



EMPLOYMENT TRIBUNALS

Claimant: Miss N Plant

Respondent: Bridge Medical Solutions Limited

HELD: at Leeds by Cloud Video Platform (CVP) **ON:** 20 June 2023

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Miss A Little, registered manager

JUDGMENT

1. The proper title of the respondent is Bridge Medical Solutions Limited.
2. The claimant's claim of unfair dismissal is hereby dismissed.

REASONS

1. Claim

- 1.1. Unfair dismissal.

2. Issues

The issues in this case relate to:

- 2.1. What was the reason for the dismissal.
- 2.2. Was the dismissal reasonable in all the circumstances.

3. The Law

The Tribunal has to have regard to the following provisions of the law:

- 3.1. Section 98(1)(b) Employment Rights Act 1996 (ERA). This section sets out a reason for dismissal as being some other substantial reason of a kind as to justify dismissal.

- 3.2. In **Dobie v Burns International Security Services (UK) Limited [1984] ICR 812 CA** the Court of Appeal upheld a decision that third party pressure to dismiss can amount to some other substantial reason of a kind such as to justify dismissal.
- 3.3. Section 98(4) ERA this sets out the reasonableness test in relation to dismissals.
- 3.4. In **Polkey v A Dayton Services Limited [1988] ICR 142** in the House of Lords (Polkey) it was held that failure to follow correct procedures was likely to make an ensuing dismissal unfair unless in exceptional circumstances the employer could reasonably have concluded that doing so would have been futile.

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities):

- 4.1. The respondent is in the business of providing support workers to individuals with learning difficulties and those with cerebral palsy. At the time of the claimant's dismissal the respondent had 38 employees.
- 4.2. The claimant was such a support worker and was employed from 6 April 2019 until her dismissal on 25 November 2022. Up to 25 November 2022 the claimant was described as a satisfactory employee.
- 4.3. The claimant worked with James Beresford as her client, who suffered from cerebral palsy. Sophie, James' sister, worked with the respondent and James' parents, who were Susan Beresford and David Beresford.
- 4.4. Although two contracts for the claimant were produced to the hearing it was the second contract, signed by the claimant on 6 April 2021, that the parties agreed as being operative at the time of the claimant's dismissal. From that latter contract the claimant was clearly an employee of the respondent and the contract contained a disciplinary policy.
- 4.5. The respondent operated a WhatsApp group amongst its staff and management. It was not open to anyone else.
- 4.6. On 25 November 2022 there was a discussion on the WhatsApp group about some meat in the fridge, found by Sophie Beresford. The claimant got involved in the conversation. Inexplicably the claimant described the person, who Sophie Beresford understood to be her, as being vile like her mother and father. This was picked up by Sophie but the claimant appears to have taken no part in the conversation despite questions that Sophie raised.
- 4.7. The claimant said that the reference to vileness and James' mother and father was an entirely separate one from involving work at the respondent and was by another social medium with someone called Carol. Coincidentally the respondent had an employee called Carol, who took part in the conversation but who was not the Carol who the claimant was talking about.

- 4.8. The claimant however was unable to produce any evidence about this separate conversation or any explanation as to who may or may not be vile nor any other explanation surrounding this episode.
 - 4.9. Immediately after the conversation on the WhatsApp group Sophie called Miss Alison Little, the registered manager, who gave evidence on the part of the respondent. The call was made immediately and Sophie thought that the reference to vileness was to her and her parents. Sophie was clearly upset but Miss Little said she was going to ask the claimant about it.
 - 4.10. The respondent took the decision to remove the claimant from the WhatsApp group there and then.
 - 4.11. Miss Little then received a call from Susan Beresford, who made it clear in no uncertain terms that if the claimant did not go she, Mrs Beresford, would take James away from the respondent. Susan Beresford would not agree to Miss Little speaking to the claimant.
 - 4.12. Within 10 minutes David Beresford called Miss Little and put more pressure on the respondent.
 - 4.13. Susan Beresford called again and again made it clear that the family would leave the respondent if the claimant did not.
 - 4.14. Miss Little therefore terminated the claimant's employment by email at 10:24am on 25 November 2022, the incident having started with the WhatsApp conversation at 9:24am.
 - 4.15. At no time did Miss Little speak to the claimant about the incident, despite the fact that she was aware of company procedures. Miss Little did consider whether there was any other way of continuing to employ the claimant but decided there was not. The claimant was also aware of the company procedures and knew there was a right of appeal but she did not exercise it. Miss Little said she did not follow the procedures because of the pressure upon the respondent from the client being James and particularly his parents.
5. **Determination of the Issues (after listening to the factual and legal submissions by and on behalf of the respective parties):**
- 5.1. It would be easy to conclude that the reason for the dismissal was the claimant's misconduct, namely, the use of the expression "vile" in the direction of a colleague and her family and its effect on them.
 - 5.2. It is very likely that had there been no pressure on Miss Little the respondent would have carried out a proper procedure, but that did not happen and the pressure most certainly did. There were four calls, one from Sophie, two from Susan Beresford and one from David Beresford. The calls from Susan Beresford in particular were assertive. The Tribunal finds therefore that the real reason for the dismissal was not the claimant's conduct but was some other substantial reason of a kind as to justify dismissal. (See section 98(1)(b) ERA). The Tribunal further finds that that substantial reason was third party pressure on the respondent to dismiss the claimant.
 - 5.3. That of itself does not make the dismissal fair or unfair and the Tribunal has to consider whether the respondent acted reasonably or unreasonably

in treating the third party pressure to dismiss as a sufficient reason for dismissal. The Tribunal must also consider equity and the substantial merits of the case (see section 98(4) ERA).

- 5.4. In this context the claimant's conduct is important in another way. She says that when she used the word "vile" she used the wrong medium but she was unable to explain about whom she was talking to when referring to "evil" people nor was she able to produce any evidence to support her uncertain theory.
- 5.5. What must not be forgotten however is that the respondent did not comply with its own procedures, at the very least by interviewing the claimant before dismissing her. The Tribunal has had to consider with some care whether the breach of procedures is fatal to the respondent's case, or is partially wrong or is neither of those things. In Polkey we are guided that if the circumstances around following procedures would be futile the failure to follow correct procedures may not be unfair.
- 5.6. The Tribunal decides that this is such a case because, whatever the claimant might have said, the third party pressure from James Beresford's parents was such that they would not have the claimant back and the respondent was unable to find the claimant any other position.
- 5.7. In all the circumstances the claimant's claim for unfair dismissal is dismissed.

Employment Judge Shulman

Date: 3 July 2023