduct relating to his actions on 30 November 2021 and other health and safety breaches.
11. If the Tribunal concludes the reason was misconduct, I must consider whether the College acted reasonably in all the circumstances in treating the misconduct as a sufficient reason to dismiss Mr Beardon? I must ask 4 questions:
 - 11.1. Whether the College had reasonable grounds for that belief?
 - 11.2. At the time the belief was formed had the College had carried out a reasonable investigation?
 - 11.3. Whether the College otherwise acted in a procedurally fair manner? I must look at the process of investigation and the disciplinary and appeal hearings and the timeline involved.
 - 11.4. Whether dismissal was within the range of reasonable responses. I must consider the size and resources of the College and ask whether a similar employer would have considered the misconduct a sufficient reason to dismiss.
12. Mindful that Mr Beardon was not represented, I set out these questions at the start of the hearing.
13. Any considerations relating to contributory fault and any reduction in the compensatory award for unfair dismissal will be made under the principles set out in *Polkey v A E Dayton Services Limited 1998 ICR 142*. I shall refer to these principles as a 'Polkey deduction'. A Polkey deduction is a deduction made from a compensatory award in a successful unfair dismissal case to reflect the chance that, if a Tribunal finds that a dismissal was unfair, the Tribunal considers that the dismissal would have happened in any event. This can lead to any award for compensation being reduced by a percentage calculation based on the Tribunal's view of the likelihood of dismissal occurring. The hearing was listed for a day. It was not possible for the Tribunal to hear evidence on POLKEY as the time did not allow this. I explained Polkey to Mr Beardon and informed him that if I decided that he had been unfairly dismissed, this issue would be considered at a separate remedy hearing.

Findings of fact

14. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.
15. Mr Beardon's employment at the College started on 18 August 2014; this is stated in section 1 of his employment contract, which he signed on 27 June 2014. When questioned he accepted that clause 17 references the College's health and safety policy, accepting it was the responsibility of all timetabled staff on a practical learning course, which he was as Course Director, to implement these policies.
16. There was no dispute as to the primary facts in relation to the way in which employment was terminated. Mr Beardon was dismissed by Mr Harrison in a letter dated 3 March 2022, following an investigation into a fire in a workshop at the Wisbech Technology Centre on 30 November 2020, subsequent suspension of Mr Beardon and disciplinary meeting.
17. On 30 November 2021 parties agree that a small fire broke out in the Body and Paint Workshop on the Wisbech Technology Centre. In the workshop were several students who were being supervised by Mr Beardon. I have seen witness statements from a couple of students (taken on 13 December as part of the investigation process) and the accident report form completed by Mr Huddleston (dated 16 December 2022). All collaborate that the fire was small, but there was a lot of smoke.
18. An internal College accident / incident report form was completed by Mr Danny Huddleston I have seen a copy of the report; it is dated '*report reviewed by Health and Safety Officer 02/12/2021*'. Mrs Rowland was the Health and Safety Officer; therefore, I find she read it at this time. Mr Huddleston describes the fire as '*minor*' and states his opinion that '*welding should not have been taking place in the workshop*'. He also states that:

'It is apparent that supervision was taking place from a distance rather than in close proximity to the students involved'. Mr Huddleston addresses how the fire was dealt with before the fire service arrived, stating that '*bypassing recognised fire extinguishing equipment and using an airline to extinguish the fire. This could have caused spread.*' The report raises concerns that the workshop did not have a '*written SSOW or risk assessment for welding operations in the workshop*'.
19. The College appointed Mrs Rowland, Head of HR and Health and Safety Officer, to investigate whether Mr Beardon had breached the College's health and safety policies. On 6 December 2021 Mrs Rowland spoke to Mr Beardon about the fire informing him of the College's decision to suspend him while an investigation took place; the decision was confirmed in a letter the same day. This letter identifies 3 reasons for Mr Beardon's suspension: '*allowing welding to take place on a truck near to flammable solvents and paints; allowing the use of a compressed air hose to extinguish the fire; and allowing inadequate personal protective equipment for the activity.*' Mrs Rowland also says that managers told her that Mr Beardon had failed to follow instructions to wear safety glasses and allowed students not to do so either and that he had allowed students to work on motor vehicles that do not belong to the College. When questioned Mr Beardon confirmed that he had received the email (4 November

2021) to all staff making eye protection mandatory. He accepted there were students in his workshop who found safety glasses uncomfortable, as did he. While he made students aware of this policy, Mr Beardon did not enforce it.

20. Mrs Rowland's letter informs Mr Beardon of the investigation process, who will be present at the meeting and is sent to Mr Beardon with a copy of the College's Disciplinary Policy. Mrs Rowland asks Mr Beardon to think about anything he believes is relevant to the investigation. She suggests that he may wish to write down anything he can remember and let her have the names of any colleagues who may have information relevant to the investigation. The letter also refers Mr Beardon to resources he may find helpful. When questioned Mr Beardon accepted the letter was fair and balanced, and that Mrs Rowland was a suitable person to carry out the investigation. The suspension is in line with Section 10 of the College's Disciplinary Procedure.
21. During her investigation process Mrs Rowland interviewed Mr Beardon on 2 occasions. First on 9 December. When questioned Mr Beardon accepted he decided not to be accompanied to that meeting. I have seen the notes of this meeting. Mrs Rowland explained the purpose of the meeting, making it clear that the meeting was taking place under the College's Disciplinary Policy. When questioned at the hearing Mr Beardon accepted Mrs Rowland asked him more than one open ended question to allow him to tell her about the incident on 30 November. I find that Mrs Rowland gave Mr Beardon several opportunities to put forward his version of what happened and a second opportunity to suggest people she could speak to (the first opportunity being in the letter of 6 December). Safety training is discussed. Mr Beardon completed the safe smart online training annually and attended 6 modules of fire training in 5 years.
22. On 23 December 2021 Cambridge Fire and Rescue Service wrote to the College with the Chief Fire Officers findings following a site visit. The report states that '*an employee failed to take reasonable care for the safety of him / herself and/or other relevant persons*'. I find this was a reference to Mr Beardon, who was the Course Director in the workshop at the time of the fire.
23. A second meeting took place between Mrs Rowland and Mr Beardon on 11 January 2022, the purpose of which is to follow up on issues arising from her investigation. I have seen the notes of this meeting. At the first meeting Mr Beardon talks about 2 students who were in the workshop when the fire broke out. Mr Rowland followed this up, taking statements from these students on 13 December 2021. I have seen copies of these statements. One student state he was '*instructed to grab an airline to put out the fire*' and that Mr Beardon was about 20 – 30 metres away when the fire broke out, the other student says Mr Beardon was about 25 meters away. The distance conflicts what Mr Beardon told Mrs Rowland at the meeting on 9 December. Based on the corroborating evidence of the students I find that Mr Beardon was some distance from the fire, and that the students and his explanation that he was 2-3 metres away was not plausible. This is the conclusion Mrs Rowland reached in her investigation. Her conclusion is based on eyewitness evidence.
24. By the time of the second meeting Mrs Rowland has inspected the workshop. She also has Mr Huddleston's report. She asks Mr Beardon why the safe system at work is not on the wall. He tells her this is a role of the teaching support officer ('TSO'). This is incorrect. Mr Beardon may have thought responsibility lay with the TSO, but the Health and Safety document to which

his employment contract refers, and to which he had access via the College's intranet site, make clear safety documentation is the responsibility of the Course Director. While Mr Beardon was willing to accept that a safe system of work, he said he was led to believe was someone else's responsibility (the TSO). There is no evidence supporting his conclusion. His employment contract and the health and safety documents he was required to read as part of his role make it clear this responsibility sits with the course direction, and therefore Mr Beardon, not the TSO. Mr Beardon could not accept that it was for him to follow the College's Health and Safety Practical Learning / Assessment Activities Policy, which he was required to implement under the terms of his employment contract and which he accepted he had access to on the College's intranet. This document states that it is the responsibility of timetabled staff to ensure the correct safety equipment and procedures were in place. It also states that Course Directors are responsible for health and safety in their work areas.

25. At this meeting Mrs Rowland also follows up on information about welding being part of the course (as students were welding in the workshop) which Mr Beardon said he would provide after the first meeting but had not done so. Practical welding was not part of the course; students had to know about welding for the written exams. At the end of the meeting Mr Beardon says he feels things are being *'thrown at him'* and that he feels *'ganged up on'*. The note of the meeting does not support this view. Mrs Rowland puts to Mr Beardon health and safety concerns identified because of the internal and Fire Service's investigations into the fire, and their findings, and gives Mr Beardon the opportunity to respond. At this meeting he does not engage with the concerns set out by Mrs Rowland. Mr Beardon's approach to delivery of the course and conclusions about who is responsible for safety requirements are drawn from his interpretation [he says *'depend on how you read it and deliver the course'* in relation to practical welding being part of the syllabus] rather than the facts of the syllabus, the responsibilities set out in his employment contract and the incorporated health and safety policies.
26. On 19 January 2022 Mrs Rowland issued a detailed report. It is comprehensive, containing photographs of the workshop, detailing the people Mrs Rowland spoke to as part of her investigation and the documents she reviewed; it includes details, and quotes, from her meeting with Mr Beardon. In his evidence Mr Beardon was concerned that his clean record had not been considered. This is incorrect. The report notes Mrs Rowland has reviewed his appraisals. When questioned Mr Beardon accepted that Mrs Rowland conducted an extensive investigation. Mrs Rowland's conclusion that Mr Beardon had breached the College's health and safety rules is supported by the findings of the investigation; these findings and the conclusion are detailed in the report.
27. Mrs Rowland recommended that Mr Beardon attend a disciplinary hearing, to which he was invited by letter dated 25 January 2022. Clause 7 of the College's Disciplinary Policy states *'the employee will be advised in writing of the nature of the complaint against her at least 7 days before such hearing and shall receive written details of the charges and copies of all the documentation to be presented at the hearing'*. When questioned Mr Beardon accepted that he had seen and had time to read Mrs Rowland's report before the disciplinary hearing and that he knew the allegations which would be considered at this hearing. Initially the disciplinary meeting was scheduled to take place on 1 February 2022. Due to Mr Beardon's ill health (when questioned he accepted that the

delay from 25 January to 21 February 2022 was due to his sickness absence) the hearing was rescheduled and took place on 21 February 2022.

28. Mr Paul Harrison, the respondent's Vice Principal Corporate Services, conducted the disciplinary hearing. When questioned by Mr Harrison confirmed that he did not know Mr Beardon, had never visited the workshop and that they had never spoken until the disciplinary hearing. When questioned Mr Beardon confirmed that Mr Harrison was an appropriate and independent person to conduct the meeting. The meeting lasted 1.5 hours. I have read the notes of this meeting. Mr Harrison gave Mr Beardon the opportunity to respond to Mrs Rowland's report, something Mr Beardon acknowledged when questioned, accepting the approach taken by Mr Harrison was reasonable. Mr Harrison's questioning centres on whether Mr Beardon's behaviour on 30 November, in using the incorrect hose (a compressed air hose) and lack of health and safety documentation in the workshop, put students in the workshop at risk. Mr Beardon does not engage with these concerns or the findings of Mrs Beardon's report, instead referring to the role of the TSO, the challenges he has faced convincing students to wear safety glasses and talking about his character.
29. Mr Beardon wants more people interviewed as character witnesses. Mr Harrison told me that he knew that Mr Beardon had a clean disciplinary record. I am satisfied this was considered as part of the disciplinary process, but that Mr Harrison concluded, given the allegations centred on health and safety breaches, a clean record was not sufficient to offset the seriousness of the breaches alleged. During the investigation and the disciplinary hearing, the College does not question Mr Beardon's character and are aware of his record.
30. Under the terms of Mr Beardon's employment contract, as Course Director and tutor he was responsible for health and safety in the workshop, using the policy documentation to guide the practices. He was not doing so to the extent required by the College's health and safety policies. Mr Beardon's view was that the TSO put together systems of work and the managers were responsible for signing off. This is incorrect. The health and safety policies show that tutors were responsible for ensuring all health and safety requirements were in place. He had completed the training, but he did not follow the policies. His comments from the meetings evidence this. For example, Mr Beardon made several comments as to why he could not implement the policy on safety glasses; this was mandatory and not negotiable as the email of 4 November made clear. He also presents evidence as to why his use of the air pump to extinguish the fire was appropriate. This is not relevant. The College had a procedure Mr Beardon was required to follow in his role and he did not so.
31. The College's Disciplinary Policy lists examples of '*offences*' which the College normally regards as misconduct and therefore grounds for immediate dismissal if the College concludes that an employee is responsible for any such offences. Clause 8.2 of the College's Disciplinary Policy defines gross misconduct as: '*as serious violation of the College's rules and procedures concerning Safeguarding, Health and Safety, IT, Data Protection or Equality and Diversity.*' As part of his employment Mr Beardon was required to familiarise himself with the list. The list includes failure to follow instructions and health and safety breaches. The safety documents were not in the workshop, something accepted by Mr Beardon, and he used the wrong hose, maybe in the moment, but both constitute breaches for which the College can dismiss without notice.

32. In evidence Mr Harrison told the Tribunal that he took some time to reach his decision that Mr Beardon had committed misconduct in part due to him researching some of the points Mr Beardon put forward at the meeting, including his justification for using the air hose. Mr Harrison concluded that the evidence Mr Beardon provided was superficial and the research was more complicated.
33. Based on all the evidence Mr Harrison concluded that Mr Beardon's approach to Health and Safety was cavalier. His belief was genuine. His conclusion was founded on eyewitness accounts of the fire, missing documentation, reports that Mr Beardon did not follow instructions and expert evidence of a Fire Officer. Mr Harrison also considered the statement made by Anthony Morse as part of Mrs Rowland's investigation. Mr Beardon has expressed concerns that challenges in his working relationship with Mr Morse may have influenced Mr Harrison's decision. I find no evidence of this. Mr Morse's statement refers to concerns about '*non-compliance with safety issues*' These concerns were put to Mr Beardon by Mrs Rowland and Mr Harrison. The response from Mr Beardon did not convince either that Mr Beardon accepted health and safety in the workshop was his responsibility as part of his employment terms, nor that he would accept this in the future. Mr Harrison confirmed his belief he had made the right decision when questioned by Mr Beardon. He commented that revisiting the evidence as part of the Tribunal process had reconfirmed his decision to dismiss Mr Beardon, who did not at the hearing (as the notes confirm) and still could not accept that he was negligence in not fully implementing the College's mandatory glasses policy, using a compressed air hose to put out the fire and failing to have the correct safety documentation in the workshop.
34. On 3 March 2022 Mr Harrison wrote to Mr Beardon informing him of the outcome of the disciplinary hearing and the College's decision to dismiss him without notice. I have seen the letter; it refers to the fire on 30 November, sets out the allegations of misconduct identified by Mrs Rowland's investigation and gives detailed reasons for the findings in relation to each by reference the documents (for example for allegation 1 the report of Cambridge Fire and Rescue) which support Mr Harrison's conclusions. When questioned Mr Beardon accepted that for Mr Harrison's conclusion to uphold allegation 1 was reasonable. Allegation 2 concerns the use of the compressed air extinguisher; when questioned Mr Beardon accepted Mr Harrison's conclusion as reasonable by reference to the Fire Officer's report. Accepted that fire officer more experience and that he would know more about the situation Mr Harrison explains his concern that at the hearing Mr Beardon did not concede that he should have handled the situation on 30 November differently. In oral evidence Mr Harrison confirmed his concerns, which are stated in the letter, that Mr Beardon would not change his behaviour in the future (as he was convinced his use of the air hose was appropriate) and this posed a serious health and safety risk for continuing Mr Beardon's employment at the College. I find that the College had no confidence that Mr Beardon would follow the stated health and safety procedures in the future. Mr Beardon was paid one month's net salary and 16 days accrued holiday.
35. On 4 March 2022 the Mr Beardon appealed the decision to dismiss him. I have read Mr Beardon's letter of appeal. He does not raise any new grounds of appeal. When questioned Mr Beardon accepted his appeal letter did not raise any new substantive points nor does it recognise the findings of the Fire Officer.

36. On 10 March 2022 Mr Pomfret, the College's Principal invited Mr Beardon to an appeal hearing on 29 March 2022; the letter advised Mr Beardon of his right to be accompanied to this meeting. Mr Pomfret and Mr Beardon did not know each other; in evidence they agreed that Mr Pomfret had occasionally visited the workshop and they had one conversation at the Wisbech campus. Mr Beardon accepted that Mr Pomfret conducted the appeal in an independent way. Mr Pomfret was aware of Mr Beardon's unblemished record. His overriding concern centred health and safety breaches, which he considered *'among the most serious'* telling me that for a College educating young people *'sound health and safety practice is of utmost importance.'* At the appeal meeting Mr Pomfret gave Mr Beardon the opportunity to put forward his case. Mr Pomfret was concerned that Mr Beardon did not accept the Fire Officer's conclusion that use of the air hose was wrong; rather than accepting this Mr Beardon again tried to justify his use of compressed air even though he accepted this went against College policies. Mr Beardon said that his use of the air hose on the fire was a *'knee jerk reaction'*; that is understandable. What is not is the fact he continued to justify it rather than acknowledging in the meeting that his approach was wrong and providing the College with reassurances about how he would handle health and safety in the future. Without these reassurances the College were extremely concerned about the possibility of future incidents.
37. On 4 April 2022 Mr Pomfret sent Mr Beardon an appeal outcome letter, upholding the appeal. When asked by Mr Beardon why he was not given a warning, Mr Pomfret explained that his biggest concern not just breach of health and safety breaches of wrong hose but also the regular challenge from Mr Beardon, the questioning of the Fire Officers notice and the fact that he would not wear safety glasses when instructed to do so, something Mr Beardon admitted when questioned explaining that he found them uncomfortable with his reading glasses. Mr Pomfret *'did not have confidence that ultimately there would not be serious breaches in the future'*, commenting that Mr Beardon *'does not recognise severity or the need to ensure students understand importance of health and safety'*. He did not feel Mr Beardon understood how important health and safety was. Mr Pomfret understood Mr Beardon wanted a difficult outcome but that he had *'a responsibility to consider facts and make a decision he considered just and did so on this occasion.'*

Law – unfair dismissal

38. Section 94 of the Employment Rights Act 1996 (the '1996 Act') confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that he was dismissed by the respondent under section 95. This is also satisfied by the respondent admitting that it dismissed the claimant (within section 95(1)(a) of the 1996 Act).
39. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

40. Section 98(4) of the 1996 Act deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend 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.
41. In misconduct dismissals, there is well established guidance for Tribunals on fairness within section 98(4) in the decision in *Burchell 1978 IRLR 379*. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt.
42. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made. The Tribunal must not substitute its view for that of the reasonable employer (*Iceland Frozen Foods Limited v Jones 1982 IRLR 439*, *Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23* and *London Ambulance Service NHS Trust v Small 2009 IRLR*). The employer is the primary fact finder; the Tribunal's role is to review the facts evident during the disciplinary process, not what may be raised at a later date *LB Brent v Fuller, CA*, at [32] of *Cossington*.
43. The compensatory award if a claim of unfair dismissal is successful must be 'just and equitable'. As a result of the decision in *Polkey v AE Dayton Services Ltd [1987] IRLR 503* a Tribunal may reduce the compensatory award to reflect the chance that the claimant would have been dismissed in any event had the dismissal followed a fair process. The Tribunal assesses this possibility by reference to the actual employer in the claim. To substitute the Tribunal's own mindset is an error of law.

Conclusions

44. The College has satisfied the requirements of section 95 of the 1996 Act, admitting that it dismissed Mr Beardon (within section 95(1)(a)) on 3 March 2022.
45. The first issue to determine is the reason for the Mr Beardon's dismissal. The College says the reason was gross misconduct based on its findings of health and safety breaches following a fire which took place in the Body and Paint Workshop on the Wisbech Technology Centre on 30 November 2021. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct. The College has the burden to prove this. I conclude that, on the balance of probability, it has. Clause 8.2 of the College's Disciplinary Policy defines gross misconduct as: '*as serious violation of the College's rules and procedures concerning Safeguarding, Health and Safety, IT, Data Protection or Equality and Diversity*'. The reason for Mr Beardon's dismissal was the way he handled the fire on 30 November, extinguishing it with a compressed air hose contrary to College health and safety policies. The

investigation into the fire revealed other health and safety breaches; Mr Beardon was responsible for implementing health and safety in the workshop. His approach was lax; the paperwork was not in order, and he did not sufficiently implement a mandatory policy that students and staff must wear safety glasses in the workshop. This behaviour constitutes misconduct under the College's Disciplinary Policy. It is stated as the reason for Mr Beardon's suspension and dismissal in the respective letters. In a claim of unfair dismissal, the focus is on the reasonableness of management's decisions. In reaching my decision it is immaterial what decision I would have made about the claimant's conduct. Mr Harrison's belief Mr Beardon was guilty of misconduct was genuine. The dismissal letter explains in detail how he has reached this conclusion.

46. Mr Beardon's claim that he was dismissed due to difficulties in his relationship with Mr Morse have no basis in fact. The College did take a statement from Mr Morse as part of the investigation. The contents relate to the investigation and line management; there is no evidence Mr. Morse inappropriately influenced the College's decision to dismiss Mr Beardon.

47. As I have concluded the reason was misconduct, my next consideration is whether the College acted reasonably in all the circumstances in treating the misconduct as a sufficient reason to dismiss Mr Beardon. I conclude that Mr Harrison, as dismissing officer, had reasonable grounds for concluding Mr Beardon had committed misconduct. He considered the comprehensive report produced by Mrs Rowland, which was based on Mr Huddleston's internal investigation, statements from eyewitnesses, information from Mr Beardon's line manager, 2 meetings with Mr Beardon at which he was given the opportunity to explain what happened on 30 November, the missing safety documentation in the workshop and the approach to implementing the safety glasses. The report also considers the findings of an independent expert report from the Fire Officer, all of which point to health and safety breaches for which Mr Beardon was responsible. Mr Harrison also meets with Mr Beardon giving him the opportunity to respond to Mrs Rowland's report. He researched Mr Beardon's justification for using the fire hose, evidence which is not relevant. Mr Beardon does not raise any additional points on appeal. Mr Pomfret considers the same evidence and upholds the decision to dismiss.

48. In essence Mr Beardon's stated case (which he sets out in a response to the College's grounds of resistance) was that his dismissal was unfair due to his clean record throughout over 7 years employment at the College, that this record was not considered and that the length of time between the fire and his dismissal [30 November 2021 to 3 March 2022] was '*totally unacceptable*'. He draws attention to sources external to the College suggesting this evidence use of the air hose was appropriate. The College did consider his record and his justification for using the air hose; however, neither of these things mitigated the finding of misconduct. I am satisfied Mr Beardon's record was taken into account as part of the disciplinary process. Mr Harrison reasonably concluded, given the allegations centred on health and safety breaches in an education setting for young people, a clean record was not sufficient to mitigate against a decision to dismiss for misconduct.

49. Third, I must decide whether, at the time the respondent formed its belief that Mr Beardon had committed misconduct, it had carried out a reasonable investigation. It did. Mr Beardon claims it was unfair as it took 4 months. Mrs

Rowland's investigation, detailed above, was thorough. It formed the basis of Mr Harrison's decision. He considered the Fire Officer's report and Mr Beardon's representations at the investigation and disciplinary meetings. As Mr Beardon did not raise any new issues on appeal, there was nothing further for him to investigate. The investigation was fair. Following the fire on the 30 November 2021, Mr Huddleston's internal report was started, Mr Beardon was suspended on 6 December, the suspension letters making the process, his rights, and entitlements in the period of suspension clear. Mrs Rowland met with him twice and asked him for the names of people he would like her to interview. She followed up at the second meeting on matters Mr Beardon had raised at the first meeting, even where he had not actioned them. She produced a comprehensive report which Mr Beardon received before his disciplinary hearing. Mr Beardon took issue with the length of time the process took. There was some delay between Mrs Rowland's 2 meetings with Mr Beardon. This allowed her to interview and produce a detailed report. She was diligent in approach. The Christmas holidays also fell in this period. By his own admission the delay to the disciplinary hearing was due to Mr Beardon's ill health. The 3 stages (investigation, disciplinary and appeal) were conducted by different individuals, unconnected to Mr Beardon or his line manager. The College conducted a diligent and thorough process, timely in the circumstances. There was no breach of the ACAS code as Mr Beardon was accompanied at the disciplinary hearing.

50. Finally, I must decide whether Mr Harrison's decision to dismiss was within the range of reasonable responses. When considering the fairness of the sanction, I must not substitute my own view for the employer's view; the Tribunal must decide if the sanction fell within the range of reasonable responses of an employer with the size and resources of the College. Mr Beardon's case is that a lesser sanction, such as a written warning would have been reasonable. As part of his employment Mr Beardon was required to familiarise himself with the health and safety policies. The list includes failure to follow instructions and health and safety breaches. Mr Beardon did not do so. Mr Beardon accepted he was in charge. In the meetings with Mr Harrison and Mr Pomfret he did not offer the College any guarantees he would have dealt with the situation differently or that he would do so in the future given the potential consequences of accident outline by the Fire Officer's report, which corroborated the College's own findings. The policies made it clear health and safety in the workshop was his responsibility. An educational setting would reasonably prioritise the health and safety of its students. The College did. In these circumstances its decision to dismiss was within the reasonable band.
51. For these reasons I conclude the decision to dismiss Mr Beardon and the process by which he was dismissed was fair.

Employment Judge Hutchings

Date: 18 November 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

8 December 2022

FOR EMPLOYMENT TRIBUNAL