



THE EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr D Burke

v

Harrow Club

Heard at: London Central

On: 30 and 31 October 2024

Before: Employment Judge Glennie

Representation:

Claimant: In person

Respondent: Ms G Nicholls (Counsel)

REASONS

1. This is a complaint of unfair dismissal brought by the Claimant, Mr Burke, which is resisted by the Respondents, Harrow Club.
2. The applicable law is as follows. Section 98 of the Employment Rights Act 1996 provides that:
 - (1) *In determining.....whether the dismissal of an employee is fair or unfair, it is for the employer to show –*
 - (a) *The reason (or, if more than one, the principal reason) for the dismissal, and*
 - (b) *That it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
 - (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

3. The reason relied on by the Respondent falls within subsection (2) as it is a reason related to the conduct of the employee.
4. Section 98 gives rise to certain points of principle, which I will summarise. The burden is on the Respondent to prove the reason for the dismissal. If the Respondent proves one of the potentially fair reasons, including a reason related to conduct, then I have to consider whether the employer acted reasonably or unreasonably. This means that it is not for the Tribunal, in other words it is not for me, to re-run the decision as to whether or not the employee should be dismissed. It is not for the judge to decide whether he or she would or would not have dismissed the employee in the circumstances. The judge has to ask whether the Respondent acted reasonably or unreasonably. This is sometimes expressed as whether the employer went outside the range of what was reasonable. There can be situations where one person could reasonably decide to dismiss the employee while another could reasonably decide not to do so.
5. Where conduct is in issue, as in this case, the well-known authority of **British Home Stores v Burchell** states that the test of reasonableness applies to all elements of the Tribunal's consideration. The Tribunal will usually ask whether there was a genuine belief that the employee committed the conduct concerned; whether there were reasonable grounds for that belief; whether there was a reasonable investigation; and whether dismissal was within the range of reasonable responses.
6. I turn to the evidence that I have heard and my findings of fact. There was an agreed bundle of documents, and page numbers that I give in these reasons refer to that bundle.
7. I heard evidence from the Claimant, and on behalf of the Respondent, from Mr Edward Simpson and Mr Chris Martin. The Respondent's organisation runs youth clubs in London including the one that I am concerned with, in the Old Oak area of W12. The Claimant was a long standing employee: in his claim form he gave the date on which his employment commenced as 2010, although in evidence he said it was more like 2005. It is not necessary for me to decide the correct date: the important point is that by 2023 he had been with the Respondent for at least 13 years, if not more. He worked for 14 hours a week as a youth worker, in particular dealing with football at the club. There was some issue as to whether or not the Claimant may have some at some point received a warning. It was agreed that, whether he did or not, he was a valued member of the youth work team.
8. On the evening of 10 July 2023 there was an incident or series of incidents involving 2 boys or young men aged around 15 or 16. I will refer to them as A and B. It is not strictly my function to decide what happened as between those two young people, and certainly is not my role to make any decision

about who out of them may have been at fault. There is, however, an issue in this case about the accounts given by the Claimant about what happened, so it is relevant for me to describe the incident as I have understood it. In doing so I should say that the only person present in this hearing who has any first-hand knowledge of what happened is the Claimant, and I take the following from his evidence.

9. There were three stages to this incident. The first has been described as verbal banter or arguments, or an altercation inside the club premises between A and B. I am satisfied that when that happened, the Claimant intervened and tried to calm it down. Second, there was a physical confrontation just outside of the club building but captured on the CCTV that was present there. In the course of this, one of the two young people fell to the ground. The Claimant intervened again, but following this the incident seemed to have calmed down and all of those who have been attending the club that evening left in a seemingly normal fashion.
10. Subsequently, although the Claimant did not witness this, there was a fight between A and B somewhere at another location away from the club. A came back to the club: the Claimant and two colleagues were still there. It was evident that A had suffered some injury, as he was either bleeding (not extensively) from the mouth or had dried blood around his mouth. I cannot say which of those it was, as the Claimant's evidence was that they more or less amounted the same thing.
11. The Claimant gave A a tissue or piece of tissue to wipe the blood. A said, or the Claimant noticed, that A had lost a tooth. They briefly went out together to look for the tooth. Then the next morning the Claimant saw A and his mother looking for the tooth, and he joined them to try and find it, unsuccessfully as it transpired.
12. The Claimant's account, which I accept, is that two more senior workers were on duty that evening, being his manager Dwayne and Jay, a qualified first aider. There was a debrief at the end of the session, as there always was, and the Claimant told Dwayne about the incident. The Claimant said that his assumption was that Dwayne would have recorded that in the debrief notes. It is impossible for me to say whether Dwayne did that or not. Mr Simpson told me that, when he was looking into the incident, he asked Wayne for the debrief notes, as one would have expected him to do, but Dwayne was unable or unwilling to provide them. Dwayne was then subsequently dismissed for reasons relating both to this incident and two other matters.
13. In terms of the sources of my finding findings about what happened, apart from the Claimant's evidence, I referred to a handwritten statement from the Claimant at page 43 which was prepared either in September 2023, or as stated later in the documents, on 3 October 2023. It does not matter which of those it was. In summary, in this document the Claimant said that he was unaware of the situation, meaning (as I find) that he was unaware at the time of the fight taking place at a location away from the club premises.

He said that he had been aware of the 2 young people arguing with each other and that he jumped in and it was sorted out.

14. At page 59 there was a longer statement given by the Claimant in connection with the investigation that took place starting in January 2024. In this he said that there was banter going on between A and B, and that he needed to intervene to calm it down. He said that he had believed that this was resolved and that all concerned then left the premises. He continued that A returned later seeking assistance, as he had lost a tooth and was bleeding from the mouth, and that he provided a wet tissue and tried to find the tooth.
15. In the course of the disciplinary meeting on 22 February 2024, which I will refer to later in these reasons, the Claimant again described what had happened, including what was described as the second incident. This was the part captured on CCTV that took place outside of the club premises but nonetheless within range of the CCTV. There has been some confusion over exactly which incidents were meant when they were referred to as the second and the third incidents, but on this occasion the Claimant identified the part captured on CCTV as the second incident.
16. Then in the claim form presented to the Tribunal on 10 June 2024 at page 9, in box 8.2 the Claimant said that he witnessed a verbal argument between A and B (although he did not identify them in that document), he saying that they both walked out to turn it physical. It was becoming a scuffle in which one fell over: he got between them and got them back inside to sort it out. They left normally but one of them came back with dry blood by his mouth, saying that he just had a fight, and he, the Claimant, had given him a piece of tissue.
17. This incident came to the attention of the local authority designated officer the ("LADO") and the police. It is not clear to me what happened regarding the police investigation, but there are notes of the LADO meetings which took place on 24 November 2023 at page 44 onwards and on 4 January 2024 at page 52 onwards. Once those two sets of investigations had concluded Mr Simpson initiated a disciplinary process. This was not confined to the Claimant. I have already referred to the process that involved Dwayne. Mr Simpson said, and I accept his evidence on this, that Jay was also investigated but no disciplinary allegations were raised against her. Mr Simpson conducted both the investigation and the disciplinary process himself.
18. There was already available to Mr Simpson the Claimant's written statement from September or October 2023, and as I have indicated the Claimant provided the further statement of January 2024. There was an investigation meeting with the Claimant on 19 January 2024 and there are notes of this beginning at page 62. The Claimant was recorded as saying that the initial statement he gave was based on the incident in the club. He said that he did not speak about the later incident, as he was not there and did not witness it. He said that he thought this is where things had become

confused. He said: "I was made aware when he walked in after the fight. I asked what happened and he said I just had a fight."

19. The Claimant added that he was a first aider and he said his youth work lead, namely Dwayne, was present and also a first aider, being Jay. He continued that he did not feel he needed to notify anyone as they were all there, and he said he didn't feel that he needed to report it as Dwayne was dealing with it as much as he was.
20. Following the investigation meeting Mr Simpson sent a letter at page 60 inviting the Claimant to a disciplinary meeting due to take place on 20 February 2024, although it actually took place on the 22nd. Three allegations were identified, namely (1) failing to follow safeguarding protocol and the serious youth violence incident procedure of reporting that young people under his care had been involved in an altercation that resulted in a young person being admitted to hospital for medical treatment; (2) failing to follow the serious youth violence incident procedure by administering first aid without training or permission and failing to notify a trained first aider; (3) dishonesty when providing the initial witness statement and relaying the version of events for the incident on 10 July 2023, specifically failing to mention that he had observed a fight, provided first aid, and assisted a young person under your care to look for a tooth.
21. The disciplinary meeting took place on 22 February 2024 and there were notes of this at page 69. In summary, those present were Mr Simpson, Mr Michael Defoe who took part in the decision with him, and the Claimant. The notes record that Mr Simpson provided the two statements that the Claimant had given and referred to the differences between them. The Claimant said that they were both accurate and that the difference arose because he had not connected the second incident with the third, which he did not see, and therefore decided not to mention it.
22. There was reference to the Serious Youth Violence Incident Procedure (at page 82). The Claimant stated that he understood this. This included the following as bullet points:
 - 22.1 Attend to the young person / people involved and administer first aid if trained.
 - 22.2 Write up an incident report using template and send to Senior Programmes Manager and the CEO the same evening.
23. The incidents themselves were discussed. There was further discussion about the apparent differences in the statements, and when asked whether there was anything to add, the Claimant said this was a really small thing, and that it happened all the time. He then said that they deal with it at the club and it was not that bad; they don't report these things because they deal with it; and the notes recorded that he stated that he could not understand what all the fuss was about. I should say that the Claimant was

quite clear in his evidence that he did not use the expression “couldn't understand what all the fuss was about” and that this was not something that he would say. It seems to me that possibly the person taking those notes may have paraphrased what they understood the Claimant to be saying, rather than quoting his exact words.

24. Mr Simpson gave the outcome of the process in a letter at pages 70-72 dated 1st March 2024. This was the Claimant would be summarily dismissed. In relation to the first allegation Mr Simpson wrote, using the plural because he was referring to himself and Mr Defoe: “We believe that you were aware of procedure, and from your admissions that you chose not to follow it.....We believe that you failed to follow procedure which resulted in service users under your care being put at risk.”
25. In relation to the second allegation Mr Simpson wrote: “We can find no evidence that you are a qualified first aider and from investigation with the duty first aid they have confirmed that you did not report the incident to them or seek assistance from them. We reject that providing minimal assistance of cleaning a wound does not amount to first aid - the young person had a missing tooth which through your admissions you were providing medical assistance of cleaning their wound whilst neither qualified nor had permission in breach of the procedure.”
26. In relation to the third allegation Mr Simpson wrote: “We believe that you were either deliberately dishonest in a belief that you can do as you please or tried to hide your failings of following a procedure which you admitted you were aware of.” He said that the Claimant's account had changed over time and went on to say that they found that the Claimant had been dishonest in his initial statement when asked to provide a report on what had happened that night and that later he provided another version of what he had observed.
27. The Claimant appealed against that decision, and the appeal was heard by Mr. Martin. There was an appeal meeting on 28 May 2024, with notes of that at page 73. Mr Martin communicated his decision on 29 May 2024 in a letter at pages 74-75. He said that he had looked again at the statements, the notes from the interviews and statements from the co-workers. There was a short statement from Jay at page 63 which confirmed that she was not asked to provide first aid.
28. Mr Martin wrote that he was confident that a full and fair process had been completed and that the conclusions were correct based on the evidence that had been collected. When Mr. Martin was cross-examined he said that he agreed that the Claimant had provided clarification of the sequence of events in relation to the possible confusion of the second and third incidents as they were described. Mr Martin said that this, however, made no real difference to the merits of the decision. He said that he accepted that the Claimant probably did say that what he had done did not amount to first aid, but Mr. Martin said that he had not expressed any view about that, so neither contradicting it nor agreeing with it. Mr Martin said that he did not

recall saying that the Claimant was right to inform his manager about the incident. I find on that point that Mr. Martin probably did give some indication of that nature. I say this because it plainly was not wrong for the Claimant to inform his manager about what had happened, and that as far as it goes, it was right to do so. I can therefore see why Mr. Martin might have indicated that doing that was right, but I accept that this was not the full extent by any means of what Mr. Martin thought was required in the situation.

29. I can understand that the matters that I have referred to may well have led the Claimant to believe that the appeal was going relatively well, and that he would have been disappointed when he learned that in fact the dismissal had been upheld. Sympathetic as I am to his feelings about that, however, this is not a ground for criticism of the appeal process.
30. I turn then to my conclusions. First, what was the reason for the dismissal? I find that it was that the Respondent, in the person of Mr Simpson and upheld on appeal by Mr. Martin, found that the Claimant had committed misconduct in the three respects identified in the outcome letter. There really is no competing suggestion as to what the reason might have been. The nearest that the Claimant has come to this was a suggestion that he was the scapegoat for the incident, meaning that the two managers were let off or exonerated, or whatever, but essentially that he was made to pay the price for the incident out of the three of them.
31. It seems to me, having seen the dismissal letter relating to Dwayne, was certainly not applicable to him because this incident was included in the reasons why he was dismissed. In any case, taking the Claimant's expressed view on its own terms, that seems to me to be accepting that the reason for dismissal was the one given by the Respondent, while challenging its validity.
32. My finding about the genuineness of the reason for the dismissal relied on by the Respondent leads me also to conclude that Respondent had a genuine belief that the Claimant had committed the conduct concerned.
33. I then have to consider whether there were reasonable grounds for that belief, in relation to each of the three points were found against the Claimant.
34. In respect of the first point, I find that it is the case that the Claimant had not followed the relevant procedures. He did not make the necessary report. Was it reasonable to regard this as misconduct? The Claimant accepts that he knew about the procedures. In the present hearing he said that he had done what he had always done in the past, in other words report incidents to his manager. He said (and I paraphrase) that Mr Simpson had come to the organisation more recently and had changed things around. I would observe that perhaps he did, but I find that employers are entitled to make changes to the procedures that are operated. Indeed, it can be necessary

for them to do so especially in areas such as safeguarding, in which the expected standards can change with the passage of time.

35. The Claimant said that, although the incident was serious, it was not the most serious he had ever come across or that he could contemplate. I accept that it is not too difficult to imagine more serious situations, and I accept the Claimant's submission to the effect that he had indeed witnessed more serious situations than this over the years that he worked with the Respondent. This does not, however, in my judgement detract from the need to follow the procedures required. The Claimant also said that his manager was responsible for the situation. Again, so far as it goes, I accept that the manager was responsible for the situation but saying that does not mean that the Claimant was not responsible for it.
36. On the second point I find that the Claimant did indeed give what amounted to first aid and that, whatever the status of his qualifications may have been, he did so without that being authorised by the Respondent. I find it important to note that there was a first aider present at the time, namely Jay. This was not a case of someone acting when confronted by an emergency and when the first aider was not immediately available.
37. I also find that handing a tissue or piece of tissue to wipe blood, whether it was dried blood or a modest quantity of flowing blood may not have been the most technical piece of first aid, but was something that the Respondent was entitled to regard as its first aid nonetheless.
38. It seems to me to be important that any need for first aid should be assessed any first aid required given by the authorised person. Again I find that this is a matter that the Respondent was entitled to take seriously because there can be repercussions if inadequate or inappropriate first aid is given by someone who was not authorised to give it.
39. I accepted Mr Simpson's evidence that all of this is particularly important when dealing with minors, as was the case here. I therefore found that there were reasonable grounds for the Respondent to believe that the Claimant had given first aid when not authorised to do so, and to find that it amounted to misconduct.
40. The third point concerns the finding that the Claimant had not been honest in his first statement. As I have said, I find that there was some degree of confusion over the two physical parts of the incident and what was being said or not said about those, but that was resolved at the appeal stage. I find, however, that there were reasonable grounds for the Respondent, and Mr Simpson in particular, to believe that the Claimant had not given a full account initially in September or October 2023. This is because he omitted reference to A returning to the club, to there being blood, whether dried or otherwise, and to his having lost a tooth.
41. Having heard the Claimant's evidence and his representations both in terms of cross examination and in what he said directly to me by way of

submissions, I am inclined to accept that he gave an honest account in that first statement. He concluded that short handwritten statement with the words that “they left” which is I think refers to A and B and probably the other attendees as well to go home, and then “which is when I think this situation happened”. It therefore seems to me that the Claimant was indicating that there was more to what happened that night than what he had included in that statement because he said, “which is when”, meaning after they had gone, “I think this situation happened”. This suggested that something else had happened beyond what was written in that statement.

42. Having said that, I find that this is an example of the sort of situation where I should not go behind a reasonable belief and substitute my own belief on the basis of what I have heard about the matter in the course of this hearing. I find that there were reasonable grounds for Mr Simpson to believe that the Claimant had not in the first instance given a full account of the events of that evening, and that in doing so he was trying to cover up his failings in terms of the procedures.
43. I therefore find that there were reasonable grounds for the genuine belief that Mr Simpson held.
44. There were no procedural failings that I can detect. The Claimant had the opportunity to answer the allegations against him. I asked Mr Simpson about the debriefing notes which had not been referred to in the witness statements, and he explained that they could not be obtained and why that was. I am satisfied that Mir Martin conducted the appeal independently of Mr Simpson, and gave the matter proper consideration.
45. Was dismissal within the range of reasonable responses? The Claimant was a long serving and valued employee. At first sight dismissal might seem harsh. But was dismissal outside the range of responses open to a reasonable employer, acting reasonably? I find it impossible say that it was outside that range. This was a serious incident, wherever precisely on the scale of serious incidents one might put it. A young person had suffered a significant injury in the shape of a wound, probably a small one, but a wound nonetheless, and the loss of a tooth. In my judgement it is important to have a contemporaneous record of an incident like this from the person with responsibility for the young people involved and who had the best knowledge of what had happened. The Claimant failed to provide a written account of that nature.
46. The Claimant had also failed to take the proper approach regarding first aid. I find that he should have asked Jay to take over when he saw that there was a need of such assistance. The Respondent was entitled to take a serious view of that failing. The Claimant also failed to give a full account of the events in the first instance when asked about it, and again I find that the Respondent was entitled to take a serious view of that.
47. Given the importance of safeguarding of young people and the Respondent’s obvious need to be able to demonstrate that it requires youth

workers to follow the relevant procedures, it would be wrong for me to say that no reasonable employer in the Respondent's position could have dismissed the Claimant.

48. All of this means that the complaint of unfair dismissal fails and will be dismissed.
49. I have not gone on to consider the effect, if any, of the principle in **Polkey** as this would involve assuming that there were procedural failings, when I have found that there were not, and therefore speculating about the effect findings which I have not in fact made. Although Ms Nicholls addressed me (necessarily in contingent terms) on the issue of contributory fault, the Claimant did not, and I have not in the circumstances made an assessment of this.

Employment Judge Glennie

Dated:9 December 2024.....

Judgment sent to the parties on:

18 December 2024

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For the Tribunal Office