



# EMPLOYMENT TRIBUNALS

## Claimant

Mrs Karen Dudek-Smith

v

## Respondent

Consol Tanning Limited  
t/a Consol

**Heard at:** Norwich

**On:** 18 April 2023

**Before:** Employment Judge Postle

## Appearances

**For the Claimants:** In person

**For the Respondent:** Miss Hann, Operations Director

**JUDGMENT** having been sent to the parties on 2 June 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, and the file having reached Employment Judge Postle to enable him to prepare written reasons on 8 September 2023, the following reasons are provided:

## REASONS

1. At the Preliminary Hearing Employment Judge Postle determined the Claimant's claim for unfair dismissal as having no reasonable prospect of success.
2. At the Preliminary Hearing, the Claimant gave evidence orally as did the owner of the Respondent's business, Miss Hann. The Tribunal was also assisted by a Bundle of documents consisting of 70 pages.
3. The Claimant was employed by the Respondent from 2 April 2013 until her employment was terminated on 28 July 2022 for gross misconduct. The Claimant was employed as a Studio Manager.
4. On 15 July 2022, in accordance with the Respondents Disciplinary Policy (page 70) the Claimant was suspended on full pay pending an investigation into allegations of gross misconduct, in particular deception and deliberate falsification of records in that the Claimant had been repeatedly issuing free sunbed sessions to clients without following company procedure.

5. The Disciplinary Investigation found that the Claimant had not been following procedures and had been issuing free sunbed sessions to clients on multiple occasions without authority, resulting in a monetary loss to the business.
6. The Claimant was therefore invited to a Disciplinary Hearing by letter of 19 July 2022 (page 27). The Disciplinary Hearing was to take place on Friday 22 July 2022, to be held via a Teams meeting.
7. The meeting was to be conducted by Miss Hann Operations Director, assisted by Miss Stevens an HR Consultant for an external body, with Rebecca Whittington of HR taking Minutes of the Disciplinary Hearing.
8. The letter inviting the Claimant to the Disciplinary Hearing set out the purpose to discuss alleged misconduct, namely the deception and deliberate falsification of records. Particularly that the Claimant had repeatedly been issuing free sunbed sessions to clients without following procedure.
9. The Disciplinary Invite letter contained a link to an online folder containing evidence in the form of:-
  - 9.1. Staff Training Guide;
  - 9.2. 10:15 Bracknell free session;
  - 9.3. Free session report, Bracknell 12:20, 28 June, 4 and 6 July;
  - 9.4. Bracknell CCTV 12 June 2022;
  - 9.5. Bracknell CCTV 20 June 2022;
  - 9.6. Bracknell CCTV 28 June 2022;
  - 9.7. Bracknell CCTV 4 July 2022, 13:49;
  - 9.8. Bracknell CCTV 4 July 2022, 14:11;
  - 9.9. Bracknell CCTV 6 July 2022;
  - 9.10. Free session log video Tutorial; and
  - 9.11. Email statement from Michael Collins.
10. The above evidence was to form the basis of the complaint supporting the allegations made against the Claimant.
11. The letter inviting the Claimant to the Disciplinary Hearing made it clear she would be given an opportunity to answer the allegations raised, present any evidence and provide any witnesses and mitigating factors.
12. The letter went on to advise the Claimant of her right to be accompanied and was signed by Miss Hann, Operations Director.
13. The Minutes of the Disciplinary Hearing are recorded at page 31 and are typed.

14. All the allegations were put to the Claimant and the Claimant was given an opportunity to respond to those allegations regarding the provision of free sunbed sessions outside the Policy of the Respondent's business.
15. The outcome of the Disciplinary Hearing was that the Claimant was to be dismissed from the Respondents as a result of theft of services, namely the provision of free sunbed sessions resulting in a monetary loss to the business. The reasons were set out in the Letter of Dismissal to the Claimant dated 28 July 2022 at page 45 and 46 of the Bundle. The Letter of Dismissal confirmed the Claimant's right of Appeal. The decision of the Operations Director, Miss Hann, was that the Claimant was aware of the process to be adopted with regard to free sunbed sessions and the Claimant had made the decision to disregard the company's Policy, the fact that the Claimant showed no remorse for taking these decisions, or had provided a credible explanation for her actions during the Disciplinary Hearing.
16. Therefore, Miss Hann considered the Claimant's actions as gross misconduct and the proper sanction given for breach of trust was dismissal.
17. The Claimant duly Appealed against the dismissal by letter of 3 August 2022 claiming that she had been treated unfairly and been the target as a result of raising a previous Grievance regarding bullying and undermining behaviour by an Area Manager.
18. The Claimant's Appeal against the decision to dismiss was acknowledged (page 49) on 8 August 2022 proposing the Appeal Hearing scheduled for 17 August 2022 before an Appeal Manager Mr Primdahl, the Managing Director, again with an HR Representative in attendance. The Appeal to be conducted by Teams video. The Claimant was also advised of her right to be accompanied. The letter went on to advise the purpose of the Appeal Hearing will be to review the Claimant's specific Grounds of Appeal.
19. The Appeal Hearing duly took place on 17 August 2022 and the Minutes of that Appeal Hearing are at page 51 – 56. The Claimant was again given the right to set out her position and the reasons for her Appeal. On 22 August 2022 Mr Primdahl, the Managing Director, wrote to the Claimant (page 57 and 58) with the outcome of the Disciplinary Hearing Appeal. In that letter he set out the Claimant's confirmed Grounds of Appeal and then went on to advise why those grounds had not been successful. Particularly that although the Claimant disagreed with the wording of the allegation and the reason for dismissal, the fact that she did not believe it equated to deception and deliberate falsification of records, nevertheless the Claimant had repeatedly been issuing free sunbed sessions to clients without following procedure. The company therefore viewed this as theft of services resulting in loss to the business. The fact that the Claimant admitted that she did not follow procedure for recording free sessions and had issued free sessions without authorisation, or attempting to obtain

authorisation. The suggestion that the iPad did not work was not accepted as there were other means upon which the Claimant could have reported any issues.

20. Furthermore, that Ms Saunders played no part in the disciplinary process being the Area Manager the Claimant had suggested had bullied and intimidated the Claimant in a previous Grievance. The Appeal was therefore not successful.

### **The Law**

21. Conduct is a potentially fair reason to dismiss under s.98 of the Employment Rights Act 1996. The Tribunal then have to consider under s.98(4):

- 98(4) Where the employer has fulfilled the requirements of subsection (1) (potentially fair reason to dismiss), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
  - (b) shall be determined in accordance with equity and the substantial merits of the case.

22. That is of course not the end of the matter, where dishonesty is alleged it is classic British Home Stores v Burchell [1980] ICR 303 territory where the Tribunal will consider the following:-

- "a. Did the Respondent carry out reasonable investigation into the Claimant's alleged gross misconduct?
- b. Did the Respondent have reasonable grounds for its belief that the Claimant had allegedly committed gross misconduct?
- c. Was dismissal within the band of reasonable responses that was likely to be available to the Respondent?
- d. Was the dismissal in all the circumstances fair?"

23. The Tribunal reminds itself it should not substitute its own view.

### **Conclusions**

24. Once the Respondents ascertained the Claimant appeared to be falsifying records, particularly repeatedly issuing free sunbed sessions to clients without authorisation or following procedure, an investigation was carried out. It was a reasonable investigation from which video CCTV evidence was obtained clearly showing the Claimant had been providing free sunbed sessions without following company procedure or authorisation.

The company clearly investigated this, it was a reasonable investigation and indeed a thorough one.

25. The Claimant was invited to a Disciplinary Hearing. The letter inviting the Claimant to the Disciplinary Hearing clearly set out the allegations and the evidence it was to be based on, provided that information and informed the Claimant of the right to be accompanied. There was sufficient time between the letter, 19 July 2022 and the Hearing on 22 July 2022.
26. At the Disciplinary Hearing the Claimant was given every opportunity to provide her side of the story. She effectively admitted providing the free sunbed sessions and tried to justify it. It would have led to the company losing money. The Decision Maker, Miss Hann the Operations Director, formed the conclusion after a reasonable investigation on reasonable grounds that there had been some falsification of records and that the Claimant had been providing free sunbed sessions to clients without following procedure or authorisation. She concluded this was gross misconduct and that the appropriate sanction in the circumstances, given the Claimant's position, was dismissal. Clearly based on the evidence before her and the Claimant's explanation, Miss Hann's decision to dismiss clearly fell within the band of a reasonable response open to her.
27. The Claimant was provided with an Outcome Letter re: dismissal and the letter setting out the Right of Appeal, there was a detailed Appeal Hearing which reviewed the reasons for dismissal and an Outcome Letter was issued to the Claimant setting out the reasons for not upholding her Appeal.
28. It is clear in these circumstances that the claim has no reasonable prospect of success.

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Employment Judge Postle

Date: 14 November 2023

Sent to the parties on:  
16 November 2023

For the Tribunal Office.