



EMPLOYMENT TRIBUNALS

Claimant: Mr S Wu

Respondent: WIND Financial Information UK Ltd

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: London Central (by CVP)

On: 11 & 12 March 2025

Employment Judge: Employment Judge Henderson (sitting alone)

Appearances

For the claimant: In person

For the respondent: Ms S David (Counsel)

Interpreter: Ms S Wilson (Mandarin)

JUDGMENT

1. The claimant was unfairly dismissed on procedural grounds.
2. The Polkey reduction applies. The claimant would have been dismissed in due course and any compensatory award is capped at four months' worth of salary and benefits.
3. There shall be a 25% uplift to the compensatory award reflect the respondent's failure to follow the ACAS Code of Practice on Disciplinary Procedures.
4. The Tribunal shall arrange a further 1-day hearing to assess the monetary amount of the Remedy (Compensation) payable to the claimant.

REASONS

Background

1. This was a claim for unfair dismissal. The claimant was employed by the respondent as a Sales and Account Executive from 20 September 2021 to 18 February 2024. ACAS early conciliation commenced on 9 February and ended on 22 March 2024; the ET1 was lodged with the Tribunal on 18 April 2024.
2. At the commencement of the hearing, I clarified the relevant issues to be decided by the Tribunal with the parties (set out below). As the claimant was a litigant in person, I explained the concept of relevance to the issues for the purposes of hearing evidence in the case and further explained that only relevant evidence would be considered in reaching a decision.

List of Issues

Unfair Dismissal (section 98 Employment Rights Act 1996 (ERA))

3. It was agreed that the hearing would deal with liability only.
 - It is accepted that the claimant was dismissed with effect from 18 February 2024.
 - The claimant says there is no good or fair reason shown for his dismissal. The respondent says that the reason for dismissal was capability (namely, poor performance)
 - The claimant says that no proper or any process was followed in his dismissal and that the ACAS Disciplinary Code should have been followed. The respondent refers to an alleged contractual disciplinary process and says this was generally followed; although the respondent accepts that a warning under this policy was given too late in the process.
 - The claimant also says that the appeal against his dismissal was unfair and unreasonable. Li Zhou (the appeal officer) did not carry out any investigations, acted unfairly and bullied the claimant at the appeal hearing. This is denied by the respondent.
 - The respondent relies on the doctrine established in **Polkey v AE Dayton Services Ltd [1987] UKHL8** and says that if the dismissal is found to be procedurally unfair, the claimant would have been dismissed within 3-6 months in any event and that any compensation should be reduced by 100%.

Conduct of the Hearing

4. The hearing was listed for 2 days. The Tribunal was presented with an agreed bundle of 1649 pages (which included much duplication and also certified

English translations of Chinese documents). Page references are to that bundle and to the English translations of documents which were originally in Chinese.

5. The Tribunal was assisted by Ms Wilson, a Court-appointed interpreter in Mandarin. Ms Wilson only translated as and when requested by the parties or the Judge. She did assist in explaining the concept of relevance to the issues in the case, when considering the evidence.
6. The Tribunal heard oral evidence from the claimant and for the respondent, from Ms Amanda (Lu) Yang (Sales Manager and the claimant's Line Manager since 28 March 2023). The witnesses adopted their written witness statements as their evidence in chief. As the claimant was unrepresented I explained to him that he would need to challenge any aspects of Ms Yang's evidence with which he did not agree, and I prompted him to do so on several occasions.
7. The Tribunal was also presented on 12 March with a written statement from Yuanwen Zhuang HR Manager of the respondent's hub in Shanghai. This was to address an issue raised by the claimant with regard to a discrepancy in the respondent's evidence concerning screenshots. No oral evidence was presented by Ms Zhuang and the Tribunal can only attach limited weight to that evidence. The Tribunal heard submissions from both parties on this evidence.

Day 1

8. The Tribunal clarified the List of Issues with the parties and explained the Tribunal process as the claimant was a litigant in person. The Tribunal also took time to read key documents identified by the parties and the witness statements. The Tribunal heard Ms Yang's evidence

Day 2

9. The Tribunal heard the claimant's evidence until 2.10 pm. The parties' oral submissions were heard in the afternoon, allowing the claimant sufficient time to prepare as a litigant in person. Ms David also prepared written submissions. The hearing ended at 3.45 and I reserved my decision.

Findings of Fact

10. The Tribunal will only make such findings of fact as are relevant to the issues in the case.

Factual Overview

11. The following is a summary of the sequence of events and is largely undisputed.
12. The respondent operates as a sales agency for products specialising in the provision of comprehensive financial data and analysis services. The Company serves a diverse range of clients in the EMEA regions, including investment institutions, banks, securities companies, universities, and think tanks.
13. The respondent's UK office comprises a small team of 3 members at the relevant times in this case. The respondent's Head Office is in Shanghai and provides financial, IT and HR support to the UK office. Ms Yang's Line Manager

- is Loretta Liu (Regional Managing Director and HR manager). The claimant often reported directly to Ms Liu during his employment. Ms Liu made the decision to dismiss the claimant.
14. The claimant commenced employment on 20 September 2021 and his contract of employment is at pages 109-126. The claimant pointed out in his cross examination of Ms Yang that at clause 11.2 of his contract of employment concerning the company's policies and procedures, it is stated "*For the avoidance of doubt, these policies and procedures do not form part of your contract of employment*". I accept that the Company Policy on Performance Assessment (see below) was not part of the claimant's contract of employment. It did however impact on his performance during his employment.
 15. Ms Yang referred to the respondent's UK Sales Disciplinary policy and in particular to the updated version in April 2023 (pages 272-302). The claimant accepted that he had seen and signed that policy on 10 May 2023 (page 309). Whilst it was not part of the contract, the claimant was expected to follow the policy.
 16. The claimant raised in his witness statement and in cross examination various questions concerning whether the policy was properly stored and accessible on the respondent's internal portal. These questions necessitated the inclusion of Ms Zhuang's witness statement at a late stage in the proceedings. However, the relevant issue is whether the claimant was aware of and accepted the policy, which he acknowledged that he was and indeed he quoted the policy back to his managers on several occasions.
 17. The 2023 Policy set out that employees' performance would be assessed quarterly, based on seven performance categories basis, divided as follows: Category A – Direct sales figures and Category B – Client service and customer care. Under the 2023 Policy, in order to meet his target, the Claimant was required to satisfy at least four out of the seven categories per quarter, with at least one category from Category A (pages 290-292). The Company's quarters are defined as follows: Q1 - February to April; Q2 - May to July; Q3 - August to October; Q4 - November to January (of the following calendar year).
 18. The Policy also set out that "*the first time an employee fails the assessment, the company will issue a written warning and provide business training and coaching. Within the fiscal year those who fail two consecutive quarterly assessments are deemed to have work capabilities that do not meet the requirements of the position or do not possess the qualifications for this position and are returned to the Human Resources Department*". I shall deal (below) in more detail with the interpretation of that wording and whether the reference to being "returned" to HR meant a possible termination of employment.
 19. There is dispute between the parties as to whether Ms Yang and Ms Liu notified the claimant that his performance did not meet the required standards and that he needed to improve. The respondent accepts, however, that no formal written warning was given to the claimant under the Company Policy until 25 January 2024 (page 375). This noted that the claimant's performance was assessed as "unqualified" as per the Policy for Q3 of the 2023 Fiscal Year. The claimant accepted that he received the warning, but he refused to sign it as he said it was "*illegal and non-compliant*".

20. On 18 January 2024, Ms Yang had already sent an email to the claimant terminating his employment (page 608). The email said termination of employment was with effect from 16 February 2024, but this was later amended to 18 February. This email made no reference to the reason for the dismissal. This email was sent prior to the written warning.
21. On 19 January 2024 the claimant spoke to Ms Liu, and she indicated the alleged problems with his performance. The claimant then emailed Ms Liu (pages 1034-1034) challenging the company's decision and actions. He said that he was the best business performer in the UK region and that the company had not complied with proper legal process in dismissing him.
22. On 25 January 2024 the claimant emailed Mr Li Zhou (Ms Liu's line manager) appealing the decision to dismiss him (pages 1080-1082). An appeal meeting was held on 6 February 2024. There are transcripts at pages 656-735 (respondent's version) and 1118-1139 (claimant's version). There did not appear to be any significant disputes between the parties about the two versions and in cross examination Ms David used the claimant's version.
23. I note that neither version of the appeal hearing shows the claimant being accompanied at the appeal meeting. Both transcripts show that the meeting was a lengthy one and the key areas of dispute regarding the claimant's performance and the respondent's failure to provide warnings prior to dismissal were discussed in some detail.
24. On 22 February 2024 Mr Zhou send the Appeal Outcome to the claimant (pages 1047-1051). The appeal was not upheld. Mr Zhou concluded that the claimant was aware that he was not meeting standards but did not improve. Mr Zhou accepted that no warning was given in time but said that such a warning would have made no difference and so dismissal was justified. Mr Zhou also noted that the claimant had not responded to Ms Yang's attempt to assist him by providing a list of new clients and also that the claimant had failed to attend any of the 24 training opportunities offered by the company in the 2023 Fiscal Year.
25. I set out below my findings on the key relevant areas of dispute between the parties.

The interpretation of the Performance Assessment Policy

26. The relevant passage was at page 291 and referred to the fact that where an employee failed to meet two consecutive quarterly assessments they would be deemed not to meet the required standards/qualifications for their position and "*are returned to Human Resources Department*".
27. Ms Yang said in her oral evidence (by way of clarification) that this meant that an employee would be at risk of dismissal. She said that this meaning was implicit in the Chinese language used, although she accepted that the English translation did not make this expressly clear. It was noted that the certified English translation had been produced by the respondent.
28. The claimant initially said that the Policy did not make it clear that failure to meet the quarterly assessments could lead to dismissal. However, he was referred in cross examination to paragraph 20 of his own witness statement

where he said that he “*should have received a written warning at least one quarter before receiving the dismissal notice*”. The claimant accepted in his oral evidence that it was “*common sense*” that failure to improve after a warning could lead to dismissal.

29. I accept this indicates that the claimant was aware that the Company’s Policy wording meant that dismissal was a possibility in the event of poor performance.

Was the claimant given any indication/warnings about his poor performance?

30. The respondent accepts that the claimant was not given any written warning under the Policy until 25 January 2024, one week after the dismissal notice. Ms Yang also accepted in her oral evidence that no other “warning” was given as such. However, she said that both she and Ms Liu had conversations/sent emails to the claimant indicating that the respondent was not satisfied with his performance levels in several areas. The claimant denied this: he said that Ms Yang and Ms Liu had made “*high level comments*” about certain elements of his practice but had not given him any warnings.
31. Ms Yang said that as from 4 August 2024 Ms Liu had requested weekly catch-up meetings, which was an attempt to encourage the sales team to work more diligently. The team was asked to complete 12 client visit logs per day. This was confirmed to the claimant in a group chat (page 597). It was also noted that the quality of the team’s logs needed to be improved. The claimant replied “OK” and he accepted in his oral evidence that he was aware of the requirement for 12 daily client logs and for the need for effective client visit logs to be maintained.
32. Ms Yang noted in paragraphs 21-23 of her witness statement that the claimant did not produce the number of clients logs required. She said that she expressed her concerns and encouraged him to improve – but accepted that this had been done in conversations with the claimant and not recorded anywhere in writing. The claimant did not accept this.
33. The claimant was referred in cross examination to page 524 an email dated 10 September 2023 which had raised concerns about his not visiting clients for 23 consecutive days. The claimant said that this email was misguided as the effectiveness of sales depended on how the company dealt with existing clients and their budgets and did not require constant contact with clients.
34. This approach was typical of the claimant’s responses. He did not agree with the respondent’s approach to sales and monitoring effectiveness of employees’ performance. He preferred to adopt his own methods which in his opinion were more efficient and produced better results. The claimant did not accept that his performance was below standard.
35. The claimant was referred in cross examination to page 600 (an email dated 15 December 2023 from Ms Yang). This email “reminded” the claimant of various daily records which he needed to complete. Ms Yang noted that the matters mentioned were “*very critical for the collaborative work of our entire team*”. She also mentioned that if the claimant felt he had any problems or needed support when implementing these measures, he should feel free to contact her. Ms

- Yang accepted in her oral evidence that she had not phrased the email as a warning and had not specifically addressed any concerns about the claimant's performance, although this was her underlying intention.
36. The claimant said in his oral evidence that he viewed this email as a "*kind reminder*" of what was required and it did not, in his opinion, indicate any problems with his performance. Further, he said that although he did not agree with everything that Ms Yang has requested of him and the team he did not want to argue with her.
37. The claimant was also referred to pages 582-587 and page 536 which were communications from Ms Liu raising concerns about the quality of the claimant's client log reports. She said there was lack of detail on communication content and follow-up tasks.
38. The claimant said that page 536 had not been sent to him. As regards the we-chat pages, the claimant said that Ms Liu did not understand what he was saying in his log reports or was not reading them carefully enough. He had attempted to keep his logs "*simple but meaningful*" as he had been instructed to do. He had elaborated on the content in the weekly update meetings. The claimant initially said that he provided further detail of client visits in the slides presented at the weekly meetings but when taken to those slides (page 552) the claimant accepted that no such detail was provided.
39. In summary, the claimant said that the client logs were a form of "*bureaucracy*" (his word) and in his opinion were not the best way of recording client visits, which was best done in the weekly meetings. This approach was typical of the claimant's responses throughout his evidence, in that, he believed that his way of dealing with sales/clients was the correct way and he did not accept the instructions/practices of his managers/the company. He also noted that he had the best sales records of the entire UK team.
40. On the basis of the evidence, I find that the respondent (through Ms Yang and Ms Liu) had raised issues with the claimant about his performance. Unfortunately, they had not conveyed these to him using clear terms that they had "problems" or "concerns" with the claimant. They had used neutral, anodyne, polite language and reminded or requested him to comply with company practices. They had made no reference to warnings.
41. Given the claimant's opinion that he knew best how to deal with sales and clients, this approach from the respondent's managers did not have the effect of indicating to the claimant that there were any problems with his performance. He took their comments as suggestions only but felt that he could do better adopting his own methodology.
42. However, I did not find the claimant's evidence that he was unaware of any issues with his performance to be wholly credible. I find that he was aware that he was not complying with the company's policies and practices – he referred to "high level comments" and so knew there were some issues. He believed that he did not need to improve and that the respondent's requirements were unnecessary, but I find that he was aware that Ms Liu and Ms Yang had raised some issues with his performance, even if, in his opinion, those issues were not justified.

Was the claimant offered help to improve?

43. The claimant was referred in cross examination to pages 744-750 which contained a list of potential new clients sent to him by Ms Yang on 5 October 2023. The claimant accepted that he did not respond to the email or follow up on any of the clients listed.
44. In his oral evidence, the claimant said that he did not accept this was an attempt to assist him or to help him improve. He said that Ms Yang was in direct competition with him as regards sales figures and if it was a list of genuine clients she would have sent it earlier or kept it for herself as Ms Yang had a large family to support. I note that the claimant did not put any of these points to Ms Yang in his cross examination of her. I find that the respondent did offer some assistance to the claimant to attempt to improve his sales figures.
45. The claimant accepted in his oral evidence that he did not take up any offers of training from the respondent's internal team. The claimant said he did not regard this as formal training and did not accept that it would help him. Again, this was consistent with the claimant's approach to his work practices.

Was the appeal process properly conducted?

46. The claimant was not offered an appeal against Ms Liu's decision to dismiss him. However, when this was requested he was allowed the appeal which was heard by Mr Zhou.
47. This took the form of a meeting: the claimant was not offered the opportunity to be accompanied. The respondent did not comply with the ACAS Code on disciplinary procedure and appeals.
48. The claimant says that Mr Zhou carried out the appeal process unfairly in that he carried out no investigations and did not speak to Ms Yang or Ms Liu or the claimant before the appeal meeting.
49. However, when asked what further investigations Mr Zhou should have carried out the claimant did not give any clear response. I also note that all the matters raised by the claimant in his case were discussed in some detail at the appeal meeting. This is based on the claimant's own transcript of the appeal meeting.
50. Although Mr Zhou did not agree with the claimant's opinions, I find that he did give the claimant a full opportunity to raise his complaints about his dismissal and the reasons for it.

Conclusions

Reason for the Dismissal

51. The respondent has shown on the balance of probabilities (as outlined in the Findings of Fact set out above) that the reason for the dismissal was the claimant's failure to meet the required performance standards as set out in the Company's Performance Policy implemented in April/May 2023. (**Gilham and others v Kent CC (no2) [1985] ICR 233**)

Proper Procedure

52. The claimant has shown on a balance of probabilities that the respondent did not follow a proper procedure for implementing the dismissal for the fair reason. Neither Ms Yang nor Ms Liu expressed in unambiguous terms that the claimant was failing to meet the requisite standards. They did not clearly communicate that he needed to improve. Their messages to him were polite and in neutral terms. Given the claimant's self-belief in his own abilities, this meant that he did not perceive there was any criticism of his performance.
53. The notice of termination of employment on 18 January 2024 gave no reason for dismissal. The formal written warning under the Policy was sent too late, on 25 January 2024 one week after Ms Liu had given notice to terminate the claimant's employment and after the claimant had queried the reason for his dismissal on 19 January 2024.
54. I find that there was no need for any investigations to be carried out into the claimant's performance figures as the company had these to hand and the claimant also had access to this information, prior to his being given notice of termination of employment.
55. However, Ms Yang accepted that she had received no training on UK employment procedures. Ms Liu provided HR advice to the UK office, and she had not followed any recognised process under UK law/the ACAS Code of Practice in implementing the claimant's dismissal.

Appeal Process

56. The respondent did not offer an appeal against dismissal and did not follow the ACAS Code on appeals, in that the claimant was not offered a companion at the appeal meeting. However, I have found that the substance of the appeal meeting did cover the key relevant matters raised by the claimant as regards his dismissal.

Was the dismissal reasonable in all the circumstances? (section 98 (4) ERA)

57. Given the findings of fact set out above, I find that it was within the reasonable range of responses to dismiss the claimant for the reason of capability ie poor performance.
58. However, it is clear from the facts in this case that the respondent followed no proper or reasonable procedure whatsoever in leading to the decision to dismiss the claimant and there are technical failures in the appeal process. The dismissal is therefore unfair on procedural grounds.

Polkey reduction

59. Having found that the dismissal was procedurally unfair, I must now consider whether the respondent has shown that the claimant would have been dismissed in any event, even if a fair procedure had been followed. I also take

into account the guidance provided in **Software 2000 Ltd v Andrews [2007] ICR 825**.

60. There is always a degree of speculation involved in carrying out this exercise, however the case law has established that the element of speculation is not of itself a reason for disregarding such evidence.
61. The respondent has shown that there were issues with the claimant's performance and that he was not meeting the required standards as per the company's 2023 Policy. A formal warning was given (too late to justify the dismissal) on 25 January 2024. The claimant did not accept the warning as relevant to his dismissal, but the warning was nevertheless made.
62. Given the claimant's own evidence regarding his negative views on the company's policy and how they chose to assess performance, and given his evidence on his opinion of the respondent's attempts to help him improve, I find that there is sufficient evidence to show that it is unlikely that the claimant would have taken steps to improve his performance.
63. The claimant appeared to rely totally on the respondent's procedural defects in implementing his dismissal and did not make any attempts to identify any potential deficiencies in his performance or the need for him to improve in any way.
64. Accordingly, I find that there is evidence before me to show (on a balance of probabilities) that the claimant's employment would have continued for a limited time, namely another 4 months (allowing for a one month notice period) following which, the respondent would have implemented the performance warning, and the claimant would have been dismissed.
65. The claimant's compensatory award shall be capped at a further 4 months' worth of salary and benefits.

Uplift for failure to follow the ACAS Code of Practice on Disciplinary Procedures

66. The respondent clearly failed to follow the ACAS Code on either dismissal or the appeal. The compensatory award shall be uplifted by 25%.
67. The Tribunal shall list a further one day hearing to assess the monetary sum payable to the claimant as compensation for his unfair dismissal.

Employment Judge Henderson

JUDGMENT SIGNED ON: 26 March 2025

JUDGMENT SENT TO THE PARTIES ON

9 April 2025

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AND ENTERED IN THE REGISTER

FOR THE SECRETARY OF THE TRIBUNALS