



EMPLOYMENT TRIBUNALS

Claimant: Mr Jatinder Dhaliwal

Respondent: Jaguar Land Rover Limited

Heard at: West Midlands Employment Tribunal (by CVP)

On: 21 and 22 November 2022

Before: Employment Judge Routley

Representation

Claimant: Mr R Ahmed (Counsel)

Respondent: Mr C Kelly (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

The Respondent did not unfairly dismiss the Claimant. The Claimant's claim is dismissed.

REASONS

The hearing

1. The hearing took place by CVP. All parties attended. There were no connection issues.
2. At the start of the hearing, I informed the party that I had a minor professional connection to the Respondent's instructing solicitor, Emma Noble. I had taught at a law school attended by Ms Noble for the purposes of completing her LPC. I had not to the best of my knowledge taught Ms Noble, but I recalled having one conversation with her. I do not believe I have seen Ms Noble since, and we do not have a personal relationship.

3. Mr Kelly raised no objection to my hearing the case. Mr Ahmed initially indicated that he had no objection, but asked for an opportunity to take instructions. Mr Ahmed then informed me that he had been instructed to make an application for me to recuse myself.
4. The hearing was adjourned for half an hour to allow me to consider this application. During the adjournment, the Claimant's representative confirmed their application for recusal in writing, and also made an application for postponement on the grounds of the Claimant's distress.
5. During the adjournment, I made enquiries as to whether another judge was available to hear the case. I made these enquiries simply because of the level of Mr Dhaliwal's distress and not because I had any concern as to my ability to hear the case fairly. There was no other judge available.
6. I determined that it would not be necessary for me to recuse myself from hearing this case.
7. There was no actual or presumed bias. I do not have any personal relationship with Ms Noble. I have not had any contact with her for some years, and the contact we had during her time at law school was minimal.
8. I did however go on to consider whether a fair-minded observer, having considered the facts, would conclude that there was a real possibility of bias. I found that there a fair-minded observer would not reach such a conclusion. Ms Noble and I have a professional connection only. We have had no contact for a substantial period of time.
9. I then considered the Claimant's postponement application. I had sympathy for the fact that Mr Dhaliwal was finding this a difficult process. However, I also had to have regard to the fact that Mr Dhaliwal's dismissal took place over three years ago. A further delay would be likely to impact upon the cogency of the evidence provided by the witnesses and the ability of the Tribunal to hear this matter fairly.
10. I took into account the fact that many parties and witnesses attending the Tribunal find it a difficult experience, and the Tribunal is able to assist parties who find the process of giving evidence difficult or stressful. I made clear that Mr Dhaliwal could take additional breaks whilst giving evidence. Additionally, we would be hearing evidence from the

Respondent's witnesses first. This would give Mr Dhaliwal some time to compose himself before he was required to give evidence.

11. Mr Ahmed explained that the Claimant was very shaken and was not able to give coherent instructions. Mr Ahmed asked if the case could therefore be postponed until the following morning, so that Mr Dhaliwal was able to properly engage with proceedings.
12. I asked Mr Ahmed how long he expected to be cross-examining the Respondent's witnesses. Mr Ahmed provided a time estimate of four hours. Mr Kelly indicated that he was likely to be cross-examining the Claimant for two hours. On this basis, I felt that it would be difficult to hear the matter in one day. It was important that this case did not go part-heard given the length of time that had already passed since Mr Dhaliwal's dismissal. I therefore agreed to adjourn the matter until 2pm to give the Claimant time to compose himself. I informed the parties that the hearing would now deal with liability only and that the matter would be re-listed for a separate remedy hearing if necessary.
13. Mr Kelly indicated that he was content with this course of action, but that he reserved the Respondent's position in respect of costs.
14. The hearing continued at 2.00pm. The parties confirmed that there were no further preliminary issues with which they wished me to deal.
15. I explained to the parties that I would read the documents referenced in the witness statements, but would not read any further documents unless I was specifically directed to do so.
16. I was provided with witness statements for Kevin Cooke, James Walker, Mark Trowbridge and Hannah Carter. However, only Kevin Cooke and Hannah Carter attended the Tribunal to give evidence. I informed the parties that I would read the statements of James Walker and Mark Trowbridge but could place limited weight upon them.
17. I was provided with two versions of a witness statement for the Claimant. The Claimant confirmed that he wished to rely upon the version dated May 2020. I have disregarded the statement dated November 2022 as requested.

Findings of fact

I make the following findings of fact:

1. The Claimant was employed by the Respondent from 16 April 2011 until 14 February 2019. At the time of his dismissal, the Claimant's job title was Group Leader. This was a supervisory position.
2. Prior to the disciplinary proceedings which resulted in his dismissal, the Claimant had a clean disciplinary record and eight years of service with the Respondent.
3. On 18 December 2018, Mohammed Abdo, a member of the Claimant's team, raised a complaint against the Claimant.
4. The Respondent had in place a Dignity at Work policy. This policy applied to the Claimant, as was accepted by the Claimant in his evidence. The allegations made against the Claimant by Mr Abdo would amount to a breach of this policy.
5. Mr Abdo alleged that the Claimant had harassed him, both verbally and physically. Mr Abdo claimed, amongst other allegations, that the Claimant had:
 - a. Touched him sexually, including brushing against his backside, pressing himself against Mr Abdo and thrusting himself against him;
 - b. Thrust his crotch at him; and
 - c. Verbally harassed him, including by shouting "I fucked him hard" and "I'm going to fuck you hard when we get back. You know you love it".
6. As a result of these allegations, the Respondent suspended the Claimant.
7. Mr Abdo was interviewed in respect of these allegations on 18 December 2018. During this interview, Mr Abdo alleged that the Claimant had "dry humped" him. Mr Abdo listed colleagues who had witnessed these incidents and whom he believed would give statements in support. Mr Abdo also named two further colleagues, Darren Jordan and Nick Poole, whom he said had been subjected to similar behaviour.

8. The Respondent then carried out interviews with seven of the Claimant's colleagues. The content of these interviews can be summarised as follows:
 - a. Stephen Ryder confirmed that he had seen "contact of a sexual nature, like grabbing from behind and simulating sex" between the Claimant and Mr Abdo, and that Mr Abdo had asked for his advice as to how to deal with it. Mr Ryder reported that Mr Abdo had told the Claimant to stop "forcefully".
 - b. Michael Bennett said that he had seen the Claimant approaching Mr Abdo, grabbing him from behind and simulating sexual movements. Mr Bennett said that he had witnessed these actions taking place "a few times a week" and that he had told Mr Abdo to report it.
 - c. Mr Ahmed said that he had seen the Claimant simulating a sex act on Mr Abdo, including during an incident that had taken place the previous day.
 - d. Mr Ali confirmed that he had seen the Claimant approach Mr Abdo, grab him from behind and simulate a sex act. Mr Ali said that the Claimant behaved in this way during "almost every shift" and that he had told Mr Abdo to report it.
 - e. Mr Szczerbinski reported that the Claimant had grabbed his ass and blown kisses at him. Mr Szczerbinski also stated that he had seen the Claimant grab Mo "all the time" and simulate a sexual act.
 - f. Mr Allen had not witnessed any touching or lewd behaviour on the part of the Claimant.
 - g. Mr Ranvir Riyat stated that the behaviour was "just banter".
9. On 21 December 2018, the Claimant was invited to an investigation meeting chaired by Kevin Cooke. The meeting took place on 3 January 2019. The Claimant was accompanied by a trade union representative at this meeting.
10. Mr Cooke read the full contents of Mr Abdo's complaint at this meeting and summarised the content of the various witness statements.

11. At this meeting, Hannah Carter made the Claimant aware that he could raise any issues he wished and present any evidence he wanted to be considered as part of the investigation process.
12. A further investigation meeting took place on 14 January 2019. The Claimant was again accompanied by a trade union representative at this meeting.
13. During cross-examination in front of this Tribunal, the Claimant was adamant that he had not stimulated sex with Mr Abdo.
14. I find that the Claimant did not issue any such denial during the course of the investigation process. The Claimant characterised his behaviour as “banter”. He apologised for his actions, but when asked about specific activities he offered such justifications as “we all do”.
15. The Claimant alerted the Respondent to the contents of a Whatsapp group of which both the Claimant and Mr Abdo were members. The messages within this Whatsapp group included very strong language and racist content.
16. The Respondent deal with this Whatsapp group by way of a separate investigation. It did not form part of the reason for the Claimant’s dismissal. The Respondent did treat the content of the Whatsapp group as mitigation evidence in respect of the allegations against the Claimant.
17. A disciplinary hearing was scheduled for 14 February 2019. The Claimant was invited to this meeting by way of a letter dated 8 February 2019.
18. The Claimant was provided with copies of all relevant documents and witness statements together with this letter. The letter warned the Claimant that an outcome of the disciplinary hearing could be his dismissal.
19. The Claimant was accompanied at this meeting by his trade union representative. At the start of the meeting, he was informed that he could ask for an adjournment at any time.
20. The Respondent claims that prior to the meeting, he had told Hannah Carter that he was too unwell to participate. However, this is not something that the Claimant mentioned in either of his appeal letters. The

Claimant did indicate as part of his second appeal that he had told Hannah Carter that he was “not keeping well”. This is not the same as telling her that he was too unwell to take part in a disciplinary process. It is was not something that was included in the Claimant’s witness statements and not something that was put to Hannah Carter in cross-examination. I therefore find that the Claimant did not tell Hannah Carter that he was too unwell to participate.

21. I find that, at the disciplinary hearing, the Claimant did not deny the accuracy of the allegations made by Mr Abdo. The Claimant accepted that his behaviour was inappropriate in a Group Leader. The Claimant’s justification for his actions was that it was “just banter”.
22. The outcome of this meeting was that the Claimant was dismissed by reason of gross misconduct. The particular conduct for which the Claimant was dismissed was the verbal and physical harassment of Mr Abdo. At the investigation stage, there was also a suggestion that the Claimant had failed to pass on safety briefings to his team in a timely manner. However, nothing in the witness statement provided by Mr Walker or the dismissal letter within the hearing bundle indicates that this formed part of the reasoning for his decision to dismiss.
23. Mr Walker did not attend to give evidence today, but Hannah Carter confirmed the accuracy of paragraphs 13-15.3 of Mr Walker’s statement as part of her evidence. These set out Mr Walker’s reasoning in respect of the Claimant’s dismissal.
24. The Respondent has a two-stage appeal process, and so the Claimant was given two opportunities to appeal against his dismissal. The first stage appeal took place on 14 March 2019. The second stage appeal meeting took place on 5 April 2019. Neither appeal was upheld.

Relevant Law and Judgment

1. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed.
2. The burden is on the Claimant to demonstrate that they were dismissed by the Respondent. However, there is no dispute as to whether the Claimant was dismissed in this case.

3. In order to demonstrate that the Claimant was fairly dismissed, the Respondent must show that it had a potentially fair reason for dismissal under section 98 of the Employment Rights Act 1996.
4. I find that the Claimant was dismissed for a reason which related to his conduct. This is a potentially fair reason under section 98(2)(b) of the Employment Rights Act 1996.
5. Section 98(4) of the Employment Rights Act 1996 deals with fairness in general. It provides that the determination of the question as to whether a dismissal was fair or unfair 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.
6. I find that the Respondent acted reasonably in all the circumstances in treating the Claimant's conduct as a reason for dismissal. I have taken into account the fact that the Respondent is a large, well-resourced employer.
7. I make this finding on the following basis, taking into account the guidance for Tribunals on fairness in the decision in **BHS v Burchell 1978 IRLR 379**:
 - a. I find that the Respondent believed that the Claimant had carried out an act of misconduct. The Claimant did not deny that he had carried out the acts of which Mr Abdo complained, and the Claimant's colleagues confirmed that they had witnessed the acts complained of by Mr Abdo;
 - b. The Respondent also has to demonstrate reasonable grounds on which to base this belief. This was challenged by the Claimant on the following grounds:
 - i. The Claimant's representative has made much of the fact that Mr Abdo's original complaint is unsigned, and has suggested that the Tribunal should treat pages 133-135 of the bundle as blank. The Claimant's representative has also challenged the fact that the meeting notes taken by the Claimant are not verbatim. It is not unusual for complaints

of this nature to be submitted unsigned, and entirely standard practice for meeting notes to be taken in summary rather than verbatim form. However, even if I were to disregard the content of Mr Abdo's original complaint in its entirety, a number of the Claimant's colleagues witnessed the acts complained of and confirmed that they had seen the Claimant touch Mr Abdo inappropriately.

- ii. The Claimant's representative has also suggested that Mr Abdo is dishonest and so should not have been believed. However, a number of Mr Abdo's colleagues witnessed the behaviour complained of and supported Mr Abdo's version of events. There has been no suggestion by the Claimant or his representative that the Claimant's colleagues were dishonest.
- iii. I have also been asked to attach significant weight to the witness statement of Ranvir Riyat, which states that the Claimant's behaviour was "just banter" and that Mr Abdo was also involved. I have considered this statement, but have to weigh in the balance the fact that the majority of the Claimant's colleagues supported Mr Abdo's version of events. I see no reason to apply particular weight to Mr Riyat's statement over and above that of his colleagues.
- iv. The Claimant further alleged that he denied that he carried out the acts in question. Whilst the Claimant vehemently denied that the acts in question took place during cross-examination in front of the Tribunal, he did not do so during the investigation or disciplinary process.

I therefore find that the Respondent had reasonable grounds on which to base its belief in the Claimant's misconduct.

- c. At the time the belief was formed, I find that the Respondent had carried out a reasonable investigation. The Claimant did not deny that he had carried out the acts of which Mr Abdo complained, and so it would have been reasonable for the Respondent to have carried out a limited investigation. However, the Respondent

interviewed the complainant, the Claimant and a number of relevant witnesses.

- d. The Respondent acted in a procedurally fair manner. Having reviewed the documents and the witness statements, I can see that an appropriate process was followed. The Claimant was invited to meetings in good time and provided with appropriate documentation. The Claimant was made aware of the nature of the case against him, and given an opportunity to state his case. The Claimant was accompanied by a trade union representative at these meetings. The process was concluded promptly, and the Claimant was given a right of appeal, plus a second appeal.
 - e. The Claimant has complained that he was not given an opportunity to suggest a line of questioning. However, at the original investigation meeting the Claimant was invited by Hannah Carter to raise any issues he wished..
 - f. The Claimant has alleged that he was unwell at the time of the investigation meeting, and not in the right frame of mind to attend. The Claimant said that he had a fit note in his pocket but did not give this to the Respondent. In light of the fact that the Claimant did not present any medical evidence to the Respondent or ask for an adjournment, it was reasonable of the employer to proceed.
 - g. The Claimant has also alleged that he was too unwell to participate in the disciplinary hearing. However, in light of the fact that he did not make the Respondent aware of this or request an adjournment, it was reasonable of the Respondent to proceed.
8. In order to determine whether the Claimant's dismissal was fair, the Tribunal also needed to be persuaded that the Respondent's decision to dismiss was within the range of reasonable responses open to a reasonable employer. The Claimant challenged this primarily on the grounds that his behaviour was part of a culture of banter in which Mr Abdo also participated. The Claimant pointed to a Whatsapp group as evidence of this workplace culture. The Claimant also maintained that Mr Abdo's behaviour in this group indicated that he was not afraid of the

Claimant. The Claimant also pointed to his long service with the company.

9. I find that the decision to dismiss the Claimant was within the range of reasonable responses open to a reasonable employer I am persuaded of this by the following factors:

- a. The allegations against the Claimant involved serious physical harassment. This seriousness of this behaviour was exacerbated by the fact that it took place in a safety-critical environment.
- b. The Respondent had a clearly worded Dignity at Work policy which applied to the Claimant. The Claimant's behaviour was a serious breach of this policy.
- c. The Claimant was in a leadership position and so had a particular responsibility to ensure that the environment in which his colleagues worked was free of harassment. It would therefore be reasonable to hold the Claimant to a different standard to the members of his team and expect that he would not participate in any culture of "banter".
- d. The Respondent considered the mitigation presented by the Claimant in the form of the Whatsapp group, and his long service, but determined that this did not excuse or justify the Claimant's behaviour. The Respondent demonstrated that it did not tolerate the type of behaviour displayed in the Whatsapp group by dismissing other colleagues who took part in the Whatsapp conversation.

Employment Judge **Routley**

Date 19/12/2022