



EMPLOYMENT TRIBUNALS

Claimant: Craig Woodward

Respondent: Great Yarmouth Services Limited

Heard at: Watford Employment Tribunal, by CVP

On: 12 November 2024

Before: Employment Judge Yardley (sitting alone)

Representation

Claimant: In person

Respondent: Mr R Newman, Solicitor

JUDGMENT

The Tribunal's judgment is that the claim for unfair dismissal is not well founded and does not succeed.

REASONS

Introduction

1. Mr Woodward ('the **Claimant**') was employed as a Cleaning Operative by Great Yarmouth Services Limited ('the **Respondent**') The Claimant claims that his dismissal on 5 January 2024 was unfair. The Respondent contests the claim.
2. ACAS was notified under the early conciliation procedure on 9 March 2024 and the certificate was issued on 4 April 2024. The ET1 was presented on 24 April 2024. The ET3 was received by the Tribunal on 6 June 2024.

Claims and Issues

3. The list of issues was agreed by the parties at the outset of the hearing.

4. The Claimant has bought a claim for unfair dismissal. It was not disputed that the Claimant was dismissed or that the reason or principal reasons for the dismissal was misconduct.
5. Therefore the issue to be determined by the Tribunal, was whether the sanction of dismissal was within the range of reasonable responses open to the Respondent.

Procedure, Documents and Evidence

6. The Claimant was unrepresented and appeared as a litigant in person. The Respondent was represented by Mr Newman.
7. The Tribunal was provided with a bundle of 116 pages. The Tribunal was also provided with two witness statements from the Claimant and a witness statement from Mr Silverwood and Ms Boyce.
8. Mr Newman did not raise any objection to the second witness statement produced by Mr Woodward and accordingly the Tribunal allowed it to be submitted in evidence.
9. The Tribunal heard evidence from Mr Woodward, the Claimant and Ms Paula Boyce, the Chairman of the Respondent who heard the appeal.
10. The Tribunal was also due to hear evidence from Mr Silverwood, the Managing Director of the Respondent who heard the disciplinary hearing. Unfortunately, Mr Silverwood was unable to attend the Tribunal due to illness. The Respondent did not seek an adjournment and the Claimant did not object to the Tribunal reading the witness statement.
11. Accordingly the Tribunal read Mr Silverwood's witness statement but explained that as Mr Silverwood was not present, it could only be given limited weight on the basis that the Claimant did not have an opportunity to cross examine the witness.
12. After the evidence was called, the Tribunal heard brief closing submissions from both parties.
13. After considering the evidence and submissions, the Tribunal gave judgment on liability at the hearing.

Findings of Fact

14. The facts of this case are largely not in dispute.
15. The Claimant was employed as a Cleaning Operative by Great Yarmouth Services Limited since 1 April 2023 following a TUPE transfer from Norse. His period of continuous employment started on 24 July 2018. The Claimant's role consisted mainly of litter picking and cleaning duties.
16. On 14 November 2023, the Respondent received a complaint from a member of the public about the Claimant.
17. The Respondent commissioned one of its managers, Simon Tomlin, Waste and Street Scene Manager, to investigate the matter on 20 November 2023.

As part of his investigation, Mr Tomlin spoke with the complainant. He also spoke with a second complainant who had also raised a complaint about the Claimant after 14 November 2023. Both complainants were asked to submit a written statement detailing their concerns.

18. The Claimant attended a short meeting with Isaac Postle-Knowles, the Street Scene Supervisor, on 21 November 2023 and was advised the Claimant that the complaints were being investigated.
19. On 23 November 2023, James Holder, Operations and Commercial Services Manager, informed the Claimant that he would be removed from duties in the marketplace area and would be assigned other duties for the time being whilst the complaints were being investigated.

The Investigation

20. The Claimant was interviewed by Mr Tomlin as part of the investigation on 1 December 2023. The Claimant was offered the option of being accompanied at the meeting, but chose not to.
21. The Claimant was told that the meeting was to investigate alleged acts of inappropriate behaviour, misappropriation of company stock and emptying trade waste. During the meeting the Claimant was given an opportunity to respond to the accusations. At the conclusion of the meeting, the Claimant was advised that a decision would be taken regarding any further disciplinary action.
22. Following the meeting, Mr Tomlin retrieved and reviewed CCTV footage from the marketplace on the dates of the alleged incidents. Having reviewed the footage, Mr Tomlin decided to meet further with the Claimant.
23. The Claimant was invited to a further investigation meeting on 12 December 2023. The Claimant was advised of his right to be accompanied at the meeting.
24. The second investigation meeting was held on 21 December 2023. The Claimant declined the offer to be accompanied at the meeting.
25. Following conclusion of the investigation, Mr Tomlin deemed that some, but not all of the complaints made, were sufficient to be dealt with under the Company's Disciplinary Procedure.

The Disciplinary Hearing

26. On 11 January 2024, the Claimant was invited to attend a disciplinary hearing. The Claimant was advised of the allegations of gross misconduct to be considered at the meeting and was afforded the right to be accompanied by a work colleague or union representative.
27. A disciplinary hearing was held on 19 January 2024 to discuss the following allegations:
 - 27.1. That the Claimant had engaged in unacceptable behaviour towards and regarding member/s of the public, in a public place, during the

course of his duties. The unacceptable behaviour having the potential to cause reputational damage to the Respondent (the “**First Allegation**”).

- 27.2. That on 18 November 2023, the Claimant had collected commercial trade waste from a business, namely GY News. The waste was not the legal responsibility of the Respondent or covered within the refuse agreement between the Respondent and Great Yarmouth Borough Council or within the remit or the Claimant’s role or responsibilities (the “**Second Allegation**”).
- 27.3. That the Claimant had misappropriated Company property, namely giving refuse bags) to third parties without prior authorisation result in a financial loss to the Respondent (the “**Third Allegation**”).
28. The hearing was heard by Chris Silverwood. The Claimant declined the right to be accompanied at the meeting.
29. Following the disciplinary hearing, and following an adjournment to consider his decision, Mr Silverwood decided the following:
 - 29.1. In relation to the First Allegation, the Claimant admitted that he used inappropriate language. This was conducted publicly and as such could have damaged the Respondent’s reputation. Consequently, this charge was found to be proven.
 - 29.2. In relation to the Second Allegation, initially the Claimant denied the allegation, but later admitted to the conduct following the viewing of CCTV. The Claimant confirmed that he knew that his role was not to collect commercial waste and that he had refused to do this for other businesses in Great Yarmouth.
 - 29.3. In relation to the Third Allegation, although this was proven, no sanction was given on the basis that Mr Silverwood was satisfied that the Claimant’s actions had been carried out with the best of intentions.
30. On 26 January 2024, the Claimant was sent a letter confirming the outcome of the disciplinary hearing and that he had been dismissed for gross misconduct with immediate effect.

The Appeal

31. On 30 January 2024, the Claimant appealed against his dismissal. His reasons included:
 - 31.1. that the sanction of summary dismissal was unfair and cited several examples of incidents concerning other employees for which they received on sanction; and
 - 31.2. that the investigation was not dealt with ‘in the correct manner’ and that he was not given a ‘fair trial’.

32. The appeal hearing took place on 1 March 2024 and was heard by Paula Boyce, Chairman of the Respondent. The Claimant declined to be accompanied at the meeting.
33. Following the hearing, Ms Boyce upheld the original decision was upheld and the Claimant was notified of her decision by letter on 6 March 2024.

The Law

34. Section 94 ERA 1996 confers on employees the right not to be unfairly dismissed, and under section 98, the employer must show that it had a potentially fair reason for the dismissal, in this case conduct.
35. Section 98(4) ERA 1996 provides that the determination of 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 this shall be determined in accordance with the equity and the substantial merits of the case.
36. The question is therefore not whether the Claimant was guilty of the misconduct, but - broadly speaking – whether it was reasonable of the Respondent to conclude that she was, and whether the dismissal was within the range of reasonable responses.
37. The approach to misconduct dismissals is based on the decision in **British Home Stores Ltd v Burchell [1978] IRLR 379** and the following questions must be addressed :
 - 37.1. Did the Respondent genuinely believe that the claimant was guilty of misconduct?
 - 37.2. If so, was that belief based on reasonable grounds?
 - 37.3. Had the employer carried out such investigation into the matter as was reasonable?
 - 37.4. Did the employer follow a reasonably fair procedure?
38. 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?
39. This “range of reasonable responses” test reflects the fact that whereas one employer might reasonably take one view, another might with equal reason take another.
40. Procedural fairness is also an important aspect and in considering it Tribunals are required to consider the guidance in the ACAS Code of Practice for Disciplinary and Grievance Procedures (2015).
41. Where there is more than one conduct-related reason for dismissal, it is wrong to focus only on the principal reason in assessing the fairness of the

dismissal. This means that the question for the Tribunal will be whether the conduct in its totality amounted to a sufficient reason for dismissal, not whether the individual acts of misconduct individually, or cumulatively, amounted to gross misconduct (**Governing Body of Beardwood Humanities College v Ham UKEAT/0379/13**).

Conclusion

42. Having established the facts set out above, I must now apply the law to those facts.

What was the reason for dismissal?

43. The Tribunal finds that the reason for the Claimant's dismissal was his conduct, namely the Respondent's belief that the Claimant behaved in an unacceptable manner towards members of the public during the course of his duties and that the Claimant collected commercial trade waste from GY News. The evidence regarding the reasons for dismissal is consistent with the disciplinary outcome letter and is not disputed by the Claimant.

Did the Respondent genuinely believe that the Claimant was guilty of misconduct? If so, were there reasonable grounds for such a belief?

44. The Tribunal finds that the Respondent had a genuine belief in the Claimants' misconduct and that this belief was based on reasonable grounds .

45. The Tribunal finds this because, in relation to the First Allegation, the Claimant admitted that there had been an incident at work where he used inappropriate language in public. In relation to the Second Allegation, the Claimant also admitted that he had collected trade waste from GY News on the date in question as corroborated by the CCTV footage.

46. The Tribunal did not consider the Third Allegation as no sanction was found to be necessary by the Respondent and did not form part of the Respondent's reasons for dismissal.

Did the Respondent carry out a reasonable investigation?

47. The Tribunal is satisfied that a reasonable investigation was carried out by the Respondent. There was an initial investigation involving two investigatory meetings with the Claimant, a disciplinary hearing, and an appeal hearing.

48. Throughout the process the Claimant was provided with an opportunity to put forward his case, ask questions and review the relevant evidence (including the CCTV footage). The Claimant was also offered the opportunity to be accompanied at each of the meetings which he declined. The Claimant was warned, prior to his disciplinary hearing, that a potential outcome of the hearing may be dismissal. Further the Claimant has confirmed that he was aware that this was a possible outcome, even though it was not an outcome he actually thought would be given.

Did the Respondent act reasonably in treating the reason for dismissal as sufficient to dismiss the Claimant in the circumstances?

49. The key issue to be determined in this case, was whether the decision to dismiss the Claimant fell within the range of reasonable responses available to the Respondent
50. The Respondent's position is that the Claimant's actions constituted gross misconduct. Referring to the Disciplinary Rules, the Respondent asserts that dismissal fell within the range of reasonable responses available in cases of gross misconduct.
51. The Claimant on the other hand argues that the decision to dismiss was not one that any reasonable employer would have taken. He referred to his unblemished record spanning 6 years and highlighted that other members of staff that have carried out similar actions but have not been dismissed.
52. The Claimant submitted that during the investigation period he continued to work without issue for his employer which, in his view, demonstrated that the Respondent retained trust and confidence in his abilities. He further noted that he offered to change his working patterns and cover others shifts for other colleagues during this time, which he argued underscored his commitment and reliability as an employee.
53. The Claimant also argued that the decision to dismiss him was disproportionately severe given this was a first offence. He also submitted that a written warning would have been more appropriate and proportionate under the circumstances. The Claimant cited an example where the refuse crew had been observed emptying rubbish into bins which do not belong to the Respondent, but those employees had received final written warnings.
54. With respect to the First Allegation, the Claimant acknowledged that his behaviour was inappropriate but explained that he was not directing his swearing at any individual. He stated that the language was an expression of frustration. The Claimant's acknowledgment of the inappropriateness of his behaviour is to his credit.
55. Regarding the Second Allegation, the Claimant explained to the Tribunal that the reason he took trade waste from GY News — specifically, some boxes and plastic — was because he was in the process of moving house. He stated that, after leaving the shop, he encountered a friend, Andy, who had offered to take the boxes back to his flat. The Claimant argued that there was no evidence of his having disposed of the materials improperly in any refuse trucks or bins and suggested that CCTV footage could have corroborated this.
56. The Tribunal has also given due consideration to the allegation that the Claimant lied during the investigation hearing in relation to the Second Allegation. The Claimant has acknowledged that he did lie and has admitted that this was wrong. However, he has not provided any reasonable explanation for his actions, though he has expressed remorse and assured that such behaviour would not be repeated in the future.
57. The Tribunal has also taken into account the Respondent's submission that inappropriate language or behaviour has the potential to cause reputational harm to its business. The Respondent has further highlighted that the unauthorised collection of commercial trade waste constitutes a breach of the

refuse agreement between Great Yarmouth Borough Council and Great Yarmouth Services, an act that carries significant consequences. The Claimant has admitted that he was aware of the seriousness of this contravention.

58. The Tribunal considered the Respondent's Disciplinary Procedure. In particular:

58.1. Rule 15.1 sets out the definition of misconduct and Rule 15.2 sets out examples of behaviours which may be regarded as misconduct.

58.2. Rule 15.3 sets out the definition of gross misconduct and Rule 15.3 sets out examples of behaviours which may be considered to be gross misconduct. In particular, the Respondent directed the Tribunal to the following examples

- *(c) Serious acts of insubordination, rudeness or inappropriate behaviour towards or in the presence of employees, contractors, business partners, investors or members of the public*
- *(i) Abuse of position for private advantage or satisfaction of self or others*
- *(o) Deliberately providing false, misleading, or inaccurate information or statements orally or in writing*

59. When determining whether it was reasonable for the Respondent to treat the Claimant's conduct as gross misconduct or to dismiss the Claimant, it is important to remember that the Tribunal must not substitute its own judgment for that of a reasonable employer. The Tribunal's role is not to decide how it would have acted in the same situation but to assess whether the Respondent's actions fell within the range of reasonable responses available to an employer.

60. Additionally, given that there are multiple allegations of misconduct, the key question to determine is whether the Claimant's conduct, taken as a whole, provided sufficient grounds for dismissal, rather than assessing whether each individual act of misconduct, either alone or cumulatively, amounted to gross misconduct.

61. On balance, the Tribunal does not find that the Respondent's decision to dismiss the Claimant was outside the range of reasonable responses for the following reasons:

61.1. The Respondent's Disciplinary Procedure explicitly outlines the types of behaviours that may lead to summary dismissal. In light of the allegations, which the Claimant has admitted, the Respondent was justified in determining that dismissal was a proportionate and appropriate response.

61.2. The Claimant's admission of providing false, misleading, or inaccurate information during the investigatory phase was reasonably interpreted by the Respondent as materially undermining the relationship of trust and confidence between employer and employee.

- 61.3. The Tribunal does not find that the Claimant has demonstrated sufficient evidence of other employees being treated differently in comparable circumstances. The Claimant has been unable to provide similar examples involving identical or materially identical facts, and the allegations of misconduct in the cases which he cited appear to differ significantly.
- 61.4. While dismissal may not have been the only reasonable outcome, and considering the Claimant's previously unblemished record and length of service, the Tribunal does not find that these factors are sufficient to render the dismissal unreasonable in the circumstances.
- 61.5. Finally, it is regrettable that the Claimant was not fully forthcoming during the investigation and disciplinary hearing regarding the real reasons for removing items from GY News, namely for his house move. It is certainly possible that greater transparency from the Claimant as to the reasons for removing boxes and plastic, could have resulted in a lesser sanction being imposed by the Respondent.
- 61.6. Notwithstanding this, the fairness of the dismissal must be judged based on the facts as they were known to the Respondent at the time of the decision, and the evidence does not indicate that the Claimant raised this rationale in mitigation during the process.
62. For these reasons, the Tribunal finds that the dismissal was fair, and the claim for unfair dismissal is dismissed.

Employment Judge Yardley

Date: 14 January 2025

JUDGMENT SENT TO THE PARTIES ON

20 January 2025

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.