EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001224/2024

Held at Aberdeen on 3 & 4 February 2025

Employment Judge N M Hosie

Mr G Snelling	**Claimant** **In Person**
Bumi Armada UK Limited	**Respondent** **Represented by,** **Mr A Atwell,** **Solicitor**

WRITTEN REASONS

On 5 February 2025 I issued a Judgment in the following terms:-

"*The Judgment of the Tribunal, for the reasons given orally at the Hearing, is that the claim is dismissed.*"

On 14 February 2025, the respondent's solicitor requested written reasons for the Judgment under Rule 60(4) of The Employment Tribunal Procedure Rules 2024. The following are these Reasons.

Introduction

1. The claimant, Graham Snelling, brought complaints of "standard" unfair dismissal; automatic unfair dismissal, by reason of making protected disclosures about health and safety concerns ("whistleblowing"); for notice pay; and for unpaid wages. The respondent admitted the dismissal but claimed that the reason was gross misconduct, in short a failure to follow a reasonable management instruction to mobilise, and that it was fair.

The evidence

2. On behalf of the respondent I heard evidence from:-

- Hazel Cromarty, HR Manager;
- Gary Lawrie, HSE/Verification Manager;
- Robert Lennan, Maintenance Supervisor who took the decision to dismiss the claimant.

I then heard evidence from the claimant.

3. A Joint Bundle of documentary productions was also submitted ("P").

The facts

4. Helpfully, the parties submitted an Agreed Statement of Facts (P.358-362) on the basis of which I make the following findings in fact.

5. The respondent is a provider of offshore energy facilities and services.

6. The claimant was employed by the respondent under a contract of employment dated 12 January 2021 ("Contract") as a Mechanical Technician, from 12 January 2021 until he was dismissed on 26 April 2024 for gross misconduct. Prior to 12 January 2021, the claimant was engaged for a period by the respondent as a contractor.

7. As a Mechanical Technician, the claimant was responsible for carrying out maintenance of the asset he was assigned to. This maintenance included

carrying out diagnostic checks; carrying out repairs; responding to breakdowns in a timely manner; and improving equipment reliability. As such, the claimant could not perform his role unless he physically attended (i.e. "mobilised") at the facility he was assigned to (in this case the Armada Kraken which is a Floating, Production, Storage and Offloading facility ("FPSO")).

8. Under the Contract, the claimant's place of work was offshore. Clause 15 of the Contract (P. 180-181) governs the work cycle that the claimant was required to comply with. This was a 3:4, 3:5 work cycle, which comprises of a repeated pattern of three weeks working offshore followed by four weeks of field break followed by three weeks working offshore, followed by five weeks of field break.

9. As part of its requirements for staff working offshore, the claimant was required to undergo regular training that included 'MIST' (Minimum Industry Safety Training). MIST is a minimum standard within the oil and gas industry for workers travelling offshore in the UK Continental Shelf and was required by the respondent for all staff travelling offshore. MIST Online is an online refresher training and re-assessment for offshore workers to renew their MIST certification every four years.

10. Clause 15.2 of the Contract states that "*for the avoidance of doubt, any entitlement to holidays (whether by virtue of statute or otherwise) is to be taken during field break*".

11. The respondent's Annual Leave Policy also states that, in relation to offshore employees, "*all entitlement to annual leave and public holiday is deemed to be included within your Field Break and should be scheduled and be taken during this period*."

12. Under the respondent's Time Off Work Policy it states that, "*cases of unauthorised absence will be dealt with under the Company's Disciplinary*

Policy and Procedure. Absence that has not been taken according to the details and policies noted above will be treated as unauthorised absence".

13. On 16 May 2023, the claimant commenced a period of sickness absence.

14. On 7 December 2023, the respondent sent the claimant a letter enclosing a copy of the respondent's Sickness and Absence Policy and Procedure (P.148). The claimant was reminded that he was required to maintain reasonable contact during periods of absence. He was asked that he respond to arrange a meeting to discuss his prognosis and when he anticipated to return to work. He was warned that failure to maintain contact during sickness absence may result in disciplinary action.

15. On 19 December 2023, the claimant attended an Absence Management Meeting. Also in attendance was Ms Adair, to provide HR support; Kenny Maclean, Maintenance Supervisor; and Audrey Anderson, HR Adviser, who took minutes of the meeting. The claimant confirmed that he had recently had an operation on his knee. He mentioned that he had a meeting with his surgeon in January after which the respondent understood he should have more clarity on when he might be able to return to work. The claimant was reminded about the importance of keeping in touch during his absence.

16. On 11 January 2024, following the claimant's meeting with his surgeon, the claimant attended an Occupational Health appointment. During that meeting the claimant was informed that he was fit to return to work.

17. On 15 January 2024, the respondent received the Occupational Health Report noting that the claimant had been signed off as fit to return to work by his GP (P. 155-156).

18. Ms Anderson called the claimant to inform him that he would be required to mobilise on 18 January 2024, in accordance with his offshore rota. The claimant informed Ms Anderson that he would not be mobilising because he

had not received a copy of the Occupational Health Report, his MIST training had expired, and that he had accrued annual leave to take that he intended to take prior to returning to work.

19. On 16 January 2024, the claimant was sent information about the MIST online training that the respondent required the claimant to complete before returning to work offshore.

20. On 16 January 2024, Ms Anderson called the claimant again. He confirmed that he had received the Occupational Health Report. Ms Anderson asked the claimant to confirm if he would mobilise on 18 January. The claimant said that he would not mobilise until 12 March 2024.

21. Between 17 and 19 January 2024, there were emails between Ms Adair and the claimant. As part of this correspondence, Ms Adair explained the respondent's position regarding how long MIST online training would take, and that the claimant was expected to mobilise for work on 18 January.

22. For his part, the claimant explained that he would not mobilise due to various personal reasons, the expiration of his MIST and his intention to take accrued annual leave prior to mobilisation in 2024. The claimant asked to be provided with the relevant employment legislation that allowed for the respondent's calculation of the claimant's annual leave.

23. In her response on 19 January 2024, Ms Adair informed the claimant that he would remain on unpaid leave until he returned to work, that he was expected to return on 30 January 2024 and that failure to do so without a reasonable explanation in advance may result in disciplinary action, up to and including dismissal. The claimant for his part had explained that he was not mobilising because he did not have his MIST and wanted to use his accrued annual leave.

24. Ms Adair also notified the claimant that he had the right to two days' paid compassionate leave. She informed him that she would arrange for this to be processed if he confirmed the days that he wished to claim it for.

25. Between mid-January 2024 until the claimant's grievance was heard in March 2024, the respondent maintained the position that (i) the claimant had taken his annual leave for 2023 during his field breaks (prior to his sickness absence starting); and (ii) there was no annual leave to be carried over from 2023 into 2024. However, as part of the grievance process, the respondent later decided that the claimant did have the right to carry over 4 weeks' annual leave from 2023 to the year 2024.

Claimant's grievance

26. On 24 February 2024, the claimant lodged a formal grievance. He complained about the Respondent's:

1. management of his annual leave allocation during his sickness absence;
2. attitude to safety concerns he raised;
3. attitude and approach during recent communications regarding his absence and return to work, which he viewed as aggressive and bullying;
4. request for him to carry out MIST training whilst unpaid.

27. The respondent carried out an investigation into the claimant's grievance. The investigation was conducted by Gary Lawrie, HSEQ Adviser, and Hazel Cromarty, HR Manager.

28. On 18 March 2024, the claimant attended a grievance hearing. The hearing was also attended by Ms Cromarty, to provide HR support; Mr Lawrie, as the grievance hearer; Ms Anderson, as notetaker; and Mike Rafferty of UNITE attended as the claimant's companion, albeit not in a formal union capacity as the claimant was not a UNITE member. The claimant was given the

opportunity to explain his grievance and how he thought that it should be resolved.

29. On 22 March 2024, the claimant was sent a grievance outcome letter which informed the claimant of the respondent's decision and of his right to appeal (P. 243-245). The claimant was also provided with a copy of the investigation report, its appendices and the minutes taken at the grievance hearing.

30. Point 1 of the grievance was partially upheld, in that the respondent found that the claimant should have been permitted to carry over 28 days of annual leave which he had accrued in 2023 while he was absent on sick leave. He was informed that he should take these holidays within his field breaks and before the end of June 2025.

31. However, in relation to the remainder of Point 1, the respondent held that the claimant did not have the right to take annual leave during his normal rota time in January outside of his field break without having first arranged a rota swap. This point was therefore not upheld, and it was confirmed that the time he had been absent in January 2024 would be treated as unauthorised unpaid leave.

32. Points 2 - 4 of the grievance were not upheld.

33. The claimant was informed that, as his grievance had been fully investigated and concluded, he was expected to complete his MIST training before mobilising and to return to work on the next normal offshore rota mobilisation date of 26 March 2024.

34. The claimant was informed of his right to appeal the grievance decision. The claimant appealed via email on Friday 29 March 2024.

35. Scott Calderwood, Operations Manager, was appointed to hear the claimant's grievance appeal.

36. Mr Calderwood acknowledged the claimant's grievance on 29 March 2024. He emailed the claimant on 8 April 2024 inviting him to attend a grievance appeal meeting on 12 April 2024.

37. The claimant replied via email on 10 April indicating that he was unable to attend the hearing on 12 April 2024. Mr Calderwood offered to re-arrange the hearing to 15 April 2024.

38. Mr Calderwood received no response from the claimant in relation to his offer of a re-arranged hearing, therefore Mr Calderwood conducted an investigation without the claimant's input.

39. Having investigated the points fully, the claimant was informed by letter dated 17 April 2024 from Mr Calderwood that his grievance appeal was not upheld (P.305-307).

Continued failure to mobilise

40. The claimant had remained on unauthorised absence while his grievance was being considered. Following the outcome of the claimant's grievance being communicated, the claimant was sent an email from the Travel and Logistics team on 22 March 2024 outlining the information in relation to his mobilisation on 26 March 2024. This included information in relation to the accommodation that had been booked for him on the night prior to his mobilisation. He was asked to acknowledge receipt (P. 246-248).

41. On 25 March 2024, having received no response, the claimant was sent a further email by the Travel and Logistics Team asking if he would be requiring his hotel that had been booked for the evening. The claimant stated in response that he would not be mobilising as he did not have his MIST.

42. The claimant was sent a further email later that day reminding him to complete the MIST training. He was informed that authorisation had been obtained for him to receive pay for a half day of training as a gesture of goodwill. He was told that if he did not mobilise as requested, he would not be paid.

43. On 27 March 2024, the day after he was due to mobilise, the claimant responded to the Travel and Logistics Team. He repeated that he would not be mobilising as he did not have his MIST and would not require a hotel.

Disciplinary process

44. As the claimant had still failed to mobilise, on 28 March 2024 the respondent wrote to the claimant inviting him to attend a disciplinary hearing on 2 April 2024 (P.250-252). The hearing was to take place in person in Aberdeen, as the claimant had previously experienced camera issues when joining meetings virtually, and the respondent offered to reimburse his overnight accommodation and travel expenses if required. The claimant was informed of his right to be accompanied to the hearing and was warned that a possible outcome of the hearing was dismissal, including summary dismissal for gross misconduct. The claimant was informed that the respondent expected him to make all reasonable efforts to attend.

45. The hearing would consider the allegation that the claimant had consistently refused to obey reasonable management instructions to meet the terms of his Contract of Employment, specifically that he had refused to mobilise to the Armada Kraken, as requested, on various dates in accordance with his planned rota.

46. The claimant replied to the invitation on 1 April 2024 and stated that he would not be attending the hearing.

47. On 2 April 2024, Ms Adair replied via email and asked the claimant to suggest an alternative date for the hearing during the week commencing 15 April 2024 and reiterated that the respondent would reimburse his travel expenses. He was informed that if he did not attend the rearranged hearing without good cause, then, in accordance with the respondent's Disciplinary Policy, the hearing would be held in his absence.

48. On 3 April 2024, the claimant informed Ms Adair that he had no intention of travelling to Aberdeen for a disciplinary hearing and stated that it should be held in his absence and asked for the decision to be emailed to him.

49. The disciplinary hearing was held on 26 April 2024 and was chaired by Rob Lennan, Maintenance Supervisor. Ms Adair attended to provide HR support and Ms Anderson attended to take a minute of the meeting. The claimant did not attend the hearing.

50. The respondent wrote to the claimant on 26 April 2024 terminating his employment on grounds of gross misconduct (P.313-316). He was informed of his right of appeal. The claimant was summarily dismissed without notice. The claimant's effective date of termination was 26 April 2024.

51. The claimant was informed that he would be paid for 33.5 days of accrued annual leave, made up of 28 days of annual leave carried forward from 2023 and 11.5 days accrued in 2024.

52. The claimant did not appeal against the decision to dismiss him.

53. As far as the automatic unfair dismissal claim was concerned the respondent accepted that the claimant had made protected disclosures but denied that that was the reason for his dismissal. The respondent also denied the notice and wages claims.

Submissions

54. Both parties made written submissions which I referred to for their terms.

Discussion and Conclusions

Unfair dismissal relevant law

55. In every "standard" unfair dismissal case when dismissal is admitted s.98(1) of the Employment Rights Act 1996 requires the employer to show the reason for the dismissal and that it is an admissible reason in terms of s.98(2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position the employee held. An admissible reason is a reason for which an employee can be fairly dismissed and among them is conduct which the respondent claimed was the reason for the claimant's dismissal.

56. That, of course, was disputed by the claimant who claimed that the real reason was that he had made protected disclosures about health and safety matters. As the onus was on the respondent to show the reason I examined very carefully the evidence which I heard from the respondent's three witnesses and in particular that of Mr Lennan who took the decision to dismiss and asked myself "*Was that the real reason or was it given to try and hide the fact that the real reason was a reaction to the claimant's protected disclosures?*".

57. When I examined the facts, by and large these were not disputed and I had the benefit of a detailed Agreed Statement of Facts.

58. By and large, all of the witnesses presented as credible and reliable including the claimant who was very open about the reasons why he was not prepared to do the MIST training which meant he could not mobilise as instructed.

59. Parties will understand that my decision could only be based on the evidence I heard from the witnesses and in the documents which were produced.

60. It was not disputed by Mr Snelling that he was instructed to mobilise on four occasions: twice in January and twice in March but he was unable to do so as he was not prepared to do the MIST training, a prerequisite of working offshore.

61. There was a dispute about the likely length of the MIST training. Mr Snelling claimed that it would normally take him about six hours but, as he would have needed to take breaks due to his recent operation, he estimated that it would have taken him around eight hours.

62. This was disputed by the respondent's witnesses all of whom were of the view that it would only have taken him two-three hours. Their evidence about this was corroborative, consistent and convincing. I also noted from the MIST document which was produced that the estimated duration was three to four hours (P.81-82). I preferred the respondent's evidence about this therefore. I find in fact that the Mist training would have taken the claimant two-three hours.

63. Also, on the evidence I had no doubt that the onus was on Mr Snelling to show that his MIST training was up-to-date. It only requires to be managed by the respondent to the extent of ensuring all employees had done it before going offshore.

64. Significantly, latterly in an attempt to get Mr Snelling back to work the respondent offered to pay him for a half day's work, some four hours, for the time he would spend doing the training, something which was not normally offered to other employees. This went very much to understanding the respondent's mind set at the relevant time. They wanted him back to work. They wanted to facilitate his return.

65. So, in light of these background facts and the relevant law, I considered very carefully, as this was a pivotal issue in the case, whether that was the true reason for Mr Snelling's dismissal.

66. I am satisfied, on the evidence, that Mr Snelling's conduct was the true reason. The respondent's evidence from all three witnesses was consistent and convincing in this regard especially that of Mr Lennan who took the decision to dismiss.

67. Mr Snelling was dismissed because he failed to carry out a reasonable management instruction, on more than one occasion, to mobilise and the reason for this was his refusal to do the MIST training without, in my view, any good reason.

68. I am bound to say I did not understand Mr Snelling's explanation that he was not prepared to do the MIST training because he was on unpaid leave at the time and that it was a matter of principle, especially when he was aware that his job was on the line.

69. There was no evidence to even suggest that the health and safety issues Mr Snelling had raised was a factor in his dismissal.

70. Mr Snelling was a very competent and valued employee by all accounts. The respondent did not want to lose him. They did all they reasonably could, and more, to get him to complete the MIST training and return to work.

71. So, having decided that conduct was the reason for Mr Snelling's dismissal the remaining question I had to determine under s.98(4) of the 1996 Act was whether the respondent had acted reasonably in treating that reason for dismissing Mr Snelling as a sufficient reason and that question had to be determined in accordance with equity and the substantial merits of the case.

72. To determine whether a dismissal for conduct is fair valuable guidance was provided in the well-known case of ***British Home Stores Ltd v. Burchell*** [1978] IRLR 379 EAT.

73. There was no doubt that Mr Lennan believed that Mr Snelling was guilty of the conduct alleged and that the respondent had carried out as much investigation into the matter as was reasonable in all the circumstances.

74. But, did the respondent have reasonable grounds for that belief? An important and material issue was whether the respondent was entitled to require Mr Snelling to take his annual leave during his field breaks which he disputed. I am satisfied that, legally, they were entitled to do so contractually and on the basis of the case of ***Russell & Others v. Transocean International Resources Ltd & Others (Scotland)*** [2011] UKSC57, to which I was referred.

75. I arrived at the view, therefore, that the test in ***Burchell*** had been satisfied.

76. The respondent had a genuine and reasonable belief in the conduct alleged, reasonably tested.

77. I was also satisfied that a fair procedure had been followed.

78. I then went on to consider whether, in all the circumstances, dismissal was a reasonable sanction. In this regard, I was mindful of the guidance in such well-known cases as ***Iceland Frozen Foods Ltd v. Jones*** [1982] IRLR 439 that there is a band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair; if the dismissal falls outside the band, it is unfair.

79. I was satisfied that the respondent's instructions to Mr Snelling were lawful. I was satisfied that Mr Snelling's refusal to complete the MIST training and mobilise was unreasonable. I was in no doubt that legally this was a wilful

repudiation of the contract by Mr Snelling and that this amounted to gross misconduct. The dismissal, therefore, was within the band of reasonable responses which a reasonable employer might have adopted and it was fair.

80. It falls from this decision that the claim of automatic unfair dismissal is not well-founded and it is also dismissed.

Notice

81. So far as the claim for notice is concerned, as I decided that this was gross misconduct the respondent was entitled to dismiss Mr Snelling summarily without notice and this claim is also dismissed.

Wages

82. Finally, so far as the wages claim is concerned, I am satisfied that the respondent's submissions are well-founded. The respondent was under no legal obligation to pay Mr Snelling's wages when he on unauthorised absence, able to work but unreasonably refusing to do so. This claim, therefore, is also dismissed.

Employment Judge: N M Hosie
Date of Judgment: 25 March 2025
Date Sent to Parties: 25 March 2025