



EMPLOYMENT TRIBUNALS

Claimant: Mr Chaudhry Ali

Respondent: G4S Secure Solutions (UK) Ltd

Heard on: 7th, 8th, 9th and 10th March 2023 by video

Before: Employment Judge Pritchard

Members: Ms H Bharadia
Mr W Dixon

Representation

Claimant: In person

Respondent: Mr J Searle, counsel

RESERVED JUDGMENT

1. The Claimant's claim that he was unfairly dismissed is well-founded and accordingly succeeds.
2. The Claimant's claim that he was discriminated against under section 15 of the Equality Act 2010 because of something arising in consequence of his disability is dismissed.
3. By consent, the Respondent is ordered to pay to the Claimant the sum of £2,937.60 gross in full settlement of his holiday pay claim less any deductions for income tax and National insurance that the Respondent is legally required to make. (If the Respondent pays this gross sum to the Claimant without deductions, the Claimant shall be responsible to HMRC in respect of any income tax and National Insurance due).
4. The Respondent concedes that it made unlawful deductions from the Claimant's wages during the period he was placed on unpaid suspension. By consent, the Respondent is ordered to pay to the Claimant the sum of £5,508.00 gross less any deductions for income tax and National insurance that the Respondent is legally required to make.
5. The Claimant's claims that he was dismissed and/or subjected to a detriment because he made protected disclosures are dismissed upon withdrawal.
6. The Claimant's claim for notice pay is dismissed upon withdrawal.

REASONS

1. The Tribunal heard evidence from the claimant and from the respondent's witnesses: Christophe Dezeure (Acting Operations Manager at relevant times); and Glenn Lownds (Operations Manager). The Tribunal was provided with a bundle of documents comprising in excess of 350 pages. At the conclusion of the hearing the parties made oral submissions.

The issues

2. The claims and issues had been discussed at a preliminary hearing before Employment Judge Klimov on 3 November 2022 and set out in a case management order. Following discussion with the parties at the commencement of the hearing, and after various concessions, withdrawals and agreement by the parties during the course of the hearing, the issues can be re-stated as follows:

Unfair dismissal

- 2.1. What was the reason or principal reason for dismissal? The respondent says the reason was a substantial reason capable of justifying dismissal, namely the revocation of the claimant's security licence. (The respondent withdrew its reliance on section 98(2)(a) and (d) of the Employment Rights Act 1996).
- 2.2. Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

Disability

- 2.3. The respondent conceded that the claimant was a disabled person by reason of PTSD at relevant times.

Discrimination arising from disability (Equality Act 2010 section 15)

- 2.4. The respondent conceded that it treated the claimant unfavourably by dismissing him.
- 2.5. Did the following things arise in consequence of the claimant's disability?
 - 2.5.1. the claimant's sickness absence in April 2020, July 2020, and between 23 November to 6 December 2020?
- 2.6. Did the respondent dismiss the claimant because of that sickness absence?
- 2.7. Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date?
- 2.8. (The Tribunal was told that the respondent would not seek to show that it had a proportionate means of achieving a legitimate aim).

Breaches of the ACAS Code

- 2.9. The case was listed to consider liability only (with a further hearing to be listed to consider the question of remedy if the claimant were to succeed in

all or any of his claims). However, the parties were informed that the Tribunal would consider at this hearing the claimant's allegations that the respondent unreasonably failed to follow the guidance set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures, the question of any percentage uplift to be considered at a remedy hearing, if applicable.

2.10. With regard to his allegation set out in paragraph 8 of his grounds of complaint, the claimant clarified that the allegation related to paragraph 27 of the Code. The claimant was unable to specify the breach alleged in paragraph 9 of his grounds of complaint by reference to the Code.

Findings of fact

3. The claimant commenced employment with the respondent on 12 February 2017 as a Security Officer.
4. The Security Industry Authority (SIA) issues licences for security staff in accordance with the Private Security Industry Act 2001. The SIA issues guidance including a document entitled "Get Licenced". There are few jobs within the respondent's organisation that do not require an SIA licence.
5. Paragraph 4.6 of the claimant's contract of employment made his employment conditional upon him having an SIA licence. Among other things, the claimant's contract of employment provided:

Any employee whose SIA licence is suspended or revoked or fails to obtain a SIA licence is liable to have their employment terminated summarily. Due to the nature of the Company's business and in view of the reasons for which the SIA would suspend or revoke a SIA licence, redeployment to a non-licensable role will not be offered where the employee ceases or no longer, for whatever reason, to hold a valid SRA licence.

You are obliged to disclose in confidence to the Company any incident which results or might result in a prosecution by the Police or private prosecution or any other matter which may lead to civil proceedings being instituted against you. Failure to disclose such detail may result in dismissal.

6. The respondent's Restriction of Work guidance for managers includes the following:

The moment the company is aware that an employee's licence is revoked or suspended the company is not allowed to engage the employee in licensable roles.

Tell the employee that you are not suspending him but it is illegal for him to work without a valid SIA licence. Therefore, there is no suspension pay.

The Guidance requires the manager to enter into a consultation period with an such an employee, dismissal being the ultimate option.

7. In December 2018 the claimant was the victim of an assault which had a negative impact on his mental health.

8. In June 2019, the claimant was convicted of a racially aggravated public order offence to which he pleaded guilty. He was fined the sum of £265 in the Magistrates' Court. He did not disclose this to the respondent or to the SIA: he thought a fine was exempt.
9. From July 2019, the claimant was assigned to work night shifts at a building in the Great West Road managed by JLL Property Maintenance (JLL). He worked 5 shifts of 12 hour duration each week and was paid at the hourly rate of £10.20.
10. He was a diligent employee and could be relied on. As one of the more senior members of staff, he would train other security officers from time to time.
11. In late 2019, the claimant became aggrieved that JLL's Assistant Facility Manager was wrongfully using CCTV to monitor the performance of the respondent's security staff on site. This caused the claimant to raise a number of complaints with the respondent and directly with JLL.
12. The claimant had a number of sickness absences during 2020, some certificated, some but not all of those absences because of stress and depression.
13. In June 2020, the claimant was diagnosed with PTSD. At no time did he inform the respondent of this.
14. In October 2020, the claimant applied for renewal of his SIA licence.
15. On 10 November 2020, the SIA informed the claimant that it was minded to revoke his licence because a DBS check had revealed his criminal conviction. The SIA informed the claimant that he had until 1 December 2020 in which to respond and to enclose mitigating documents. The claimant did not inform the respondent of this communication. Nor did he inform the respondent of his conviction.
16. The claimant did not submit a response to the SIA and his application for an extension of time in which to do so was refused.
17. On 4 December 2020, the respondent was informed by the SIA that the claimant's licence had been revoked. A member of the respondent's Employee Services Team recorded in an email:

We have been notified by the SIA that Choudhry Ali's licence has been revoked. As a result of this, the employee cannot work in a role requiring a SIA licence.

We have blocked Choudhury from working, and this block will be in place until the individual has a valid, active Licence or has been moved into an alternative role not requiring a licence.

Please can you ensure that all scheduling is removed from the system and all associated manager and supervisors are notified. This employee is not able to work in a role requiring a licence.

The MAC Team advise that the Restriction of Work process is started without delay.

[The email included a link to the Restriction of Work process]

Procedural advice:

- *invite the employee in for consultation meeting*
- *conduct the consultation meeting to establish whether the licence will be reinstated and / or are there any alternative roles that the employee can be deployed into*
- *at the end of the consultation period confirm the outcome to the employee in writing. This will be a) reinstated into role b) redeployed to a different role c) issued notice of termination*

18. On the same day, Mr Dezeure, the claimant's line manager, promptly sought advice from Employee Services as to the reason for the revocation and the procedure to follow. He chased for a reply later that day:

Can I have an urgent update please?

The officer was meant to be in duty this coming Monday, I need to know exactly what happen as if a licence is revoked, there is 21-day appeal etc.

Also I need the process to follow and letters

19. Mr Dezeure received a reply from the respondent's HR Business Partner sharing a link with the procedure and advising Mr Dezeure to stand the claimant down.

20. On 7 December 2020, Mr Dezeure emailed the respondent's HR Business Partner:

Sorry to trouble you with this one, I actually never had any dealing with revocations prior.

The SIA website states: if you appeal against the revocation, your licence remains valid during the appeal process and you can continue to work while their appeal is going on, unless your licence has also been suspended.

21. The respondent's Employee Services Administrator made enquiries of the SIA and reported:

I have just spoken to the SIA and they cannot give me the exact reason, however they have confirmed that this is down to criminality.

You will need to discuss with the officer regarding any previous arrests, charges or cautions he has received and advise him he has 21 days to appeal the SIA decision.

This was all sent out to the officer on the 4th December when his licence was revoked.

22. Mr Dezeure was advised by the respondent's HR Business Partner as follows:

He can't work – that is the instruction we have been given. If you have a role that doesn't require a licence – then he could do that (but think about the reason given for the revocation of the licence).

23. With effect from 7 December 2020, the claimant was placed on unpaid suspension.
24. By letter dated 7 December 2020, Mr Dezeure invited the claimant to attend a consultation meeting. The letter informed the claimant that the loss of his licence might lead to the termination of his employment if a resolution could not be found. As far as Mr Dezeure was concerned, this commenced the process under the respondent's Restriction of Work guidance.
25. At the meeting, which took place on 12 December 2020, the claimant explained that he had received the letter from the SIA on 10 November 2020 advising that they had discovered the undisclosed conviction of a racially aggravated offence. He admitted that he had failed to disclose the conviction to both the respondent and to the SIA saying that he did not know it was required of him. He told Mr Dezeure that he intended to appeal against the revocation of his licence to the Magistrates' Court. Mr Dezeure asked the claimant to keep him updated.
26. On 15 December 2020, Mr Dezeure informed the respondent's HR Business Manager of the meeting and sought advice as to whether the claimant's suspension should be without pay. The HR Business Manager replied:

My understanding is that suspension is unpaid (because he cannot work)

HR – am I correct?

27. By letter to the claimant dated 15 December 2020, Mr Dezeure wrote to the claimant to confirm the matters discussed at the meeting. He told the claimant that the respondent would try to support him by redeploying him to a role where an SIA licence would not be required but that his employment might be terminated if an alternative role could not be found.
28. Having heard nothing from the claimant, Mr Dezeure emailed the claimant on 18 December 2020 asking for an update. Mr Dezeure includes the following in his email:
- As explained to you on Saturday, I am following HR's instructions*
29. On the same day, the claimant appealed to the Magistrates' Court against the revocation of his licence.
30. The following day, the claimant emailed his resignation to the respondent, complaining that his data protection had been breached by reason of JLL's wrongful use of CCTV, also complaining about being placed on unpaid suspension whilst the issue with his SIA licence was resolved.
31. By email to the claimant on 22 December 2020, Mr Dezeure expressed his concern about the reasons given for his resignation. He referred to a prior discussion in which the claimant had expressed his willingness to relocate from Great West Road to Ealing or Slough (because of the claimant's concern that

the SLL Assistant Facility Manager had been using CCTV to monitor security staff) but this had not proceeded because of the revocation of his licence. In his email, Mr Dezeure included the following:

With regards to the revocation of your licence, we held a meeting and I explained to you that you didn't appeal in time, with respect to unpaid suspension, I am following HR's instructions

32. Mr Dezeure gave the claimant until 2 January 2021 to reconsider his resignation.

33. In the event, the claimant withdrew his resignation the following day which was accepted by the respondent.

34. On 29 December 2020, the SIA issued a Licence Dispensation Notice (LDN) for the claimant valid for 10 weeks or until a decision had been made. A member of the Employee Services Team emailed as follows:

Please find attached Licence Dispensation Notice (LDN) for your officer.

This is valid for 10 weeks or until a decision has been made. Should the licence decision not be made within the 10 weeks we will reapply to the SIA for an extension LDN.

Whilst the LDN is in place please remind the officer that they should check their SIA portal regularly as the SIA may require further information.

failure to comply with this may cause delays with the Licence application.

35. Mr Dezeure queried this with the respondent's Employee Services Team:

I thought his licence was revoked?

Have there been any changes?

36. Mr Dezeure received this reply:

Yes that's right, the SG licence is revoked. Let me go back to the SIA and double check. I'd presume the CCTV should also be revoked so I'm not sure why they have approved the LDN

I'll let you know when they get back to us

37. Mr Dezeure also repeated his understanding:

I believe the SIA allow you still work after your licence has been revoked and gives you 21 days to appeal

38. On 31 December 2020, Mr Dezeure was emailed by the Employee Services Team as follows:

We've had the following message from the SIA, has Chaudhry informed you of what the SIA have told him?

Thank you for contacting the SIA we recommend that you speak to Mr Ali for more details on the messages we sent him. in view of the above we recommend that you shouldn't allow Mr Ali to work on the LDN.

39. Mr Dezeure spoke with the claimant on 7 January 2021.
40. By letter dated 11 January 2021, the revocation of the claimant's SIA licence not having been reversed, and the 30-day consultation period having expired, Mr Dezeure gave the claimant three weeks' notice of termination of employment to take effect on 1 February 2021. Before sending the letter, Mr Dezeure spoke with the respondent's recruitment officer and also checked for himself the respondent's internal job portal but there were no available unlicensed jobs into which the claimant could be redeployed.
41. Mr Dezeure informed the claimant that if the respondent had sight of evidence that his SIA licence had been revalidated, then the respondent would gladly reinstate him. Further, Mr Dezeure informed the claimant that if he regained his licence after the termination of his employment, then the respondent would welcome his application to rejoin the company.
42. On 25 January 2021, the claimant appealed against Mr Dezeure's decision to terminate his employment. He asked for the decision to terminate his employment to be postponed pending the outcome of his appeal to the Magistrates' Court.
43. On 31 January 2021, the claimant raised a grievance about his concerns that the respondent's client had been using CCTV to monitor the security staff and about holiday pay.
44. By letter to the claimant dated 11 February 2021, the claimant's SIA licence remaining revoked, Mr Dezeure confirmed the termination of the claimant's employment on 11 February 2021.
45. For reasons which do not concern the Tribunal, the claimant decided that he would not attend a grievance hearing which he considered would be a waste of time.
46. Muhammad Khan, Business Manager, heard the claimant's dismissal appeal on 3 March 2021. By letter dated 23 March 2021, Mr Khan informed the claimant that his appeal had not been successful.
47. In December 2021, upon the SIA agreeing to reverse the revocation of his licence, the Claimant withdrew his appeal to the Magistrates' Court.

Applicable law

SIA licence appeals

48. Section 11 of the Private Security Industry Act 2001 provides:

11 Appeals in licensing matters

(1) *Where—*

(a) an application for a licence is refused,

*(b) a licence is granted subject to conditions imposed under section 8(6),
or*

(c) a licence is modified or revoked,

the applicant or, as the case may be, the holder of the licence may appeal to a magistrates' court ... against the Authority's decision to refuse to grant the licence, to impose those conditions or, as the case may be, to modify or to revoke the licence.

(2) An appeal under subsection (1) must be brought before the end of the period of twenty-one days beginning with the day on which the decision appealed against was first notified to the appellant by the Authority.

(3). . .

(4) ...

(5) ...

(6) Where an application for the grant of a licence by way of a renewal... is revoked, the licence to which the ... revocation relates shall be deemed to remain in force—

(a) for the period during which an appeal may be brought under subsection (1);

(b) for the period from the bringing of any such appeal until it is determined or abandoned;

(c) for the period from any determination on appeal that a licence should be granted until effect is given to that determination, or it is overturned on a further appeal;

...

Unfair dismissal

49. Section 98 of the Employment Rights Act 1996 provides:

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

50. When relying on section 98(2)(d), an employer must show that continued employment of the employee would *in fact* contravene a statutory enactment.

In Bouchaala v Trusthouse Forte Hotels Ltd [1980] ICR 721 it was held that a genuine but erroneous belief by employers that they would be in breach of a duty or a restriction imposed by or under any enactment could not be a reason falling within section 98(2)(d). However, in Bouchaala it was also said that a genuine but erroneous belief that it was impermissible to continue to employ a person because of an enactment prohibiting further lawful employment could be “some other reason” for a dismissal”. In such a case, the reasonableness of the belief which was the reason for the dismissal should be taken into account; Baker v Abellio London Limited UKEAT/0250/16/LA.

51. Under section 98(4) of the Employment Rights Act 1996, where the employer has shown the reason for the dismissal and that it is a potentially fair reason, the determination of the question whether the dismissal was fair or unfair 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 must be determined in accordance with equity and substantial merits of the case.
52. In order to establish a reason for dismissal, the employer must show a genuine belief in the circumstances leading to the decision to dismiss. If the employer shows such a genuine belief, the Tribunal must decide whether the belief was held on reasonable grounds.
53. When considering the fairness of the dismissal under section 98(4), a Tribunal might expect a reasonable employer to warn the employee of the possibility that their contract of employment could be terminated, to consult with the employee, to carry out a reasonable investigation into the relevant circumstances, and to make a reasonable search for alternative employment which the employee could undertake.
54. The requirement for procedural fairness is an integral part of the fairness test under section 98(4) of the Employment Rights Act 1996.
55. A tribunal will err in law if it substitutes its own view of whether or not the employer acted reasonably in the circumstances rather than asking whether the decision to dismiss for some other substantial reason fell within the range of reasonable responses that a reasonable employer might adopt; in an SOSR context see: William Cook Sheffield Ltd v Bramhall EAT 0899/03.

Discrimination arising

56. Section 15 of the Equality Act 2010 provides that a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B’s disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
57. However, this kind of discrimination will not be established if A shows that he did not know, and could not reasonably have been expected to know, that B had the disability.
58. The Code of Practice on Employment 2011, to which the Tribunal must have regard where any part of the Code appears relevant to any question arising in proceedings, provides:

5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a 'disabled person'.

5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment...

59. In submissions, the claimant referred to two cases in which the question of constructive knowledge was considered: A v Z UKEAT/0273/18 and Cox v Essex County Fire and Rescue Services UKEAT/0162/13.
60. In City of York Council v Grosset 2018 ICR 1492, a case in which the employer dismissed a disabled employee for misconduct caused by his or her disability, the Court of Appeal held that a dismissal can amount to unfavourable treatment under S.15, even if the employer did not know that the disability caused the misconduct. The causal link between the 'something' and the unfavourable treatment is an objective matter that does not depend on the employer's knowledge.
61. The questions to be asked in determining a section 15 claim are set out in Pnaiser v NHS England 2016 IRLR 170. As stated in that case, it does not matter precisely in which order those questions are asked. Depending on the facts, a Tribunal might ask why the employer treated the claimant in the unfavourable way in order to answer the question whether it was because of "something arising in consequence of the claimant's disability".
62. Section 136 of the Equality Act 2010 sets out the burden of proof that applies in discrimination cases. Subsection (2) provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that person (A) has contravened the provisions concerned, the Tribunal must hold that the contravention occurred. However, subsection (2) does not apply if A shows that A did not contravene the provision.

ACAS Code of Practice

63. The ACAS Code of Practice on Disciplinary and Grievance Procedures only applies to situations giving rise to a disciplinary situation involving culpable behaviour on the part of the employee; Holmes v Qinetiq Ltd UKEAT/0206/15. It does not apply to dismissals for some other substantial reason; Phoenix House Ltd v Stockman UKEAT/0264/15.

Conclusion

Unfair dismissal

64. It is patently clear from section 11(6) of the Private Security Industry Act 2001 that the claimant's licence was deemed to remain in force, both during the period of 21 days following the SIA letter stating that it was minded to revoke his licence, and from 18 December 2020 when the claimant submitted his appeal to the Magistrates' Court until its determination.

65. The SIA states in its Get Licenced guidance:

If someone appeals against their revocation, their licence remains valid during the appeal process and they can continue to work while their appeal is going on, unless the licence has also been suspended.

66. The Tribunal notes that this extract is identical to that set out in Mr Dezeure's email of 7 December 2020 to the respondent's HR Business Partner.

67. The respondent's Restriction of Work guidance, which states that it is illegal for an employee whose licence has been revoked to work, was clearly incorrect.

68. The respondent conceded at the hearing that the claimant would have been able to continue to work legally and that the respondent was mistaken as to the legalities relating to revocation.

69. A lay person, if asked whether the dismissal of the claimant in these circumstances was fair or unfair, might reply "unfair of course – had the employer not got it so badly wrong the claimant would still have his job". This view would be subject to Mr Searle's submission that the claimant's own wrongdoing was the first link in the chain of causation leading to the termination of his employment but, nevertheless, the lay person's view would be understandable.

70. However, section 98 of the Employment Rights Act 1996 has been subject to much interpretation and refinement in the appeal courts over many years. The Tribunal is bound to follow the principles set out in those appeal cases.

71. The Tribunal first considers whether Mr Dezeure had a genuine belief that the claimant could not work legally.

72. Mr Dezeure had no regard to the claimant's contract of employment and its provisions play no part in the Tribunal's consideration of the reasons and/or fairness of the dismissal.

73. The Tribunal is satisfied that, having heard Mr Dezeure's evidence, particularly in response to questioning by the Tribunal, he held a genuine but mistaken belief that the claimant could not legally work as a security officer because his licence had been revoked. That mistaken belief is capable of amounting to a substantial reason: Bouchaala.

74. The Tribunal next considers whether Mr Dezeure's genuine belief was held on reasonable grounds. Again, a lay-person might say "Of course not, the belief was mistaken". However, the test is not objective.

75. The Tribunal reminds itself that while the respondent bears the burden of proving the reason for the dismissal, the question of reasonableness requires the Tribunal to apply a neutral burden.

76. Mr Dezeure himself was sufficiently concerned as to whether the claimant could legally work because he investigated the position by searching the internet. He queried the position twice, firstly with HR and again with the respondent's Employee Services.

77. In the first instance, Mr Dezeure set out in an email to HR the extract from the SIA website. The extract made it abundantly clear that if someone appeals against their revocation, their licence remains valid during the appeal process and they can continue to work while their appeal is going on.
78. HR's advice was simply: "He can't work - that is the instruction we have been given". Notwithstanding such directly conflicting information, Mr Dezeure did not further question HR's advice nor seek to ascertain why it was given contrary to SIA's own clear guidance. In the Tribunal's view, in light of such starkly conflicting information, no reasonable employer would let it rest there and, without more, follow HR instructions.
79. In the second instance, Mr Dezeure informed a member of the Employee Services Team of his understanding that the claimant could still work after his licence had been revoked. The answer he received was in relation to the LDN and not in relation to the revocation. However, there was no evidence to suggest that Mr Dezeure queried this or sought clarification, information or advice relating to the SIA guidance. It was left in the air. Mr Dezeure simply continued with the process he had started on 12 December 2020. Again, it is the Tribunal's view that in the circumstances no reasonable employer would leave such a matter unresolved rather than seek a rational explanation as to why HR and/or Employee Services were, in effect, advising that SIA guidance should not apply.
80. Thus, although the Tribunal accepts that Mr Dezeure held the genuine belief referred to above, it was not held on reasonable grounds.
81. The claimant maintains that in such a large organisation there must have been alternative employment into which he could have been redeployed. Of course, the question of redeployment should never have arisen in the first place because the claimant could legally work at all times in his role as Security Officer. To the extent that the Tribunal needs to consider this issue, it would prefer Mr Dezeure's evidence that he satisfied himself that there was no suitable alternative employment for the claimant. The internet advertisements of March 2023 referred to by the claimant (which include a number of overseas jobs) would not persuade the Tribunal that there might have been suitable vacancies in February 2021.
82. The Tribunal next considers the appeal.
83. The claimant complains that it was inappropriate for Mr Khan to determine the appeal because Mr Khan had been involved in his dismissal and in dealing with the claimant's complaints by CCTV monitoring by the JLL Assistant Facility Manager. The Tribunal is unable to accept that Mr Khan was an inappropriate person. Apart from being updated by Mr Dezeure about the process he was going through with the claimant, there was no credible evidence to suggest that Mr Khan took any part in the decision to dismiss the claimant; that was solely Mr Dezeure's decision. There was certainly no credible evidence to support the claimant's bald assertion that Mr Khan must have been behind his dismissal. Secondly, the JLL/CCTV monitoring issue was not connected to the decision to dismiss. That issue, raised in a formal grievance, was in any event being handled by another manager.

84. Mr Khan did not give evidence to the Tribunal. However, the Tribunal has seen the claimant's appeal letter, the notes of the appeal hearing, and the outcome letter recording Mr Khan's decision.
85. At the appeal hearing, Mr Khan told the claimant that he had limited knowledge about what was happening with his licence but that he would look into the reasons why it was revoked and see if the procedure was followed correctly.
86. However, notwithstanding the claimant's contention that he was permitted to work in the 21 day period following revocation, that the decision to terminate his employment should be postponed pending his appeal in the Magistrates' Court, and the claimant telling Mr Khan "it is revocation, not suspension" there was no credible evidence to suggest that Mr Khan investigated reasonably or at all the legal effect of the revocation.
87. Indeed, Mr Khan told the claimant at the appeal hearing, prior to having the opportunity to investigate the matter, that the revocation of the claimant's licence meant he could not work.
88. In his outcome letter, Mr Khan informed the claimant that upon revocation of his licence, the SIA had recommended that the claimant should not be offered work. There was no evidence before the Tribunal to suggest that this was the case.
89. The Tribunal is of the view that no reasonable employer would fail to consider properly what the claimant had to say and, in the circumstances, fail to look into the legalities relating to the claimant being able to work when his licence was revoked but under appeal. As with Mr Dezeure, it appears that Mr Khan simply followed HR advice. The failure to investigate further fell outside the band of reasonableness.
90. Finally, the Tribunal has had regard to the process followed. In the Tribunal's judgment, it is outside the band of reasonableness to require a manager to apply to an employee whose licence has been revoked, a procedure contained in guidance which includes misleading and/or inaccurate statements as to the legality of working when a licence is revoked.
91. Having regard to the size and administrative resources of the respondent's organisation, which is considerable, the Tribunal concludes that the respondent acted unreasonably in treating some substantial reason, the mistaken belief, as a sufficient reason for dismissing the claimant.

92. The claimant was unfairly dismissed.

Disability discrimination

93. The respondent admitted that the claimant was a disabled person but did not accept that the claimant's sickness absences arose as a consequence of his disability. The respondent also denied that it had knowledge or constructive knowledge of the claimant's disability.
94. Without reaching any conclusions as to those issues, the Tribunal considers why the claimant was dismissed.

95. The claimant sought to rely on a text message sent to him by Mr Lownds on 7 July 2020 saying “... *sorry to hear you are sick again. We will need to arrange a date to discuss the amount of sickness as you have hit a few trigger points on the amount of time off*”.
96. In the event, Mr Lownds did not meet with the claimant. At no time did the respondent seek to implement an absence management process or issue warnings requiring an improvement in attendance. There was no suggestion that Mr Dezeure knew of Mr Lownds text message.
97. The claimant also referred in evidence to a telephone call with Mr Dezeure about his sickness absence, Mr Dezeure saying that an appointment should be made with occupational health. However, the evidence as to the reason for the claimant’s dismissal is overwhelming, namely Mr Dezeure’s mistaken belief discussed above.
98. The Tribunal notes that the claimant did not appeal against his dismissal on the basis that it might have been because of his sickness absence.
99. The claimant has failed to show a prima facie case. The decision to dismiss the claimant had nothing whatsoever to do with his sickness absence.
100. Thus, even if the claimant’s absences arose in consequence of his disability, and the respondent knew or ought reasonably have known that the claimant was a disabled person, he was not dismissed because of his sickness absences
101. The claimant was not discriminated against under section 15 of the Equality Act 2010.

ACAS Code

102. The dismissal in this case did not concern a disciplinary situation and/or any culpable conduct on the claimant’s part. The ACAS Code does not apply and the Tribunal has no jurisdiction to award an uplift to any compensation.

Remedy hearing

103. The claimant has indicated that he would like to be re-instated into his previous role by the respondent. The claimant is a litigant in person. English is not his first language. This case will be listed for a further hearing with an allocation of two days to consider remedy.

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Case No: 2302190/2021

Employment Judge Pritchard
Date: 16 March 2023