



EMPLOYMENT TRIBUNALS

Claimant: Claire Smith

Respondent: Turnock Ltd

Heard at: West Midlands **On:**29th and 30th January
2024

Before: Employment Judge Steward (sitting alone by CVP)

Representation

Claimant: In person (with the assistance of Ms Downs)

Respondent: In Person

JUDGMENT

The claim for unfair dismissal is well founded and succeeds.

Introduction

1. The Claimant was employed by the Respondent as an Assembly Operative from the 3rd August 2020 until the 25th April 2023.
2. The Claimant was dismissed by the Respondent at a meeting on the 25th April 2023 for gross misconduct. The nature of the misconduct was a post the Claimant placed on facebook that the Respondents say contravened the Respondents Social Media and Internet Use Policy. The Respondents also state other aspects of the Claimants conduct and performance were concerning but the principle reason for dismissal was the facebook post. The Claimant says that this post and other aspects of her conduct (which she does not accept in any event) did not amount to gross misconduct and she should not have been summarily dismissed. The Claimant also states the Respondents disciplinary procedure was unfair.

3. The Claimant appeared in person but with the assistance of Ms Downs as a volunteer. The Respondent was Turnock Ltd. The managing director Gordon Stone dealt with the hearing for the Respondent. The bundle consisted of 157 pages. The Respondent had 4 witnesses these were Mr Philips, Ms Powell, Ms Stackhouse and Ms Yeomans. On the morning of the 29th January 2024 the Claimant confirmed she had completed a witness statement which was sent to the Respondent and the Tribunal but was not in the bundle. This was located and considered on the morning. The Claimant confirmed her statement but was not subject to any cross examination. Gordon Stone and Ms Stackhouse also gave brief evidence. Neither party had any questions for the other witnesses and so they were not called to give any evidence. The case was then adjourned to allow both the Claimant and Respondent to consider submissions and, if they wished, to prepare some basic written submissions.
4. I received written submissions from both parties which were very helpful and both parties had the opportunity to address me to those submissions on the second day of the hearing.

Summary of the law

5. Section 94 of the Employment Rights Act 1996 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 S.95. There is no dispute in this case that the Claimants Contract of Employment was terminated by the Respondent's on the 25th April 2023.
9. Section 98 of the 1996 Act deals with the fairness of dismissals. There were two stages within s.98. First, the employer must show that they had a potentially fair reason for the dismissal within s.98(A)(2). Second, if the respondent shows that they 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.
10. In this case it is not in dispute that the respondent dismissed the claimant because it believed she was guilty of misconduct. Misconduct is a potentially fair reason for dismissal under s.98(2). The respondent has satisfied the requirements of s.98(2).
11. Section 98(4) then 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 the equity and substantial merits of the case.
12. In misconduct dismissals, there is well established guidance for tribunals on fairness within s.98(4). In the decision of Burchell [1978] IRLR 379 and Post Office v Foley [2000] IRLR 827. The tribunal must decide whether the employer had a genuine belief in the employee's guilt. 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 s.98(4), the tribunal must decide whether the employer acted within the

band or range 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, and the tribunal must not substitute its view for that of the reasonable employer.

Findings of Fact

13. In this section I will record findings of fact.
14. On the 21st April 2023 Teresa Stackhouse spoke to Gordon Stone about the Claimants behaviour and the impact it was having on other members of staff. He decided to have a meeting on Monday 24th April 2020 to include himself and Ms Stackhouse and Mr Phillips to discuss matters further. This meeting took place in the canteen and at this meeting Ms Stackhouse gave examples of concerning behaviour of the Claimant. Mr Stone and Mr Phillips discussed giving the Claimant a 'stern warning'. However Ms Stackhouse then produced an entry of the Claimants facebook page which had been discovered over the weekend. The Respondent took the view that this entry on facebook denigrated both Mr Stone and Mr Phillips and also the company Turnock Ltd. The Respondents concluded that the entry on facebook was in breach of the company policy on Social Media and Internet Use.
15. On the morning of the 25th April 2023 Gordon Stone asked the Claimant to join him and Mr Phillips and Ms Stackhouse for a meeting in the canteen. The Claimant attended with the support of Ms Corcoran (who was also named by Ms Stackhouse as somebody whose conduct was under question) During this meeting the list of concerns were read out and the Claimant was asked to comment on each one. When the facebook post was shown to the Claimant the Respondent states she said she did not put this on her facebook page. The Claimant does not deal with this in her statement. It was at this moment that Gordon Stone decided to dismiss the Claimant for gross misconduct. No contemporaneous notes or record was kept for the meeting on the 24th April or the 25th April. When asked about this Gordon Stone stated that 'scrappy notes were kept' and that his 'handwriting is terrible' Gordon Stone accepted in evidence it was the discovery of the facebook posting and the Claimants reaction to it that led her to be dismissed there and then.
16. The Claimant was given 48 hours to appeal the decision. Gordon Stone emailed the Claimant that morning and eventually an appeal meeting was held the following day at 13.30hrs. At that meeting was Gordon Stone, Mr Phillips, Emma Corcoran and Sue Parker attended and Ms Parker took the notes. However no notes of this meeting have been produced. The dismissal for gross misconduct stood.
17. I believe it is important to consider the facebook post and its implications in more detail as this is the reason for the dismissal. The post can be found at A2-1 and A2-2 in the bundle. It is accepted it is a post on the account of the Claimant. It is a facebook account. The post shows the figure of a woman blindfolded sat in front of at least one other figure who is also blindfolded. Above the woman are the words "Weve all had jobs like this...." and below her are the words 'How management act after you and your co-workers clearly point out the issues at work'. This seems to be a reposted message. I don't believe the wording is that of the Claimant but is just the wording on the original meme. The account of the

Claimant notes that she works at Turnocks Electrical. This seems to be a general post. It is not qualified by the Claimant making any comment and linking it in anyway to her own job or working environment. She makes virtually no comment other than emojis. I accept that it is a post/meme from a company or organization called 'everydayproblems'. It will be read by all those who have access to Claimants account. It could also be reposted. The evidence of the potential audience for this posting was unclear. It is difficult to say whether anybody looking at this meme would link it directly to the Claimants working environment. Even if that is a possibility it is a remote one in my view. However it is not directly critical of Turnocks Electrical and make no comment about the Claimants working environment. The Respondents Social Media and Internet Policy states that nothing should be posted on social media that could reasonably considered to damage the company or adversely affect the company. It could result in disciplinary proceedings. I think it is unlikely that this meme would have damaged or adversely affected the company. However it merited some discussion with the Claimant and perhaps for some action to be taken such as a warning or a reminder of the guidance in this area so that nothing like this was repeated.

18. I do find that the Claimant was asked to attend a meeting on the 25th April 2023 with virtually no notice or advanced warning of what the meeting was going to discuss even though it was a serious meeting. No minutes were kept of the meeting on the 24th or the 25th. The appeal meeting was also hurriedly convened and no minutes of that meeting have ever been kept.

Conclusions on Unfair Dismissal due to Conduct

19. It is clear that the Claimant was dismissed and the reason for that dismissal was her conduct. That is not disputed. The question for the Tribunal is whether the dismissal for the reason of conduct was fair or unfair. Did the Respondent act reasonably or unreasonably. Was the decision to dismiss for the reason of conduct within the 'band of reasonable responses' test? Further was a fair disciplinary procedure followed
20. After considering all the written and oral evidence the Tribunal finds that the decision to dismiss the Claimant for reason of conduct was unfair. The Respondent did not act in a reasonable way given the reason for the dismissal was one of conduct.
21. The Respondents were alerted to some issues of conduct on the by Teresa Stackhouse after she took over the role from Kate Yeomans at the end of March 2023. None of these issues were ever raised with the Claimant before the meeting on the 25th April 2023. They were brought to the attention of Gordon Stone on Friday 21st April 2023. At the meeting on the 24th April 2023 Gordon Stone had decided to give the Claimant a stern warning. In the ET3 Mr Stone mentions that they were going to start disciplinary proceedings. However the discovery of the facebook entry then led to the dismissal of the Claimant for Gross Misconduct. Its clear, as conceded by Gordon Stone, that the reason for the dismissal was the facebook entry by the Claimant and her reaction to it.
22. As per paragraph 17 above I do not accept that the facebook meme 'reasonably considered to damage the company.....or adversely affect the company' In my view given the nature of the facebook post, the content and the limited scope for observation the Claimant could have been spoken to and advised about her conduct and potential impact on her and the company. Further education and

guidance in this area was one option. If the disciplinary procedure was to be commenced then a verbal or written warning was another option. Upon consideration of S.98(4) the Tribunal finds the Respondent did not act reasonably in dismissing the Claimant for the reason of conduct namely the posting of the facebook meme.. In doing so the Tribunal has applied the 'band of reasonable responses' test. The Respondent has not acted in a reasonable way given the reason for the dismissal. I cannot say that all other employers of a similar size would have acted in the same way. I do not impose my own opinion or view on the issue of reasonableness but I approach the issue using the 'band of reasonable responses' test.

23. I also find that the disciplinary procedure and process was unfair. The ACAS code sets out 6 steps. After the facts have been established the employer should be informed. Thereafter a meeting should be held. In this matter the facts were established but the Claimant was not informed before the meeting on the 25th April 2023. She was presented with the facts at that meeting and was then dismissed. No notes of the meeting on the 24th or the 25th April were kept. An appeal process was provided but at very short notice. I do not believe the Claimant had a fair opportunity to prepare her case or put it.
41. Therefore the Claim for Unfair Dismissal succeeds and the matter will be listed for a hearing to deal with the remedy stage.

Employment Judge Steward
31st January 2024