



THE EMPLOYMENT TRIBUNAL

BETWEEN

Claimant

and

Respondent

Ms B Adeogun

University of Roehampton

Held at London South

On 26-28 March 2018

BEFORE: Employment Judge Siddall (Sitting Alone)

Representation

For the Claimant: Mr M George, Solicitor

For the Respondent: Ms S Tharoo, Counsel

JUDGMENT

The Judgment of the Employment Tribunal is:-

The claim for unfair dismissal is not well founded and it does not succeed.

REASONS

1. This is a claim for unfair dismissal. The case was heard over 3 days. I heard evidence from witnesses for the Respondent Ms Heidi Davies from the Human Resources Department, Mr Reginald Blennerhassett who was the Manager who made the decision to dismiss and from Professor Lynn Dobbs who chaired the appeal panel. I also heard from the Claimant herself. The Claimant submitted a witness statement for a witness on her behalf, Mr Stephen Egbekewremu who attended for parts of the hearing. Unfortunately he was not present when the Claimant's evidence commenced after lunch on the second

day, and he was not able to attend on the final morning to give evidence. The Claimant's representative Mr George confirmed that he was not seeking an adjournment in relation to Mr Egbekewremu attendance but he asked me to take his written witness statement into account. I have done so whilst bearing in mind that Mr Egbekewremu was not available for cross examination and that therefore I may need to give his evidence less weight.

2. Under section 98 of the Employment Rights Act, the first matter for me to decide whether the reason for dismissal is a potentially fair one. The Respondent says that the reason for dismissal was the Claimant's misconduct. If there is a fair reason for dismissal, I must then decide whether dismissal was reasonable in all the circumstances under section 98(4).
3. The findings I have made and the conclusions I have drawn from them are as follows.
4. The Claimant commenced employment with the Respondent in March 2003 as a Senior Domestic Supervisor.
5. In October 2004 she took up the role of Domestic Manager. Her duties included managing a team of around 14 cleaning staff, recording the hours they worked, allocating overtime, authorising claim forms and making arrangements to cover vacancies either through the University's internal recruitment agency which was called Unitemps or through other agencies. The Claimant reported to Emma Staveley Head of Cleaning Services.
6. On 19 December 2014, Emma Staveley met with Heidi Davies of HR and with the Director of Estates and Campus Services to discuss complaints of bullying made by cleaning staff against the Claimant. At that meeting Ms Staveley also reported an incident which had taken place with the Claimant earlier that day. Ms Staveley had met with the Claimant to discuss an issue in relation to the Claimant's mobile phone where the level of the usage had been queried and the phone had been cut off. Ms Staveley's allegation was that the Claimant

had been very upset about this and she made her views known and also said to Ms Staveley that she had a dream about a colleague whose husband had subsequently died. Ms Staveley took this remark as being rather threatening. She became upset and wished to leave the room. She asserted that the Claimant had physically restrained her and then followed her out to her car and got into the passenger seat. Details of this incident were set out by Ms Staveley in a statement at page 77 of the bundle.

7. At that meeting a decision was taken to investigate the allegations made against the Claimant. After the Christmas closure on 7 January 2015, the Claimant was suspended pending an investigation and Mr Paul Mac Court was asked to investigate.
8. On 16 January 2015, Mr Mac Court interviewed the Claimant with her trade union rep and he met with her again on 11 February 2015 to take further evidence from her.
9. On 13 February 2015 Ms Staveley wrote to Human Resources to notify them of further concerns relating to the conduct of the Claimant, this time relating to alleged financial irregularities. It was alleged that the Claimant was putting through overtime claims for cleaning staff for hours that they had not worked and then requesting staff to pay some or all of the money back to her in cash. After consultation with her trade union rep and Mr Mac Court, the Respondent decided that a separate investigator would be appointed to look into these financial allegations. Jacky Brown, a Senior Lecturer and Head of Digby Stuart College was appointed to carry out that investigation.
10. The Claimant was notified of these allegations on 16 February 2015. In the meantime, Mr Mac Court interviewed 13 members of the cleaning team and on 16 March the Claimant was advised that Mr Mac Court's investigation had concluded that there was a case to answer in relation to the bullying allegation, although Mr Mac Court had not upheld all of the allegations made by Emma Staveley and others.

11. The Claimant was called to a disciplinary hearing on 9 April 2015. She was sent a copy of Mr Mac Court's report which included a copy of Ms Staveley's statement and details of the information supplied by the other cleaners. In the meantime, Ms Brown met with the Claimant and her rep on 26 February 2015 to talk to her about the allegations of financial misconduct.
12. The Claimant went off sick with stress and anxiety on 2 March 2015. Ms Brown went on to interview 9 members of staff. She examined timesheets and Unitemps payment records and concluded that these appeared to show that the Claimant had authorised payments for temporary workers for periods when they were not shown on timesheets as having been at work. Staff had confirmed to Ms Brown that they had not worked these additional hours and that they had been asked to make cash payments to the Claimant.
13. On 10 March 2015, Ms Brown sent to the Claimant a list of queries that she had prepared about the discrepancies that she had noted from the records and she asked the Claimant to provide her response.
14. On 26 March 2015, the Claimant attended an occupational health appointment and the advice received was that she was not fit for work and not fit to answer questions or attend a disciplinary hearing. As a result of this advice the disciplinary hearing fixed for 9 April was postponed.
15. On 14 April a copy of Ms Brown's report, completed pending responses from the Claimant to the queries that she had raised, was sent out to the Claimant and on 14 May the report was sent to the Claimant formally with a request that she attend a disciplinary hearing fixed for 5 June 2015. I should note here that Ms Brown's report concluded that the records showed clear discrepancies but she stated that the allegation about staff being asked to make cash payments could not be evidenced.
16. On 2 June 2015, Occupational Health advised that the Claimant was unfit to attend a management meeting.

17. On 4 June 2015, Human Resources wrote to the Claimant to say that the hearing would be postponed to 25 June 2015 and that letter noted that Occupational Health had advised that the Claimant might not be able to attend for the foreseeable future.
18. The Claimant was advised that the disciplinary hearing would go ahead but if she was unable to attend she could either submit representations in writing, she could be represented at the hearing by her trade union representative or by another person or she could speak to the panel members by phone or via Skype.
19. The Claimant representative protested about the decision to go ahead with the disciplinary hearing and the Respondent replied on the 5th June 2015. Ms Davies noted that it was a 'difficult balance but we cannot leave these matters unresolved indefinitely given that Bola attributes her illness to the disciplinary action and some of the other staff who have made allegations against Bola have also reported stress and anxiety as a result of the uncertainty and delays'. (Page 242 of the bundle).
20. The disciplinary hearing was conducted by Mr Blennerhassett, Pro Vice Chancellor of the Respondent and Ms Scorey, University Librarian. Ms Davies attended as HR Advisor and the panel called Mr Mac Court, Ms Brown, Ms Staveley and Charlotte Bernadillo to give evidence. Charlotte Bernadillo was the Cleaning Supervisor who reported to the Claimant.
21. On 30 June 2015, notes of the disciplinary hearing were sent to the Claimant and she was asked to comment.
22. On 13 July 2015, her trade union representative replied attaching a copy of the minutes which the Claimant had annotated in some detail setting out her response to what the disciplinary panel meeting had discussed. Essentially the Claimant denied that she had been aggressive and denied the allegations about making fraudulent claims. At the same time the Claimant requested access to her emails and was advised by the Respondent that in fact her email account had not been suspended and that she could access it.

23. The Claimant also queried the notes of the interview with Mr Mac Court and asked for a copy of the statement of Emma Staveley. She was advised that this had been included as an appendix to his investigation report.
24. The panel met again on 16 and 20 July to consider the responses made by the Claimant. On 20 July 2015 a letter was sent to the Claimant confirming her dismissal for gross misconduct. The disciplinary panel considered that both investigations had been very careful and that the Claimant had not provided a credible explanation for the discrepancies shown on the timesheets and payment records. They accepted Mr Mac Court's findings about the allegations of aggressive behaviour towards Ms Staveley and towards other members of staff.
25. On 3 August 2015 the Claimant appealed against her dismissal.
26. An appeal hearing was fixed for 17 August 2015. The Claimant's trade union representative could not attend so the hearing was rescheduled for 5 October and the appeal panel was chaired by Professor Lynn Dobbs.
27. On 2 October 2015, the Claimant's trade union representative wrote in requesting additional information, including an audio recording of the disciplinary hearing, the original signing-on sheets and what the Claimant described as 'key log books' as well as records of the extra hours which the Respondent said had been paid.
28. At the appeal hearing the trade union representative set out the grounds of appeal. Mr Blennerhassett attended to give reasons for the dismissal. The Claimant raised the question of collusion of staff against her. She said that she had a warm relationship with members of staff but suggested that they had made up things about her.
29. At or following the appeal hearing, the Claimant was provided with copies of the key log books which Ms Davies had found, and records of the Unitemps payments that had been provided as well as an audio recording of the earlier

hearing. The Claimant provided additional comments on the 16th October 2015. She met again with the panel on 29 October 2015, so that they could ask her some further questions and understand what she was saying in relation to the additional evidence that had been produced. The key log sheets were considered and it was put to the Claimant that these appeared to show the same as the timesheets, that is that the Claimant had put through payments for some staff when they were not at work.

30. Two Unitemps workers had been paid for 3 weeks in one case and 6 weeks in another when they said that they were either not present at work at all or that they had not worked extra hours. The Claimant's response was that she must have made a mistake.
31. On 2 November 2015, the outcome of the appeal was sent to the Claimant confirming the decision to summarily dismiss her for gross misconduct. A claim was lodged with the Tribunal on 19 November 2015.
32. My decision is as follows.

I am satisfied on the evidence that the reason for the Claimant's dismissal by the Respondent related to her conduct. In assessing whether such dismissal was reasonable, the test that must be applied is that set out in the case of *Burchell v British Home Stores*. Can the Respondent show that it had a genuine belief, based on reasonable grounds and after a reasonable investigation, that the misconduct had been committed? If so was dismissal within the reasonable range of responses to that misconduct?

33. Two sets of allegations have been made against the Claimant. The first included a complaint by Emma Staveley of aggressive and intimidating behaviour alongside complaints of aggressive behaviour by other members of staff and the second set of allegations related to financial misconduct. Both sets of allegations were carefully and comprehensively investigated by Mr Mac Court and Ms Brown respectively and the Claimant was interviewed by both

and given the opportunity to comment on the allegations and provide further evidence.

34. The responses made by the Claimant were considered carefully. The Claimant raised the possibility of collusion at various points during the disciplinary process. This was considered by the disciplinary panel who took the time to interview Charlotte Bernadillo. Ultimately the panel reached the conclusion there was no evidence to support an allegation of collusion. The Claimant also alleged that Mr Mac Court should have interviewed Stephen Egbekewremu which he had not done. Mr Egbekewremu was not around on the days when Mr Mac Court interviewed other members of staff. The disciplinary panel challenged Mr Mac Court about the staff he had interviewed in an email which is found on page 272 of the bundle and his response was "I interviewed all the Frobel cleaning staff that were available over a 2-day period. If the corroborating evidence this revealed had been finally balanced for and against the allegations, there would have been merit in looking for further staff to interview, but the evidence supporting the allegations was sufficient margin to make it extremely unlikely that one further interview would reverse the outcome". It is clear that the disciplinary panel accepted the conclusion that he had reached.
35. The appeal panel also considered the failure to interview Mr Egbekewremu at the second appeal hearing on 29 October 2015, but again decided that it was not necessary for him to be interviewed. Of course, having reached the Employment Tribunal hearing we have the benefit of the relevant witness statement and Mr Egbekewremu sets out his view that the Claimant was not an aggressive person and that Charlotte Bernadillo, the Domestic Supervisor wanted to force her out. Mr Egbekewremu also said that he did not hear any members of staff talking about an allegation that the Claimant was forcing them to offer bribes.
36. It is clear that the disciplinary panel and the appeal panel carefully considered the allegation of possible collusion or improper motive in relation to the allegations brought against the Claimant. I noted that the disciplinary panel

interviewed Charlotte Bernadillo directly and as a result discounted this possibility. It was reconsidered at the appeal but noted that the Claimant had suggested no possible motive for such collusion to have taken place, and the panel conclusion was that there was sufficient evidence in any event of bullying and of financial misconduct. I have also noted that during the course of this hearing the Claimant's representative did not cross examine either Mr Blennerhassett or Ms Dobbs on their failure to interview Mr Egbekewremu. Taking all these matters into account I find that the Respondent did not act unreasonably in making a decision not to seek an interview with him. In any event having considered Mr Egbekewremu's written statement I do not think that his evidence would have made any difference, given the clear statements from other members of staff about the Claimant's conduct towards them.

37. The Respondent was entitled on the evidence to reject the suggestion of collusion, having considered it carefully and spoken with Ms Bernadillo.
38. The principal basis on which the Claimant alleges that the dismissal was unfair relates to the fact that she did not attend the disciplinary hearing. It is always a matter of concern if a disciplinary hearing has taken place and an employee has not had the opportunity to attend. I note that the Respondent had listed the disciplinary hearing to take place on two previous occasions but that the Claimant could not attend. I note the Occupational Health advice which could not provide any clear indication of when the Claimant might be fit to attend. An employer in this situation is always in a difficult position. On the one hand it is important to be fair to the Claimant but on the other hand there is a reasonable interest in bringing proceedings to a conclusion. I have noted that the ACAS Code of Practice says in its introduction that employers should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
39. I note that the Claimant was interviewed at the investigation stage by both investigators and she was offered three options to participate in the disciplinary hearing if she was not well enough to attend. She was given the chance to comment on the notes of the disciplinary hearing which she did, she attended

the appeal, she was provided with further evidence which she requested, especially the key log sheets which she wanted to see and she was given an opportunity to provide extra evidence herself which she did. She was then given a second opportunity to meet with the appeal panel to answer further questions and provide further responses to the allegations.

40. The Claimant says that her exclusion from the disciplinary hearing is unreasonable and results in a flawed process. I find on the basis of all the evidence that the Respondent's decision to go ahead with the hearing was a reasonable in all the circumstances.

41. The Claimant's position is that the Respondent did not have a genuine belief in her misconduct, that it carried out a flawed investigation and that there was no basis for the decision to dismiss. I cannot agree with that submission. The Respondent was extremely diligent in the enquiries it made before taking a decision to dismiss. The Claimant's requests for additional evidence were all dealt with. Her assertions about what had happened were considered carefully, including her assertion of collusion and her assertion that Mr Egbekewremu should have been interviewed, but ultimately the Respondent concluded on a balance of probabilities that the Claimant had behaved inappropriately to other members of staff. Likewise, it reached a view that there was financial misconduct. The financial information provided is particularly compelling. The documentary evidence which included timesheets, payment records and key logs shows that staff were being paid for periods when the timesheets and key logs recorded that they were not there. At no stage has the Claimant been able to provide a convincing explanation as to why this evidence should not be accepted. During the hearing she was adamant that the key logs were inaccurate, but she was not able to provide specific details of why that was. The Respondent also had evidence available from the cleaning staff themselves who said they had not worked the hours for which they had been paid. I have noted in particular the case of Adelaide Koto who was paid for hours in addition to her normal contracted hours but says she did not work them, and the case of Evelyn Tsey who was not working at the University for a period of 6 weeks, but appears to have been paid during that time. There was

ample evidence from which the Respondent was able to conclude that serious misconduct had occurred. They formed a genuine belief that this misconduct had taken place and they had a reasonable basis for reaching that belief.

42. I do not accept the submission either that the reason for dismissal differed from the original allegations made. The case did evolve to some extent but as it did full details were always provided to the Claimant. Throughout the internal proceedings she was always provided with details of the case she had to answer. In cases of gross misconduct, a breakdown of trust is usually an essential element of the decision made by an employer. It is clear in this case that the fraudulent claims amount to gross misconduct and it was reasonable for the Respondent to conclude that this had occurred. As such dismissal was within the reasonable range of responses. As a result of all these findings the claim for unfair dismissal does not succeed.
43. I indicated to the parties at the end of the hearing that I was considering a wasted costs application against the Claimant's representative. Mr George arrived late on all three mornings of the hearing. On the first day he arrived one hour late. He was warned not to be late again and a timetable was fixed for the following day to make sure the case could be completed in time. Despite that Mr George arrived one hour late on the second day and the timetable had to be abridged. Despite a further warning Mr George also arrived late on the third day (although the hearing had to be put back until 11am anyway as the Counsel for the Respondent had been unavoidably delayed due to a family emergency, so that his lateness had less impact).
44. Mr George blamed transport problems. I do not consider that he offered a reasonable excuse for his late arrival on all three days and I consider that his conduct met the test set out in Rule 80 of the Employment Tribunal Rules of Procedure. However, Mr George has told me that he was acting for his client on a "no win no fee" basis. As such she has not incurred any fees due to Mr George's late arrival. In the circumstances I consider that I am not able to make a costs order. Had this not been the case I would certainly have done so in relation to the two hours of hearing time lost on the first and second day.

Employment Judge Siddall
Date: 16 April 2018.