



EMPLOYMENT TRIBUNALS

Claimant: Mr N Aspden

Respondent: GEOAmev Limited

Heard at: Leeds **On:** 22 January 2023

Before: Employment Judge Cox

Representation:

Claimant: In person

Respondent: Mr Malik, solicitor

REASONS

The issue

1. The Claimant alleged that the Respondent had unfairly dismissed him from his job as a prison custody officer. The Respondent is a company that provides secure prisoner transportation and custody services, under contract with the Ministry of Justice (the MoJ). The Claimant's job involved moving prisoners between prisons, and taking people from police stations or prisons to attend court and then take them back to the establishment if they were remanded in custody or sentenced. He worked from a Vehicle Base in Pontefract.
2. The parties agreed that the Claimant was dismissed on 6 March 2023 and that the reason for his dismissal was his poor attendance record. That was a potentially fair reason for dismissing him, constituting "some other substantial reason such as to justify the dismissal of an employee holding the position which the employee held" (Section 98(1)(b) of the Employment Rights Act 1996 – the ERA). The only question the Tribunal needed to answer was therefore whether, in the circumstances of the Claimant's case, including the Respondent's size and administrative resources, the Respondent acted reasonably or unreasonably in treating the Claimant's poor attendance record as a sufficient reason for dismissing him (Section 98(4) ERA).

The evidence

3. The Tribunal heard oral evidence from the Claimant. For the Respondent, the Tribunal heard oral evidence from Mr Hall, Vehicle Base Co-Ordinator for Pontefract, who managed the Claimant's attendance in the early stages; Mr Mace, Vehicle Base Manager for the teams at the Vehicle Bases in Pontefract and Hull, who made the decision to dismiss the Claimant; and Mr Cobham, Regional Manager for the East Midlands, who dealt with the Claimant's appeal against dismissal.

The facts

4. The Respondent has an Attendance Management Policy and Procedure. In the section on "absence reporting", it states:

"If you cannot attend work for any reason, you need to let us know. You must contact your line manager at least one hour before you are due to start work. If your line manager is unavailable you must leave a message with another member of the management team via telephone so that your line manager can get in touch with you when they are available.

We do not accept text messages, emails or messages on social media. We also do not accept messages from another person, unless you can't call yourself (ie you are in hospital)."

5. In the section covering short-term absence management, the procedure lays down a series of triggers. After two occasions of absence within a rolling 12-month period, the employee is invited to an informal absence review meeting at which a plan for managing their absence is discussed and initiated. After three occasions of absence within a rolling 12-month period, the employee is invited to a "Stage 1: Formal Absence Review Meeting" at which they may be issued with a Written Absence Warning that will stay on their personnel file for 12 months. If the employee has a further absence during the life of that Warning, they are invited to a Stage 2 Formal Absence Review Meeting, at which they may be issued with a Final Written Absence Warning, which will stay on their personnel file for 12 months. If the employee has a further occasion of absence within a rolling 12-month period then they are invited to a "Stage 3: Formal Absence Review Meeting" at which they may be dismissed.
6. The Claimant had an extensive record of poor attendance at work, which included reaching Stage 3 of the procedure on more than one occasion. Mr Mace confirmed that it was the Claimant's attendance over the period from January 2022 until his dismissal on 6 March 2023 that was the basis for his decision to dismiss the

Claimant. The Tribunal therefore took into account only the way in which Mr Mace treated the Claimant's absences in that period.

7. From January to August 2022, the Claimant had 10 days when he did not turn up for his shift. His line managers, the three Vehicle Base Co-ordinators at Pontefract, were aware that he was having various difficulties in his home life, relating to his wife and daughter. They did what they could to support him. They treated his days of absence as unpaid authorised leave or emergency annual leave or stood the Claimant down, which meant the day could be treated as time off in lieu rather than a failure to attend work. These absences did not therefore count as period of absence under the Respondent's absence management procedure.
8. There came a point, however, where the Claimant's line managers felt that they could no longer accommodate his absences. They were having an effect on the Respondent's ability to meet its contractual commitments to the MoJ, causing potential problems for the running of the court system. They were also putting unfair pressure on the other staff who were having to cover the Claimant's work. When on 23 August the Claimant was absent for a day because of stress due to his wife being ill, his line managers held an informal discussion with him and warned him that if his attendance did not improve they would have no choice but to start the formal absence management process. Less than a week later, the Claimant was absent for another day, due to a stomach bug, and a week after that he was absent for three days due to his wife's post-natal depression (she had given birth at the end of August).
9. Mr Hall called the Claimant to a Stage 1 meeting under the attendance management procedure and issued him with a Written Absence Warning. Mr Hall also reminded the Claimant of the correct absence reporting procedure: he had been messaging his line managers privately rather than calling the Base an hour before his shift began. Further, Mr Hall offered the Claimant the telephone number of UNUM, a telephone helpline service that the Respondent makes available for its staff.
10. On 17 September 2022 the Claimant was absent for a further day because of his wife's post-natal depression. This should have meant that the Claimant was moved to Stage 2 of the procedure, but Mr Mace decided not to progress matters because the Claimant's wife had just given birth and it felt like "the proper thing to do".
11. The Claimant was absent again for 21 days from mid-October to mid-November because of stress-related problems arising from personal problems his daughter was having. Mr Mace held a meeting with the Claimant under Stage 2 of the procedure. The Claimant said that his wife was a lot better and that his daughter was now staying with her Nanna and seemed to have turned a corner. He said he felt better now that he was back at work. He said that he had rung UNUM but they

had not yet called him back. On 22 November Mr Mace issued the Claimant with a Final Written Absence Warning.

12. On 10 December 2022, the Claimant failed to turn up for his shift. It was not until 12 December that his wife called to say he would not be in work because a close friend had died. The Claimant was therefore not following the absence reporting procedure. The Claimant was on sick leave until 9 January 2023 due to mental ill-health arising from the death of his friend. Before the Respondent could decide what to do in response to this absence, on 18 January the Claimant began a further period of sickness absence because of stress and anxiety, again without following the correct reporting procedure. (He had emailed Mr Falvey, one of his line managers, who was not on shift that day and so the message had not been passed on.) In the days before his absence began on 18 January, the Claimant had no access to a car and his line managers had therefore arranged for him to be picked up from home. On the third day, Mr Hall tried to contact the Claimant by telephone to tell him that the vehicle had set off to collect him but there was no answer.
13. Mr Mace held a meeting with the Claimant on 6 March 2023 under Stage 3 of the procedure. The Claimant was still on sick leave at this time but before the meeting, Mr Mace had obtained a report from the Respondent's occupational health advisers to confirm that the Claimant was fit to attend the meeting.
14. The Claimant's rate of absence since January 2022 was 30%, with a total of 94 sick days. (This was not including the 10 days that his line managers had recorded as unpaid leave, emergency holidays or stand down days in order to assist the Claimant.) He had had 16 periods of absence in a 15-month period. The Respondent's target was for an absence rate of 5%. In the light of this very high rate of absence, the impact it was having on the business, and the many and varied reasons for it, Mr Mace did not believe that the Claimant's attendance record would improve. He decided that the Claimant should be dismissed.
15. The Claimant appealed against his dismissal, broadly on the grounds that the Respondent should have offered him more support and taken more account of the reasons for his absence.
16. In order to assess whether the Respondent had given the Claimant enough support, in advance of the appeal meeting Mr Cobham visited the crew room at the Pontefract Base from which the Claimant worked. He saw on display lots of information and leaflets about UNUM and the names of staff members who were available to act as mental health first aiders. Mr Cobham was aware of the significant number of occasions on which the Claimant's line managers had treated his absences as emergency leave, unpaid leave or days on which he was stood down and had even made arrangements for him to be collected from home. After the appeal meeting, Mr Cobham enquired about how much recent support the

Claimant had been given and Mr Mace forwarded details of attempts that Mr Falvey had made to contact the Claimant in January and February, mostly unsuccessful. Mr Cobham concluded that the Claimant's line managers had gone "above and beyond" what could reasonably have been expected of them to support the Claimant. He concluded that the Respondent had "absolutely done enough" to help the Claimant to maintain a satisfactory attendance record.

17. Mr Cobham noted the unpredictable pattern of the Claimant's absences. At the appeal meeting he asked the Claimant whether he had followed the correct absence reporting procedure and the Claimant accepted that he had not. The Claimant's only explanation for this was that he had had too much on his mind. Even though the Claimant told Mr Cobham at the appeal meeting that he had stopped taking his antidepressant medication and was now in a better place, Mr Cobham had no confidence that his absence levels would improve or that he would comply with the absence reporting procedure. He considered Mr Mace's decision to dismiss the Claimant had been reasonable and so dismissed the Claimant's appeal.

The Tribunal's decision

18. The Tribunal also accepted that Mr Mace's decision was reasonable in all the circumstances. The Claimant had an extensive and unpredictable pattern of absences. He had also persistently failed to notify the Respondent correctly about when and why he would be absent. He had been given several warnings about the consequences of his continuing absences and failure to follow the reporting procedure but nothing had changed. Further, the Respondent's managers had given him a substantial degree of support to help him manage the impact of his personal life on his ability to attend work. They had categorised periods of absence in a way that would not trigger further action under the attendance absence procedure, they had not progressed him to the next stage of the procedure when they could have done so, and they had even arranged for him to be collected from home when he had no car.
19. Whether or not the reasons for the Claimant's absences were within his control, it was reasonable for the Respondent to decide that the impact of them on the business could no longer be sustained. His claim of unfair dismissal therefore failed and was dismissed.

Employment Judge Cox
Date: 16 February 2024

