



EMPLOYMENT TRIBUNALS

Claimant: Mr Peter Zabala

Respondent: Royal Mail Group Ltd

Heard at: London Central (by CVP)

On: 24-25 October 2024

Before: Employment Judge Heydon

REPRESENTATION:

Claimant: Represented himself

Respondent: Ms H Kendrick (solicitor)

JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of unfair dismissal is not well-founded. The claimant was fairly dismissed.

REASONS

Introduction

1. This is a claim for unfair dismissal brought by the Claimant, Mr Peter Zabala. The Respondent is Royal Mail Group Ltd.

The claim and issues

2. The Claimant was an employee of Royal Mail since 2002, employed at an operational

postal grade. He was summarily dismissed on 12 April 2024. The claimant complains that he was unfairly dismissed.

3. The Respondent says that the Claimant was fairly dismissed without notice due to three issues which arose out of an incident on 19 February 2024: (1) failing to follow a reasonable instruction; (2) abusive and aggressive behaviour in the workplace; and (3) assaulting a manager by pushing him in the stomach.
4. The Claimant admitted counts (1) and (2), but denies the assault. He says that the investigation was carried out unfairly and that summary dismissal was outside the range of reasonable sanctions.

Procedure, documents and evidence heard

5. The Claimant was dismissed on 12 April 2024. The claim was filed on 25 June 2024.
6. The claim was listed for a full merits hearing on 24 and 25 October 2024, via CVP. The Tribunal heard oral evidence from the Claimant himself. For the Respondent I heard oral evidence from Mr Steven Shore and Mr Steve Potter. All witnesses provided a witness statement, all of which were accepted as evidence-in-chief. The Tribunal was also provided with a 266-page bundle of documents.

The Facts

7. On 19 February 2024, the Claimant arrived at work at around 6:30am. He was rostered to do “double-prepping” one of the tasks which had to be done before he could go out on his delivery round. At around 7:30, Michael Kneeland, a Royal Mail trainee manager approached the Claimant and asked him to move from double-prepping to another task called “walk sorting”. The Claimant refused. Mr Kneeland asked again later, and the Claimant again refused and began shouting “No” repeatedly. This drew the attention of another manager, Shabaaz Khan, who then approached to see what was happening.
8. What happened next goes to the heart of the dispute. It is alleged that in the heat of the moment, the Claimant pushed Shabaaz Khan in the stomach, unbalancing him so that he moved backwards a step or two. At all times the Claimant has denied this. He says that he raised his hands to protect himself as Mr Khan was very close and moving into his personal space, but no contact was made. He points out that he is much smaller than Mr Khan and says that it would not have been possible for him to have pushed Mr Khan with sufficient force to make him move backwards. In order to decide this case, the Tribunal does not need to decide whether or not the Claimant pushed Mr Khan, and I do not do so.
9. Mr Khan asked the Claimant to come with him and Mr Borland, a trade union rep, into the office. The Claimant was still very agitated at this point and again refused. Mr Khan went to speak to his line manager, Stephen Shore, who advised that the

Claimant should be sent home for a cooling off period, to stop matters from escalating. Mr Khan returned a few minutes later to tell the Claimant to go home. Again he refused, insisting that he complete his double-prepping job. Eventually, having finished double-prepping, he did go home.

10. Later that day, Mr Kneeland referred the matter to Mr Michael Trotter. The same day, Mr Trotter wrote to the Claimant inviting him to a fact-finding meeting on 23 February, stating that allegations had been made of refusing to follow a reasonable instruction, intimidating/threatening behaviour and physical assault on his line manager. The following day he wrote again to the Claimant informing him that he was to be suspended pending further investigations.
11. The fact-finding meeting took place on 23 February with the Claimant, Mr Trotter and Adam Alarakhis (a union rep) present. In the meeting, the Claimant said that Mr Kneeland was forcing him to do walk sorting work prematurely. He accepted that Shabaaz Khan shouted "Don't push me", but denied that he had pushed him. He admitted refusing to go to the office with Mr Khan as he was suspicious about what would happen in private. He denied failing to follow a reasonable instruction. The union rep asked for CCTV footage of the incident to be provided.
12. Following the meeting, Mr Trotter decided that he had to refer the case up to a more senior manager as the potential penalty was outside his level of authority. It was referred to Stephen Shore. Despite having had some involvement in the aftermath of the incident itself, Mr Shore decided that it was appropriate for him to take on the case as he was not a direct witness.
13. Mr Shore invited the Claimant to a formal conduct meeting on 15 March, based on allegations of failing to follow a reasonable instruction and physical assault. On 2 March, the Claimant wrote asking again for the CCTV footage.
14. On 2 March 2024, Mr Shore emailed Royal Mail Security to ask for CCTV footage. On 4 March he received a reply asking him to call security. When he called, Mr Shore was told that CCTV could not be accessed because the person with access was on long-term sick leave. He was told by a member of security that it was unlikely that the cameras would have been on or pointing in the right direction.
15. Prior to the hearing, Mr Shore obtained statements from Shaabaz Khan, Anthony Spence, and Gary Davies. At this stage there was no statement from Mr Kneeland. Mr Khan provided a further statement on 11 March. On 14 March, the Claimant provided a personal statement. At this stage, Mr Kneeland and Mr Khan both stated that the Claimant pushed Mr Khan. The other witnesses did not see a push but did hear the Claimant shouting "no, no" repetitively, and heard Mr Khan shouting "don't push me".
16. On 26 March, Mr Shore took further statements from Mr Khan and Mr Kneeland and sent them to the Claimant on 27 March. In the covering email he said "if you have any

comments in regards to these two statements, please either reply back to me or send me an email with your response. On 28 March, the Claimant acknowledged receipt, but did not say anything else. On 2 April, Mr Shore wrote to the Claimant saying that he had concluded his investigation. It referred to 3 allegations: assault, failing to follow a reasonable instruction and intimidating behaviour towards a line manager.

17. On 12 April, he gave his decision, which was that he had found the 3 allegations proven, and decided that dismissal was the appropriate outcome.

18. The Claimant appealed.

19. The appeal was conducted by Steven Potter, who has worked for Royal Mail for 46 years, including the past 15 years as an independent case manager. Mr Potter had had no previous involvement in the case, or with Mr Zabala at all. A meeting took place on 16 May, where Simon Edmunds, a union rep set out the Claimant's case. Mr Potter asked the Claimant about what happened that day.

20. On 21 May, Mr Potter re-interviewed Shabaaz Khan, Steven Shore, Gary Davies and Anthony Spence. He also interviewed Ryan Miller, Michael Trotter, Neal Borland, Michael Kneeland. On 7 June he sent copies of the interviews to the Claimant. On 10 June, the Claimant sent detailed comments back.

21. Mr Potter wrote to the Claimant on 24 June upholding the dismissal. He concluded that the 3 allegations were proven. In relation to the assault allegation, he gave the following conclusion:

“Conduct notification three is “Physical assault.” That notification is proven. Peter believes the burden of proof is the same as criminal law but that is not the case. I have to have a reasonable belief that the incident occurred. I see no reason Shahbaaz would tell Peter to stop pushing him if he was not being pushed. Ryan claims the push did not happen but did not hear the words from Shahbaaz, even though Gary heard the words from further away. Mick saw Peter pushing Shahbaaz and I have already commented on Ryan's evidence in a previous part of this report. Peter was so angered by being given a completely reasonable instruction to go onto another part of mail preparation that I believe he did push out at Shahbaaz.”

22. He went on to conclude that for the assault, dismissal was the appropriate outcome, giving the following reasons:

“In addition to my findings, I have also considered Peter's length of service and his clear conduct record. Set against that is the fact Peter behaved as he did when given a perfectly reasonable instruction. I do not believe Peter will ever change his view that managers cannot flex from the scheduled work task. I also believe there to be a genuine risk that Peter will react similarly in the future when faced with something with which he does not agree. I have considered all penalties available

to me under the conduct agreement. I believe for conduct notifications one and two, the appropriate penalty would be dismissal, suspended for 2 years. For conduct notification three, dismissal is the appropriate penalty.”

The Claimant’s subject access request for CCTV footage

23. On 18 July, the Claimant made a subject access request to Royal Mail for the CCTV footage of the incident. He received a reply on 24 July stating that footage from 19 February 2024 was no longer held, and would have been routinely deleted before his request was received. Therefore, no-one knows for sure whether the incident was ever recorded on CCTV, but if it was, it has long been deleted.

The Law

Unfair dismissal

24. It is not in dispute that the Claimant was dismissed for reasons of conduct, which is a reason which is capable of being fair (see section 98(2)(b) Employment Rights Act 1996).

25. As that has been established (see section 98(1) Employment Rights Act), the question of whether the dismissal is fair or unfair falls to be determined in accordance with section 98(4) of the Employment Rights Act 1996. Section 98(4) provides as follows:

“..... 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.”

26. Following the case of *British Home Stores Ltd v Burchell* [1978] IRLR 379 this means that the Respondent must have a genuine belief that the Claimant committed the act of misconduct; that belief must be based upon reasonable grounds and the Respondent must have carried out as much investigation into the matter as was reasonable in the circumstances of the case.

27. If the Respondent can show this then, following the case of *Iceland Frozen Foods v Jones* [1982] IRLR 439, the question then turns as to whether the decision to dismiss falls within the band of reasonable responses.

DECISION

Unfair dismissal

Genuine belief

28. The first question for the Tribunal to consider is whether the Respondent had a genuine belief that the claimant had:
- a. Assaulted his line manager;
 - b. Been aggressive/intimidating towards a manager;
 - c. Refused a reasonable request from his line manager
29. At the time of the investigation, the Claimant had admitted to acting aggressively towards a line manager, although he stated that he was only partly culpable due to the actions of his employer both at the time and cumulatively in the past.
30. The Claimant also admitted to refusing several requests from his line manager (i.e. to move from double-prepping to walk-sorting; to go to the office; and subsequently to go home), although he had denied that all of those requests were reasonable.
31. The Claimant consistently denied the assault.
32. The only questions in dispute then were: whether the requests was reasonable; and whether the assault took place. These were the questions which Mr Shore, and subsequently Mr Potter, had to determine. I find that Mr Shore took evidence from people who were there at the time, and heard credible evidence both that the assault took place and that the requests from line management which the Claimant had refused were reasonable. The same is true of Mr Potter. I find that both Mr Shore and Mr Potter had a genuine belief that all three of the allegations were true.

Based on genuine grounds

33. Mr Shore heard from several witnesses saying that they say the Claimant pushing Mr Khan. Nearly every witness heard Mr Khan shouting "Don't push me". He had evidence from the Claimant himself stating that he did not push Mr Khan. I do not accept the Claimant's assertion that due to the differences in their sizes it was not possible for him to have pushed Mr Khan backwards. Despite these differences, if Mr Khan was taken by surprise and/or off-balance at the time, I find that it is entirely possible. I find that both Mr Shore and Mr Potter had sufficient evidence in front of him to be able to conclude that the Claimant pushed Mr Khan.
34. I also find that both Mr Shore and Mr Potter had sufficient evidence to conclude that the requests that the Claimant had refused to follow were reasonable.

Reasonable investigation

35. I remind myself that it is not for the Tribunal to decide what the investigation process should have been.

36. I find that there were several problems with the original decision-making process:

- a. Separation of investigation and decision-making role. The ACAS guidance states that as a general rule, the investigation should be carried out separately from the decision making. The Respondent has said that Michael Trotter was the investigator, this is not really correct. He carried out the initial fact-finding interview, but Mr Shore did all the investigating. He decided who to take statements from, took all the statements himself, and enquired about the CCTV evidence.
- b. Apparent bias. Although Mr Shore was not a direct witness to the alleged assault, he was involved in dealing with the original incident. He was the person who instructed that the Claimant be sent home to cool off, having been informed by Mr Khan on the day that he had been pushed. Mr Shore therefore would already have had a view about what had happened before the investigation began.
- c. CCTV. In a case where dismissal is a possible outcome, it is particularly important that the employer follows avenues to collect evidence which may exonerate them. The claimant specifically requested CCTV evidence of the incident. Mr Shore did request this from security but was told that there was only one person who could access it, who was on long-term sick leave. I find it very difficult to accept that in a large and complex organisation such as Royal Mail, it would be impossible to access such information in such circumstances. The impression created is that it would have been hard work for the security team to get the data, and so they sought (successfully) to fob Mr Shore off, first by telling him that access was impossible and then that it probably didn't exist (a fact that they did not know). The fact is that still now, no-one knows whether it existed or not. Had Mr Shore pushed harder, it is possible that he might have been able to obtain CCTV footage of the incident. But we will never know for sure.
- d. Piecemeal process. The process was a little piecemeal and it could have been unclear to the Claimant. Mr Trotter carried out an initial interview. Then it was referred to Mr Shore, who obtained some statements. Then there was the formal conduct meeting. Then Mr Shore obtained further statements and asked the Claimant to comment.

37. Compounding all of these problems together, I conclude that this aspect of the investigation was not reasonable. Had it been the only stage of the process, I would have decided it was unfair.

38. However, the Claimant then exercised his right to appeal to Mr Potter. Mr Potter was an experienced case manager, had no previous involvement in the matter and approached it afresh. He instigated a new investigation, taking new statements from previous witnesses, and from others who appeared to him may have relevant information (including witnesses who may have helped the Claimant, such as his regular work-partner Ryan Miller). By this time, it was not possible to get any CCTV

footage. Had it existed in the first place, it would have been deleted by then. A trade union rep was able to present the Claimant’s case at the hearing, and in reaching his written conclusion, Mr Potter addressed each point raised by the Claimant, and explained how he reached his conclusions.

39. In my judgment, Mr Potter did carry out a reasonable investigation, taking care to find and examine all evidence which might assist him in determining what happened that day, and free from any pre-existing biases. Having done so, he gave detailed written assessments of the evidence, and explained his reasoning.

Was dismissal within the range of reasonable responses?

40. At the end of his decision, Mr Potter explained that he had concluded that dismissal was appropriate for the finding of assault. Was dismissal within the range of reasonable responses? I find that it was. Mr Potter took into account the Claimant’s previous good record and long service but concluded that dismissal was appropriate nonetheless. A physical assault in the workplace, even a relatively minor assault, is a serious matter and I find that Mr Potter’s decision to uphold the dismissal was within the range of reasonable outcomes.

41. In conclusion, the dismissal was fair, and the claim is therefore dismissed.

**Employment Judge Heydon
13 January 2025**

Judgment sent to the parties on:

20 January 2025

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For the Tribunal:

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