



EMPLOYMENT TRIBUNALS

Claimant: Miss M Boal

Respondent: Healthera Limited

Heard at: Bury St Edmunds

On: 6,7 February 27 March 2025

Before: Employment Judge M Magee

Representation:

Claimant: Mr Singh (counsel)

Respondent: Ms Richards (solicitor)

JUDGMENT having been sent to the parties on 30 April 2025 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. Miss Boal ("The Claimant") brought claims for unfair dismissal, a failure to provide a statement of particulars and a failure to provide adequate and true reasons for dismissal against her former employer, Healthera Limited ("The Respondent").

2. I heard the Claim on 6,7 February and 27 March 2025 at Bury St Edmunds Employment Tribunal. Mr Singh of Counsel appeared for Miss Boal. Ms Richards solicitor appeared for the Respondent.

The Hearing

3. The Tribunal received a bundle of 620 pages (in 3 parts) and subsequently an earlier bundle of 586 pages prepared for a previously postponed final hearing plus an index, an opening note on behalf of the Claimant, and a supplemental bundle from the Claimant. The Claimant had prepared a chronology, but it was not in a neutral format, so the Tribunal did not rely on it for the final hearing. Mr Bateman gave evidence for the Respondent. Ms Boal gave evidence as did Ms Chin on behalf of the Claimant.

4. Ms Richards made an application to postpone the hearing due to the absence of Mr Liu who had been called abroad on business as she wished to call him as a witness. Mr Singh opposed that application. The Respondent had produced a witness statement purportedly authored by two individuals (including Mr Liu). The Respondent had not sought to serve a witness statement from Mr Liu individually. The case had been postponed previously and further postponement applications rejected. The case was now old and the Respondent would be able to give evidence of the circumstances of the dismissal by Mr Bateman. The balance of prejudice was against the Claimant in terms of the additional delay and costs incurred by a postponement. It was not in keeping with the overriding objective in terms of avoiding delay and unnecessary expense by postponing. The application to postpone was refused.

5. At the commencement of the hearing Ms Richards confirmed that, although the ET3 gave the reasons for dismissal as capability and/or redundancy, the Respondent only intended to argue capability as the reason for dismissal.

6. There was a delay in my receiving the request for written reasons and professional commitments have prevented me from completing it sooner. I apologise to the parties for any inconvenience caused.

Issues

7. What was the reason for the dismissal? The Respondent says capability (performance).

8. Did the Respondent act reasonably in treating that reason as one to justify dismissal.

9. Was there a failure to provide a statement of particulars of employment (ss.1 & 4 ERA);

10. Was there a failure to provide adequate and true reasons for dismissal (ss 92 and 93(1)(b));

11. Should there be an uplift for failing to comply with the ACAS codes (s.207A of the Trade Union & Labour Relations (Consolidation) Act 1992.

Findings of Fact

12. Miss Boal was employed by the Respondent from 17 February 2020, initially as Sales Team Coordinator.
13. She was provided with written particulars of employment [3] upon commencement.
14. Miss Boal's probationary review was undertaken by Martin Hao on 16/8/20. Her Overall evaluation was "Excellent" [26].
15. In January 2021, she was awarded "Employee of the Quarter" [587].
16. She was appraised by Mr Bateman [27-34] on 17 February 2021. She was recorded [32] as "improved knowledge and communication, good team player, large amount of work with reasonable attention to detail. Could improve with sales ops/organising/automation/better documenting process"
17. In November 2021, Mr Hao asked Miss Boal to work with Business Development Managers to make cold calls and book product demonstrations, which she did from December 2021 until January 2022.
18. On 16 February 2022 she was appraised by Mr Bateman [72-82]. Her overall performance was recorded [81] "demonstrated that you can grow further in the company and this new role will give you the chance to do so.... overall since October I am satisfied with your work and look forward to further improvements" She was marked no lower than a 3 "routinely meets and exceeds". There were no recorded failures to meet expectations.
19. On 16 February 2022, Miss Boal's salary was increased to £30,000 and her role was changed to Commercial Business Co-ordinator [71]. These were additional responsibilities to her Sales Team Coordinator role. The evidence of the appraisal supports the conclusion that it was "an opportunity to grow further in the company". I therefore conclude that it was a promotion.
20. On this and a number of other issues, I found Miss Boal to be an honest and credible witness, giving evidence consistent with the contemporaneous documentation. In contrast, Mr Bateman's evidence was contradicted by the documentary evidence and I preferred Miss Boal's evidence where there was a dispute of fact, not otherwise supported by documentation.
21. In November 2022, Miss Boal was voted employee of the month [104]
22. Miss Boal moved to a new role on 15 November 2022 in sales [618/9]. There is no documentation recording that change in role.
23. In her Appraisal 9 February 2023 by Mr Myatt [109-119] she recorded no scores below 3. There were no "failure to meet expectations". Quality of work [113] was marked to the highest standards "5". Mr Myatt records that he was impressed by her effort level and ability to adapt [116]. Switching to a new role in sales was noted as an achievement and a personal growth opportunity.
24. I do not find that Miss Boal was given warnings as to performance and prefer her evidence, being consistent with the appraisal records.
25. Following the appointment, Miss Boal's salary was increased to £33,000 from 1 February [122].

26. On 24 Feb 2023 [123-4] a personal growth plan was appended to the appraisal. This set out a series of sales targets. That set out the key responsibilities of Miss Boal's role.

27. On 4 August 2023 Miss Boal was asked to move to account management, Customer Success. Miss Boal commented that she was happy to leave sales. I prefer her evidence which is consistent with the appraisal records and records of job changes and conclude she was not given a warning about failure to meet targets.

28. Miss Boal moved to the Customer Success role on between 7 and 21 August 2023. There is a dispute between the parties as to the exact date with neither being precise. I treat her as having started that role on 14 August 2023. There is no documentation confirming the change of role. Miss Boal was on annual leave from 28 August to 4 September.

29. Mr Bateman on 4 September 2023 [185-7] produced a "Performance Review" and recommendations at the request of Mr Liu at a time when Miss Boal had completed two weeks in the new role. This had not been disclosed nor discussed with Miss Boal. Nor is there any document setting performance targets and concerns to which this document was a response. He stated that there was a meeting in June 2023 where Miss Boal was given a warning as to performance and dismissal. There is no formal document recording such a meeting. In the Performance Review, Mr Bateman recommended that Miss Boal "be exited from the business on the grounds of performance". This document was produced at the request of Mr Liu.

30. Page [365] shows performance analysis of Miss Boal and other employees for the periods November 22 to Quarter 3 2023. In Quarter 2 Miss Boal had the highest number of calls, pitches made, Demos booked, the second highest demos conducted, quotes out, orders confirmed and sites signed. Mr Bateman confirmed that the targets were intended to be aspirational. No staff regularly met the sales targets.

31. On Friday 8 September 2023 Miss Boal was called into a meeting with Mr Bateman and Ms Bloy without prior warning and told she was being dismissed. Miss Boal states she was told by Mr B that it was because they could no longer afford her. Mr Bateman denies this and states that he informed her that it was because of performance. Mr Bateman stated in evidence that he tended to sugar coat any messages in respect of performance and may have not made himself clear to Miss Boal. I prefer Miss Boal's evidence on this point that she was told that the company could no longer afford her.

32. On Monday 11 September 2023 Miss Boal requested from Mr Bateman written reasons for dismissal and grounds [193].

33. Mr Bateman replied the same day [195] stating that the reason for dismissal was "not meeting expectations in both your recent Sales Development and Customer Success Roles".

34. On 14 September 2023, Miss Boal appealed her dismissal and disputed that there were performance issues [197-198].

35. The Respondent produced statements from Mr Myatt [202] (dated 6 Oct), Mr Bloy [203] (dated 9 Oct) and Mr Bateman [204] (dated 10 Oct), almost a month after Miss Boal was given notice of termination.

36. Miss Boal's last day of employment was 8 October 2023. By this date she had not received a statement of change to her role, setting out her role and responsibilities.

37. On 12 October 2023 an appeal meeting was held by Andrew Bellingham [205]. Miss Boal provided a statement and evidence in support [206-211].

38. On 24 October 2023 Mr Bellingham dismissed the appeal [216], No mention was made of the 4 September 2023 document produced by Mr Bateman.

39. Miss Boal had been entitled to a commission of 9 percent on new customer sales. Her last commission was £1529.59, representing 3 months' commission. Miss Boal's ability to earn commission would have diminished, given her new role, had she continued.

Law

40. Where an employer seeks to rely on incapability or lack of qualifications as the ground for dismissal, the onus is on it to show that this was the actual reason or principal reason for dismissal. But this should not be mistaken as meaning that an employer must objectively establish that a dismissed employee lacked capability.

41. In **Alidair v Taylor [1978] ICR 445** the questions to be answered by the tribunal were:

- a. does the employer honestly believe this employee is incompetent or unsuitable for the job?
- b. are the grounds for that belief reasonable?

42. What the tribunal has to decide is whether there was material in front of the employer that satisfied the employer of the employee's inadequacy or unsuitability and on which it was reasonable to dismiss. In the absence of clear evidence of poor performance, an employer is likely to struggle to demonstrate that it has a sufficient reason for dismissing on the ground of capability. In **Smith v Glasgow Council [1987] ICR 796**, it was confirmed that, if the employer fails to show a clear reason or principal reason for dismissal it will not be able to demonstrate reasonable reliance on the reason asserted and the dismissal will accordingly be unfair.

43. The employer will be expected to be able to show that the targets had been brought to the employee's attention and that he or she was made aware of the possible consequences of not meeting them.

ACAS Uplift

44. The case of **Rentaplast v Coulson [2022] IRLR 664** makes it clear that where an employer contemplates action because it considers that there are issues of misconduct or poor performance, the ACAS Codes are engaged. It is not necessary that there is in fact poor performance or misconduct. An employer cannot sidestep the application of the ACAS Code by asserting that there is an alternative reason for dismissal.

Conclusions

45. Miss Boal was informed about sales targets in Feb 2023. The Appraisals do not indicate any significant concern with Miss Boal's performance, beyond normal employee development. The appraisals records demonstrate Miss Boal meeting or exceeding expectations. There are no formal records of any warnings or any formal performance management. There are no documents setting out that performance targets have been set within a performance management context. Further there was not and cannot have been any appraisal of those within a capability context. No formal capability process was engaged and followed.

46. The performance evidence relied on does not support the conclusion that Miss Boal was underperforming. It was accepted that the targets were aspirational and that employees regularly did not meet them. Miss Boal was first or second in respect of the five employees identified. The data did not support the conclusion that Miss Boal's performance was an issue.

47. The documentation in respect of Miss Boal's appraisals and changes of role support the conclusion that the role changes were by reason of personal development and business need rather than her failing to meet her performance objectives. The performance data does not support a conclusion that Miss Boal was underperforming in relation to the other employees. I find that the evidence at the relevant time Miss Boal was one of the top two performing employees. I conclude therefore that there were not reasonable grounds for concluding that Miss Boal was incompetent or unsuitable.

48. Miss Boal had been the new role Customer Success for a short period of 2 weeks (excluding holiday) before Mr Bateman drafted his document recommending her dismissal as the instruction of Mr Liu. Even if the Respondent had given her a warning as to a final chance (which I conclude he did not), this was insufficient time for her to have demonstrated any performance improvement or for the Respondent to reasonably conclude that she had failed to demonstrate any improvement.

49. The conclusions in Mr Bateman's dismissal recommendation were never shared with Miss Boal, they were produced expressly at Mr Liu's request dated 4 September 2023. They were not shared with Miss Boal during the appeal procedure. I conclude that there were no formal performance management concerns and that this document was produced to provide a rationale for Miss Boal's dismissal.

50. I conclude that the Respondent did not genuinely believe that Miss Boal was incapable of fulfilling her role.

51. Further I conclude that there were not reasonable grounds for so finding.

52. I find that given the evidence of Miss Boal's performance and the absence of any performance management process, together with the short period in which the Respondent determined that she had failed in the Customer Success role that a decision to dismiss was not within the band of reasonable responses open to an employer.

53. Miss Boal was given no warning of the dismissal meeting, was not told she could be accompanied, the subject matter of the meeting, nor the potential consequences. She was given a right to appeal, although that process did not give her the opportunity to substantively engage with the purported grounds for dismissal.

54. Accordingly I conclude that Miss Boal was unfairly dismissed.
55. Given my findings above, the reasons for the dismissal were not true and accurate. The Claim for failing to provide reasons for dismissal succeeds.
56. The Respondent contended that the issue was performance. The ACAS Codes are therefore engaged. There was no process followed on dismissal (written warning, accompanied, allegations, no meaningful opportunity to engage in the appeal) I find an ACAS uplift in circumstances of 20% is appropriate.
57. Given my conclusions, in respect of Miss Boal's performance, there is no reduction for contributory fault. I do not find that Miss Boal would have been dismissed had a fair process been followed and therefore there is no Polkey reduction.

Reconsideration of Failure to provide employment particulars

58. Miss Boal had written particulars at the outset of her employment which comply with section 1 of the Employment Rights Act s1. The Personal Growth Plan supplements the earlier written particulars, rendering it compliant with The Employment Rights Act. Miss Boal commenced her Customer Success role on 14 Aug 23, she was dismissed with notice on 8 September. At that point and up to her dismissal she was not provided with written particulars of her new role and responsibilities.
59. Having further considered the issue of providing particulars of employment, the Tribunal considers that there may have been a misapplication of the law in relation to this issue. The Tribunal under Rule 71 of the Employment Tribunal Procedure Rules 2024, wishes of its own motion to reconsider the issue of liability on failing to provide employment particulars for the change to her employment subsequent to role she commenced on 14 August 2023. The parties are invited to make any written submissions they wish in respect of a reconsideration within 14 days of the date of this judgment.

Remedy

60. Miss Boal was aged 31 at dismissal. She had 3 years' continuous service.
61. Her salary was £33,000. Her gross weekly pay was £634.62. Her net weekly pay was £516.75. In addition she had private health insurance at £8.54 per week.
62. She obtained new work commencing on 11 March 2024 at a salary of £30,000. She sought losses until the date of the final hearing, but not beyond.

Unfair Dismissal

Basic Award

3weeks @ £634.62

£1,903.86

Compensatory award

From 9 October 23 to 10 March 24 (21.86weeks)

21.86 x (£516.75 + £8.54) £11,482.96

From 11 March 24 to 27 March 2025 (54.43 weeks)

54.43 x (£33.70 + £8.54) £2,299.12

Loss of statutory rights £500

Loss of commission £1,300

Total compensatory **£15,582.08**

ACAS Uplift 20% **£3,116.41**

Failure to provide written reasons

2wks @ £634.62 plus 20% ACAS uplift **£1,523.09**

Total Award £22,125.44

Approved:

Employment Judge **M Magee**

Date. 12 September 2025

JUDGMENT SENT TO THE PARTIES ON

22 September 2025

FOR THE TRIBUNAL OFFICE

Notes

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