

Appeal No. UKEATS/0003/19/JW

EMPLOYMENT APPEAL TRIBUNAL
52 MELVILLE STREET, EDINBURGH, EH3 7HF

At the Tribunal
On 25th July 2019
At 10.30am

Before

THE HONOURABLE LORD SUMMERS

(SITTING ALONE)

Ms. Aileen Murdoch

APPELLANT

Whitbread Group PLC

RESPONDENT

Transcript of Proceedings

JUDGMENT

FULL HEARING

APPEARANCES

For the Appellant

Mr Mark Allison
(Solicitor)
Messrs. Livingstone Brown
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For the Respondent

Mr Mark Foster
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THE HONOURABLE LORD SUMMERS

1. I am satisfied that the Employment Judge erred in accepting that the ground given by the Respondents for the dismissal of the Appellant could properly have included consideration of the Appellant's intention or motive.
2. The ground upon which the Appellant was dismissed was "Failure to process correct payment of team members". I accept that this ground entitled the Respondents to examine evidence about whether or not the Appellant had or had not been properly trained and if satisfied that she had been properly trained and had no proper excuse for failing to process payments correctly, to discipline her for that failure. I consider that the concluding line of the Disciplinary Outcome Report p 2 (p 184 of the Core Bundle) referred to an issue which lay outside the scope of the ground under investigation.
3. Had the Respondents wished to assert that they thought that the Appellant had processed payments for some illegitimate reason then they should have said so. Had they wished to assert that she had done so intentionally they should have said so. Such an allegation is far more serious than that which appears from the ground stated.
4. In my judgment the fact that the Appellant was dismissed in respect of a ground that focuses on her competence and not her conduct demonstrates that her dismissal was based on considerations that lay outside the scope of ground 3. It was suggested to me that the fact that dismissal occurred despite the relatively innocuous nature of the ground demonstrates that the appeal should have been directed at the reasonableness of the sanction. I do not accept this. What it demonstrates is that the decision maker in fact dismissed the Appellant on a ground other than that disclosed by ground 3. The decision maker as his evidence to

the Tribunal disclosed was, notwithstanding the coy terms Disciplinary Report Outcome letter, in fact dismissing for an allegation whose terms were not properly focused in the ground for dismissal.

5. The Employment Judge ought not to have had regard to the evidence of Mr Jamieson set out for example at paragraph 131. He ought to have confined his decision to the evidence that was habile to support the terms of ground 3 and nothing more. I accept therefore that he misunderstood the reason for dismissal in the sense that he misunderstood the scope of ground 3 and what it permitted the Respondents to do. I accept that on another level he did understand what the Respondents were in fact doing. He seems to have appreciated this but did not appreciate that it was an understanding of the scope of ground 3 that lay beyond its own terms. I do not consider that the second limb of the appeal in ground 1 arises. In my view the Employment Judge did not substitute his own view,
6. I therefore conclude that while the Employment Judge did correctly conclude on hearing the evidence that the reason for dismissal included consideration of the Appellant's illegitimate intentions or motives. I reject therefore ground 1(a). It does not follow from that that ground 1(b) is upheld. The EJ did not in my view substitute his view for the employer's view. He accepted the employer's view as reasonable within the scope of section 98(1). It appears to me that he did not substitute his own view for the reason for dismissal. His error was to allow consideration of factors that lay beyond the scope of the ground of dismissal and which having regard to their character ought to have been the subject of specific allegation.
7. The upshot is that ground 2 is upheld in that the Appellant was entitled to notice of the gravity of the allegation against her and specifically entitled to be told that it would be

asserted that she had misprocessed the wages deliberately or for some other illegitimate reason. She should have been told that the ground was not confined to the issue of her competence but included her conduct. That in my view is an error of law and the appeal is therefore upheld.

8. In these circumstances ground of appeal 2 succeeds.