



EMPLOYMENT TRIBUNALS

Claimant: MR B DOEL

V

Respondent: ROYAL MAIL GROUP LTD

Heard at: Reading **On:** 8-9 April 2024

Before: Employment Judge Read

Appearances:

For the Claimant: In Person

For the Respondent: Ms Z Tahir (Solicitor)

JUDGMENT

1. I find that the claim for Unfair Dismissal made by the Claimant is not well founded and I dismiss the claim.
2. The Claimant has been an employee of Royal Mail Grp Ltd since 1997. On 22 May 2022, he was conducting his duties by driving his forklift at the International Logistics Centre (ICL). During those duties, he struck a large shutter door that facilitates the loading and unloading of vehicles. Damage was caused to the door and the Claimant did not report that damage to his employers. As a result of that damage and failure to report, an investigation was undertaken, he was subject to disciplinary proceedings, and he was dismissed without notice effective on 5 Aug 2022. The Claimant appealed that decision, and the dismissal was upheld on 4 Nov 2022.
3. It is not in dispute that the Claimant was an employee of the Respondent, nor that he was dismissed in accordance with s95(1) of the Employment Rights Act 1996 (ERA). The Respondents claim the dismissal was a result of the misconduct of the Claimant under s98(2)(b) of the ERA.

4. On 28 Dec 2022 the Claimant submitted an ET1 claiming his dismissal was unfair. His case that he was unfairly dismissed was agreed on the following basis:
 - a. He did not know he had damaged the door; therefore, he was not dishonest about failing to report it.
 - b. The investigation and disciplinary process had procedural irregularities; participants were biased, making it unfair.
 - c. The sanction awarded was excessive and harsher than those awarded in similar cases.
 - d. His long service and good conduct have not been taken sufficiently into consideration.

5. I will consider each of these grounds made by the Claimant.

Factual Basis for Dismissal

6. All parties accept that the accident occurred on 22 May 2022 and the Claimant damaged the door with his forklift truck. There is no evidence that the damage was done deliberately. The Claimant agreed in evidence that if he knew of the damage it was his responsibility to report it as a Health and Safety issue and failure to do so would be a breach of his responsibilities as detailed in "our business standards", An Employee Guide and such a failure would be a breach of health and safety rules.

7. If the Claimant had known about the damage, he should have reported it. Such a failure would amount to misconduct on top of any accusation of negligent driving of his vehicle. However, it is the Claimant's evidence that he only knew that he damaged the door when he had an opportunity to see the photographs and CCTV of the incident, sometime into the disciplinary process. He believed he only stuck a Radio Frequency Identification Device ('RFID'), something he contends is not uncommon and often not reported,

this is backed up by an interview with Mr Malik the initial investigator who agreed striking an RFID would often not be reported.

8. The Respondent's position is that the Claimant knew from the outset that he damaged the door, not the RFID, and failed to report it and has consistently denied this only admitting the damage when he had no option not to do so having been confronted with CCTV evidence.
9. I have had the benefit of seeing the CCTV evidence, hearing the witnesses, and seeing the photos of the damage. I find the Respondent did fairly conclude that the Claimant knew he damaged the door on 22 May 2022 and failed to report it, the evidence shows he was in a rush and was looking forward to some time off. Was it reasonable for the Respondent to have come to this factual determination? I find it was given: the extent of the damage to the door and the number of times the claimant went back and forth trying to free the forklift (evident from the CCTV). Also, the Claimant confirmed in oral evidence that the work environment was not noisy making the significant impact easily heard and noticeable. I therefore find it reasonable for the Respondent to conclude that the Claimant knew he damaged the door, failed to report it, and was not honest when initially asked. I find these as the facts.

The Disciplinary Process

10. Was the misconduct procedure the Claimant faced fair? Section 98(4) of the ERA assists me in considering if the misconduct proceedings process was fair:

“(4) Where the employer has fulfilled the requirements of subsection (1), 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.”

11. I am also guided by *Iceland Frozen Foods v Jones* [1982] IRLR 439, Justice Browne-Wilkinson said,

“(3) in judging the reasonableness of the employer's conduct an Industrial Tribunal [me] must not substitute its decision as to what was the right course to adopt for that of the employer;

(4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;

(5) ... determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the 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.”

12. In coming to my decision, I use the framework offered in *British Home Stores v Burchell* [1980] ICR 303 and *Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23.

a. Did the Respondent genuinely believe that the Claimant was guilty of misconduct?

b. If so, was that belief based on reasonable grounds? The view that there was misconduct is a view within the band of reasonable responses.

c. Had the employer carried out such investigation into the matter as was reasonable?

d. Did the employer follow a reasonably fair procedure? If all those requirements are met, was it within the band of reasonable responses to dismiss the Claimant rather than impose some other disciplinary sanction such as a warning?

13. I have already determined as a matter of fact the misconduct occurred.
14. I turn now to the investigation and process. Royal Mail has a clear and compliant investigation process, on paper, however at the lower level, this was poorly adhered to. Royal Mail is a large organisation with significant resources and its policies should have been better stuck to. This was a simple case with clear evidence both in terms of photos and CCTV none of which were obtained in a timely manner or disclosed to the Claimant in accordance with their policies. Had this been done it is quite possible that the Claimant would have backed down from his position earlier. However, I note the 'misconduct' he was being disciplined for was not his later statements repeatedly sticking with the account of not damaging the door but his failure to report at the time or very shortly after, and it was that which he was being held to account for.
15. There was evidence in the bundles of inappropriate comments between a number of decision-makers; Mr Dobe and Mr Coke seemingly gave their opinions on what should happen and the sanction. I conclude this as a lack of competency and confidence in the investigation procedures at the early stages that caused them to reach out for advice rather than orders. Mr Dobe was clear it was his decision, although such comments between colleagues are distinctly unhelpful and can lead to a perception that a decision-maker is not independent.
16. I note that if disclosure had been achieved at an earlier stage then the Claimant may well have given up his position at an earlier stage in the proceedings but failing, he was found culpable of was the failure to report the incident at the time, not his continued denials.
17. However, regardless of these early procedural irregularities the law (*Taylor v OCS Group Ltd* [2006] IRLR 613) looks at the whole process, including appeal. Did the Claimant have his rights protected and was a fair dismissal achieved by a comprehensive appeals process?

18. At appeal Ms Walsh, was appointed as the independent claims manager. She came from a specialist department in such matters distinct and separate from both the Claimant and the lower-level managers. She acknowledged that the processes that had gone before her were not in accordance with the policy and it was her role to ensure that this was rectified, and the Claimant had a procedurally fair process.
19. Ms Walsh set about conducting a fresh investigation, all the relevant documents, photos, and videos were disclosed to the Claimant, and he had an opportunity to comment on them, which he did as shown in his letter to Ms Walsh outlining his case. I note the CCTV was not disclosed until after she had spoken with him but it was before any decision was made. The Claimant's comments were taken into consideration by Ms Walsh as can be seen in her decision. She then issued an independent and I find unbiased (this is evidenced by her seeming willingness to criticise some of her predecessor's actions) decision letter outlining in detail the factors she took into consideration.
20. The process in the early stages was flawed in that effective disclosure was not undertaken, evidence was not obtained and there was a degree of unhelpful opinion shared between managers, this was substantially rectified by the appeals process enabling the claimant to have his case heard in a full and compliant manner.
21. Finally turning to the sanction awarded, dismissal. It is not my function under the law to place myself into the role of decision-maker and decide the sanction as if I were making that decision. I must be satisfied that the sanction awarded was within the 'bounds of reasonable responses' of an employer to make such a decision. In determining this I am helped by the Royal Mail Conduct policy that defines some behaviours (in a non-exhaustive list) that can be deemed Gross Misconduct, i.e. conduct so serious that warrants dismissal without notice. Deliberate breach of Health and Safety policy is on the Gross Misconduct list. Sandwell and West

Birmingham Hospitals NHS Trust v Westwood, UKEAT/32/09, 2009 states there is a need for “deliberate wrongdoing” or amount to “gross negligence”, the failure to report a health and safety issue of one’s own fault could reasonably fall within deliberate wrongdoing.

22. The Claimant has cited several cases where accidental damage has occurred and little action has been taken against those employees. All the Claimant’s examples were where the incident had been immediately reported or witnessed by managers, the case before me was one of a failure to report the incident, not just the incident itself. If comparable cases are to be persuasive and give rise to unfairness the circumstances need to be significantly comparable, (Paul v East Surrey District Health Authority [1995] IRLR 305). I did not hear any evidence of such cases to render the decision unfair for a lack of parity of dealing.
23. In coming to her decision on dismissal Ms Walsh has specifically took into account the Claimant's long service, good character, and the feasibility of other work within the organisation but did not find these outweighed the need to report incidents that could pose a serious risk to other employees. The Claimant has now stated that he has an ongoing issue with his foot and eyesight issues, neither of these were raised before the decision maker at the time. I find that the sanction of dismissal awarded was within the bound or reasonable responses.
24. It my judgment that the Claim for Unfair Dismissal is not well founded and is dismissed. I appreciate this will be a blow to Mr Doel but I wish to thank all for their professionalism and assistance in this case.

Employment Judge Read
20th August 2024

Sent to the parties on: 22 August 2024

For the Tribunal Office

Note:

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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