



EMPLOYMENT TRIBUNALS

Claimant: Mr Anthony Knight
Respondent: First MTR South Western Trains Limited
Heard at: Reading **On: 15, 16 and 17 April 2024**
Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: In person
For the Respondent: Mrs C Musgrave-Cohen

RESERVED JUDGMENT

The claimant's complaint of unfair dismissal is not well founded and is dismissed.

REASONS

1. In a claim form presented on the 9 September 2022 the claimant made a complaint of unfair dismissal. The respondent denied the claim.
2. The claimant gave evidence in support of his own case and also relied on the live evidence from Mr Clifford Perry MBE: the claimant also provided evidence in the form of witness statements from Mr Michael John Hook, Mr David Goodman, Ms Rebekah Fryer, Commodore Richard Meryon RN, and Ms Patricia Fryer. The respondent relied on the evidence of Mr Dermot Crummy, Mr Luke Burgess, and Mrs Rachel Josey. All the witnesses provided written statements which were taken as their evidence in chief. I was also provided with the trial bundle containing 874 pages of documents. The claimant also provided some additional documents namely emails between Allan Finlay to the claimant and an email from Karen Bowers to the claimant. From these various sources I made the following findings of fact.
3. The respondent is a train operating company providing a passenger rail service from London Waterloo Station to the south and south west of England. The claimant was employed as a Rail Operator (RO) 2 based at Wokingham Station from 20 January 2014 until 5 May 2022. The claimant's post required that he carry out platform duties at that station. The station manager at Wokingham at the relevant time was Dermot Crummy.

4. On 29 June 2021 the respondent received a complaint alleging bullying behaviour by the claimant towards a contractor (AL) engaged by the respondent to work at Wokingham Station. The complaint conveyed to Mr Crummy was that the claimant had prevented AL from having access to the mess room. The claimant and Mr Crummy spoke on 29 June 2021 when the claimant was told that he must allow AL to have access to the mess room.
5. On 1 July 2021 AL made a statement in which he stated that the claimant told him that he was forbidden from going into the mess room; that on 30 June the claimant had removed chairs from the mess room to prevent AL from having anywhere to sit; that also on 30 June the male toilets were out of service and AL asked the claimant if he could use the disabled toilet and the claimant refused without giving a reason. AL also stated that the claimant often *"treats me differently and I have no idea why"*.
6. On 12 and 13 July 2021 Mr Crummy spoke to other staff at Wokingham station and also carried out a further interview with AL as a result of what he was told Mr Crummy sought advice from HR and then carried out an investigation which involved speaking to a number of staff at Wokingham who worked with the claimant. On 18 July 2021 Mr Crummy received an email concerning the claimant's conduct from HC, and then subsequently carried out an interview with HC on 27 July 2021.
7. On 28 July 2021, the claimant went through a disciplinary hearing involving a Form 1 disciplinary hearing in respect of a "red light incident". The red light incident resulted in the claimant being given a reprimand, as a result of which the claimant lodged an appeal. The appeal was due to take place on the 18 August 2021, the appeal was however subsequently postponed. The claimant was told that the reason for the postponement of the appeal was that the claimant had been placed on investigatory suspension.
8. On the 29 July 2021 the claimant was invited to a fact-finding discussion with Mr Crummy. In the course of this interview the claimant was invited to comment on allegations about his conduct that had been made by AL and HC. During this meeting when the claimant had the opportunity to respond to four specific allegations that were put to him he did not give any substantive response to the allegations, the claimant's response was to either say that he could not remember things or that the meeting was not the "proper forum" for him to give answers to the matters raised. Following that investigation meeting the claimant was placed on investigatory suspension by Mr Crummy.
9. Mr Crummy continued his investigation into the claimant's conduct and spoke to a number of the claimant's colleagues on 3, 11, 12 August and 3 September 2021. The claimant was then invited to a further fact finding interview on 29 September 2021. During this second fact finding interview the claimant refused to answer questions but took notes of what was being alleged.
10. On 29 September 2021, Mr Crummy decided that the claimant had a case to answer and sent him a letter in which he confirmed that the claimant had been

charged under clause 9 of the respondent's disciplinary procedure, the allegations were said to amount to gross misconduct.

11. The charges made against the claimant were:

“That on Tuesday 29th June 2021, whilst rostered to work 14:15 hours to 23:30 hours, at Wokingham Station, you intentionally locked the staff messroom out of use to purposefully restrict an STM Agency colleague accessing this room in contravention of the South Western Railway Bullying and Harassment policy, which subsequently resulted in a complaint being received.

That on Tuesday 29th June 2021, whilst rostered to work 14:15 hours to 23:30 hours, at Wokingham Station, you deliberately removed the chair from the staff messroom, for the duration of an STM Agency colleague's break, resulting in the colleague feeling victimised, in contravention of the South Western Railway Bullying and Harassment policy, which subsequently resulted in a complaint being received.

That on Wednesday 30th June 2021, whilst rostered to work 14:15 hours to 23:30 hours, at Wokingham Station, when requested to unlock the disabled toilet due to the male toilets being out of order, you refused this request and insisted that the individual used the ladies toilet resulting in the colleague feeling victimised, in contravention of the South Western Railway Bullying and Harassment policy.

That on Sunday 18th July 2021, whilst rostered to work 08:00 hours to 20:00 hours, at Wokingham Station you acted in an intimidating and demeaning manner towards a South Western Railway Colleague, in contravention of the South Western Railway Bullying and Harassment Policy, which subsequently resulted in a complaint being made.

That between June 2021 and July 2021, you have demonstrated behaviours which have been perceived as bullying, by deliberately acting in ways to intimidate, belittle, humiliate and victimise colleagues, in contravention of the South Western Railway Bullying and Harassment Policy.”

12. The meeting was arranged to take place on the 4 October 2021, the claimant was informed that he had the right to be accompanied by a representative at the hearing who could be fellow worker, a staff representative or official of the trade union. The claimant was informed that he was entitled to call witnesses. The claimant's suspension was to continue with basic pay until the hearing.

13. The claimant received the hearing pack containing the evidence that the

respondent was relying on during October 2021. The disciplinary hearing was rearranged to take place on 11 November 2021, there appears to have been a mix up which resulted in the claimant and his representative not attending the hearing and so the disciplinary hearing was rearranged again to take place on 9 December 2021, then once more rearranged for the 20 January 2022, before being rearranged for the 17 February 2022 and then finally rearranged for 7 March 2022.

14. Between the date of the claimant's suspension and the disciplinary hearing the claimant was not fit to work for much of the time and was referred to occupational health. On 30 June 2021 occupational health had advised that there should be a "*stress risk reduction assessment*" completed for the claimant. The claimant was seen by occupational health on 21 December 2021 who stated that the claimant was "*unfit due to stress related depression*". The advice also stated that:

"Mr. Knight is fit to attend a disciplinary meeting. Due to reduced ability to focus and concentrate, I advise that he should be allowed 20% extra time to assimilate information shared with him at this meeting."

The claimant was referred to occupational health on the 28 January 2022, the resulting advice stated that:

"Following assessment today I would advise that Mr Knight is currently unfit for work and this is likely to remain the case until the disciplinary matters are concluded. He would in my view need a further occupational health assessment once all the disciplinary issues are finished, in order to advise on his fitness to return work and possible workplace adjustments to consider.

I am of the opinion that Mr Knight will be fit to attend a disciplinary hearing in one month which will provide more time to build up his mental energy, concentration levels and emotional resilience in order to cope with the process and possible outcomes. I would advise consideration of extra time to respond to questions, extra breaks as necessary and recommend that he is accompanied at the meeting."

15. On 9 March 2022 the claimant's GP stated that the claimant "*may be fit for work taking account of the following advice*" and "*can manage 1-2 hours of light administrative duties daily but not able to return to workplace until Stress Risk Reduction Assessment completed as per OH Advice.*"
16. The disciplinary hearing commenced on 7 March 2022 with Mr Burgess as the disciplinary manager. On 7 March 2022, the claimant's union representative raised a number of background and procedural matters to which after a short adjournment Mr Burgess gave the respondent's reply. The claimant raised further matters in respect of which Mr Burgess agreed to make further enquires and agreed an adjournment of the disciplinary hearing to the 31 March 2022. The claimant handed to Mr Burgess a

“timeline” document. The meeting was unable to resume on the 31 March, was rearranged for the 18 April, but unable to proceed on that day and in fact resumed when rearranged for the 5 May 2022.

17. During the adjournment Mr Burgess considered the timeline and made enquires in respect of the matters raised in the timeline. In respect of the timeline Mr Burgess said the following in his statement:

“Ultimately I could not see any of this background had a bearing on the substance of the disciplinary allegations which concentrated on specific allegations of behaviour between June and July 2021 made by specific individuals not previously involved in those earlier issues. The information provided by Mr Knight only gave me the impression that he was a focal point for problems at Wokingham Station. His information revealed that he had interpersonal problems with a good many others at Wokingham over a long period – whether he had raised grievances against others, or they had raised grievances against him. There was information about a good deal of ongoing conflict with others to an extent that was far from usual in any normal workplace.”

18. The disciplinary hearing resumed on the 5 May 2022. The hearing began with a challenge to Mr Burgess’s ability to conduct the disciplinary hearing. The claimant’s representative took the position that Mr Burgess was not entitled to ask questions of the claimant, an approach that was rejected by Mr Burgess. The claimant’s representative then made some detailed submissions to Mr Burgess followed by a short adjournment, when the hearing resumed it was requested, and agreed, that Mr Burgess would put his question to the claimant in writing. There was then an adjournment for lunch and so that the claimant and his representative could consider the questions from Mr Burgess. On the meeting resuming the claimant was not present, he had gone home because he was said to be feeling unwell. The claimant’s representative asked that the meeting was adjourned to a later date to allow the claimant time to answer the questions from Mr Burgess. Mr Burgess decided that the meeting would continue. Although the claimant’s representative was invited to stay, he refused to do so and left.
19. Mr Burgess then spent time going through all the material in the pack, including that provided by the claimant, and the notes of the previous and current meeting before coming to his decision.
20. Mr Burgess concluded that the claimant had refused to respond to the allegations, he came to his conclusion by considering how the claimant had responded throughout the proceedings from the pre-suspension interview meeting to the current meeting. Mr Burgess considered that the claimant did not wish to engage with the facts of the disciplinary case but instead had by his behaviour attempted to control the process. Mr Burgess did not consider that the claimant’s claim to illness on the 5 May 2021 was genuine, but even if the claimant’s illness was genuine he did

not consider that it was in the claimant's interests or the respondent's interests to drag the matter out any longer.

21. Mr Burgess concluded that the allegations against the claimant were true. Mr Burgess then went on to consider the appropriate sanction. Mr Burgess considered that the claimant had offered no mitigation. Mr Burgess considered that the evidence showed a pattern of behaviour over a period of time that constituted bullying and was not likely to change in the future. The claimant was dismissed by Mr Burgess.
22. The claimant was informed of Mr Burgess's decision to dismiss the claimant and informed that he had the right to appeal the decision to dismiss. The claimant appealed the decision to dismiss him.
23. The claimant's appeal took place on 14 June 2022, the appeal manager was Mrs Josey. The claimant gave to Mrs Josey a pack of documents, these appear in the trial bundle at pages 220 to 272. Mrs Josey dismissed the claimant's appeal.
24. Prior to the events that resulted eventually in the claimant's dismissal the claimant had a number of interactions with other colleagues which he considers were important background to the dismissal and explain the reason for his dismissal.
25. The claimant had made complaints about a colleague A who had brought into the workplace, the staff mess, two knives. At various times the claimant raised this as an issue with his managers the claimant considered that it presented a health and safety issue. The reaction of managers was to take no action and they had no concerns about the knives. The claimant eventually took it upon himself to remove the knives from the mess and secret them elsewhere. This resulted in the claimant being subjected to disciplinary action arising from the removal of the knives. The claimant was suspended from work but when the claimant was allowed to return to work he was informed that he had been subject of collective grievance which was made by colleagues including A and further the claimant found that there were now six knives as opposed to the two that had previously been kept in the staff mess.
26. At about the same time that the saga of the knives was playing out the claimant was also being sent letters by his then manager Cathy Moore. The claimant complains about a series of 6 letters which he considers evidence bullying and harassment of him. The respondent contends that the matters are not bullying and harassment they are merely examples of the claimant being managed.
27. These two events were among the various matters that the claimant raised in the course of his appeal which Mrs Josey ultimately did not consider to be relevant to the matters that the claimant was being disciplined in respect of.
28. Section 98 of the Employment Rights Act 1996 ("ERA") provides that in

determining whether the dismissal of an employee was fair or unfair, it shall be for the employer to show (a) the reason (or, if there was more than one, the principal reason) for the dismissal, and (b) that it is a reason falling within subsection (2). The conduct of an employee is a reason falling within the subsection.

29. Where an employer has shown a potentially fair reason 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.
30. The Respondent must show that: (a) it believed the claimant was guilty of misconduct; (b) it had reasonable grounds upon which to sustain the belief; (c) at the stage which it formed that belief on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances of the case.
31. It is not necessary that the tribunal itself would have shared the same view of those circumstances.
32. After considering the investigatory and disciplinary process, the tribunal has to consider the reasonableness of the employer's decision to dismiss and (not substituting its own decision as to what was the right course to adopt for that of the employer) must decide whether the Claimant's dismissal "fell within a band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair". The burden is neutral at this stage: the tribunal has to make its decision based upon the evidence of the claimant and respondent with neither having the burden of proving reasonableness.
33. Parties submissions: The claimant read out a closing submission in respect of his case and subsequently provided me with a copy of the document that he read. The respondent provided me with written submissions. I have all these matters into account in arriving at my decision in this case.

Conclusions

34. I am satisfied that the investigation manager, Mr Crummy, genuinely believed that there was potentially gross misconduct which warranted disciplinary proceedings. Mr Burgess concluded that the disciplinary charges had been proved after carrying out a detailed analysis of the charges made against the claimant and further that the charges amounted to gross misconduct. Mrs Josey concluded that she did not believe the claimant who said that the events had not taken place.

35. I am also satisfied that there were reasonable grounds upon which the respondent could conclude that the claimant was guilty of gross misconduct. The respondent had the account of AL about the events relating to him. There was other evidence that supported the evidence of AL in the form of statements made by other staff suffering similar action at the hands of the claimant. Some other staff confirmed that the claimant had behaved towards AL in the way that had been alleged. There is no evidence that ought to have alerted the respondent to be cautious with the evidence of those who supported the veracity of the allegations against the claimant. While some of the witnesses to events were involved in the collective grievance and historic issues relating to the claimant, the complainant AL was not a party to the collective grievance.
36. In respect of the allegations relating to HC the respondent had his account of the events. The evidence of HC was supported by the evidence of others. In the absence of any explanation or evidence from the claimant it was open to Mr Crummy and Mr Burgess to accept the veracity of the accounts given by HC and the supporting witnesses.
37. The claimant now provides detailed explanations for events which were not given at the time to the investigation manager, the dismissal manager or the appeal manager. The claimant now provides an account about the exclusion of contractors from the mess room. Such an explanation given at the investigation stage would have been a complete explanation for his conduct. The allegations were made clear at the investigation stage and the claimant had the opportunity to give that explanation on two occasions during the investigation and again at the disciplinary hearing but did not do so. Even at the appeal stage the explanation was not given, the claimant simply limiting himself to the exhortation that the events did not happen. The claimant's explanation now provided suggests that the events did certainly happen in some form or other but there was a rational explanation for them at the time. The claimant had the support of an experienced union representative during the disciplinary process.
38. The respondent conducted a thorough investigation speaking to members of the station team who may have been witness to events and also to establish the practice and understanding of those who worked in the station. The claimant was given the opportunity to provide his version of events at the investigations meeting.
39. The respondent complied with its own procedures which comply with the ACAS Code. The claimant had plenty of time to respond to the allegations. The claimant had more than 5 months between the allegations being made and the claimant being provided with the evidence and the first disciplinary hearing meeting actually taking place. The first disciplinary hearing was then adjourned and at the second meeting at the claimant's request the questions were provided to him in writing by Mr Burgess. The claimant had opportunities to give his account of events to Mr Burgess in the disciplinary hearing but did not take it.
40. While the claimant was suffering from ill-health that meant he was unfit to

work, the respondent only proceeded with the disciplinary hearing after taking advice from occupational health and considering the views of the claimant's GP. There was no medical reason given by the GP or occupational health at the time that the investigation meeting took place, the disciplinary hearing took place and the appeal hearing took place that suggested that they should not have taken place at that time.

41. The claimant raises a number of matters which are referred to as the "4 themes" in his witness statement. The evidence that I have heard does not justify a conclusion that these themes result in a conclusion that the claimant was unfairly dismissed. There was no issue about the claimant's performance of his duties or popularity with customers. The themes 2, 3 and 4 in view were not established by the evidence.
42. The claimant's contention that he was subject of a conspiracy was raised with Mrs Josey in the appeal, she considered this issue and came to the conclusion that there was no conspiracy directed against claimant.
43. The claimant's allegation that he was the victim of bullying and harassment was considered at the disciplinary appeal stage as potentially emerging from the claimant's timeline of events produced first at the disciplinary hearing. The claimant's timeline appears to have led not to the conclusion that the claimant was the victim of discrimination but rather that the claimant was someone who had several issues with colleagues and having or being part of a wider problem. The claimant did not take the opportunity to provide an explanation to Mr Burgess about the timeline and so it appears to me that Mr Burgess was entitled to reach a different conclusion to the one that the claimant would have wished him to.
44. The respondent in my view at all times followed a reasonable procedure in dealing with the claimant.
45. The respondent considers that the claimant's conduct amounted to bullying and harassment. Taking all the matters considered by the respondent into account, including the nature of the events individually and cumulatively, I am satisfied that was a conclusion that they were on balance allowed to arrive at. Having properly reached that conclusion I am satisfied that dismissal was within the range of responses of a reasonable employer.
46. The claimant's complaint of unfair dismissal is not well founded and is dismissed.

Employment Judge Gumbiti-Zimuto

Date: 19 April 2024

Sent to the parties on: 2 May 2024

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For the Tribunals Office

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