



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH BY CVP VIDEO CONFERENCE

BEFORE: EMPLOYMENT JUDGE BALOGUN

BETWEEN:

MRS ANN ADAKA

Claimant

And

HM REVENUE & CUSTOMS

Respondent

ON: 6 – 8 January 2021

Appearances:

For the Claimant: Mukhtiar Singh, Counsel

For the Respondent: Alex Line, Counsel

RESERVED JUDGMENT

The claim of unfair dismissal fails and is dismissed.

REASONS

1. By a claim form presented on 4 July 2017, the claimant complains that she was unfairly dismissed from her role as a VAT Assurance Officer with effect from 6 March 2017. The respondent contends that the claimant was summarily dismissed on grounds of her conduct and that dismissal was in all the circumstances fair. A claim of disability discrimination had previously been withdrawn.
2. I heard evidence from the claimant. On behalf of the respondent I heard from Ade Sangowawa (AS) Quality Lead, London and South East; Ann Guest (AG) CSHR Casework Advisor; and Susan Mant (SM) Technical and Professionalism Lead, South East region.
3. An electronic bundle was provided. Unfortunately, the pdf page numbering did not corresponded with the bundle index or the witness statements. This was not helped by the inclusion in the bundle of inserted pages with alphanumeric numbering. Therefore, for ease of reference, the page numbers in square brackets in the judgment are based on the bundle index.

Issues

4. The issues in this matter are as follows:
 - a. Did the respondent genuinely believed the claimant had committed allegations 1-3 set out in her suspension letter dated 6 August 2015?
 - b. were there were reasonable grounds for that belief?
 - c. at the time the belief was formed had the respondent carried out a reasonable investigation?
 - d. did the respondent otherwise adopt a fair procedure
 - e. was dismissal within the range of reasonable responses.

The Law

Unfair Dismissal

5. Section 94 of the Employment Rights Act 1996 ("ERA") provides the right not to be unfairly dismissed.
6. Section 98(2) sets out the potentially fair reasons for dismissal. One of those reasons is conduct 98(2)(b)
7. Section 98(4) provides that in determining whether a dismissal is fair or unfair, the tribunal must have regard to whether in all the circumstances the employer acted reasonably or unreasonably in treating the reason shown by the employer as sufficient reason for dismissal.

8. In considering whether a dismissal is fair, the tribunal must not substitute its view for that of the employer but should consider whether dismissal fell within the range of reasonable responses open to the employer. The *range of reasonable responses* test applies to both the decision to dismiss and the procedure applied. Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA.

Findings of Fact

9. The claimant was employed by the respondent from 20 May 2002, latterly as a VAT Assurance officer, until her dismissal with effect from 6 March 2017.
10. On 6 March 2015, the claimant was suspended from work on full pay on account of her being subject to an internal criminal investigation by IG (Internal Governance) Criminal in relation to allegations of tax offences, tax credit fraud and money laundering [121]. A separate investigation was then conducted by IG Civil into the same allegations albeit as disciplinary conduct issues.
11. On 16 November 2016, a report into the allegations was issued by Gerard Rowen, IG Civil investigations, who concluded that the claimant had a case to answer in respect of 5 allegations [251-274]
12. By letter dated 9 December 2016, the claimant was invited to a disciplinary hearing to answer 5 specific allegations [304-306]. These were:
 - (i) From 2003 to date, failure to declare for tax purposes income from rental properties
 - (ii) Between 2003-2006 submitting claims for tax credits as a single claimant and receiving £8740.26 to which there was no entitlement
 - (iii) In a self assessment tax return for 2009/2010, declaring the sale price of her property to be less than the actual price for which it was sold
 - (iv) Between 2004-2010, engaging in work outside HMRC without obtaining prior permission from her manager
 - (v) Between 2004-2010 failing to declare for tax purposes income derived from employment outside of HMRC
13. AS was appointed the decision manager in respect of the disciplinary case and AG was appointed the Civil Service Human Resources (CSHR) Specialist Advisor. The role of the CSHR is to support and advise the decision manager on procedural matters. The claimant contends that AG's involvement in the case went beyond advice and that she was, to all intents and purposes, the decision maker. I address this further in my conclusions.
14. The disciplinary hearing was held on 6 January 2017 and was conducted by AS. The claimant was accompanied by her line manager, David Hall [499-506]

15. On 7 February 2017, the claimant wrote to AS with further representations and also enclosed additional documents in relation to allegation 3 in order to show that the sale price had been recorded correctly on her tax self-assessment. [349-358]
16. On 6 March 2017, the claimant attended a Discipline decision meeting at which she was informed that she was to be dismissed for gross misconduct with immediate effect. AS found allegations 1-3 proven. Allegations 4-5 were found to be unproven. Full reasons for the decision are set out in a formal deliberations document [487-498]. The dismissal was confirmed by letter of the same date [476-478].
17. The claimant appealed against her dismissal. She argued that she was not guilty of wilful behaviour or gross negligence to justify a gross misconduct finding and to the extent that she had not adhered to internal procedures, there were sufficient mitigating circumstances. She also claimed that AS had told her that she was pressured by HR into dismissing her and that her original decision was that dismissal was too harsh [515-517] The claimant repeats this allegation in her claim form [15]. AS denies it. Having considered this dispute, I prefer AS' account. AG supported AS' account and told the Tribunal that the decision to dismiss was AS' alone. AG's evidence is unsurprising and is not in my view determinative. However, my observations of AS were that she took her role as decision maker seriously and wanted to get it right. The alleged comment appears inconsistent with the professional way in which AS had dealt with matters up to that point and I consider it unlikely that AS would deliver the decision in the terms set out in her deliberation document and then immediately undermine it by telling the claimant that it was not the decision she wanted to make. I find on balance of probabilities that the alleged statement was not made by AS.
18. The appeal hearing took place on 12 April 2017. At the hearing, the claimant produced a bundle of additional documents in support of her case [531-538]. The appeal was conducted by SM. The claimant was unaccompanied on this occasion. Also in attendance was a notetaker [569-574].
19. During the hearing, the claimant had requested additional information, which she said was missing from the IG bundle. That information was provided to her on 11 May 2017 and she was given an opportunity to make further representations [543]. The claimant sent in further representations on 23 May 2017 [544-550]
20. On 5 June 2017, SM wrote to the claimant confirming that her appeal was unsuccessful and that the decision to dismiss her was upheld [566-568]
21. Although not directly relevant but for completion, in the concurrent criminal investigation, charges in relation to allegation 3 were discontinued and the claimant (and her husband) were acquitted of the charges relating to allegations 1 and 2.

Submissions

22. The parties provided written closing arguments supplemented by oral ones. I was also provided with a number of authorities. These have been taken into account.

Conclusions

23. Having considered my findings of fact, the parties' submissions and the relevant law, I

have reached the following conclusions on the issues.

24. It is common ground, and I am satisfied, that the claimant was dismissed on grounds of conduct for the reasons set out in the dismissal letter and accompanying deliberations document.

Reasonable belief

25. In relation to the respondent's reasonable belief, I shall deal with each allegation separately.

Allegation 1 – failure to declare income from rental properties

26. This allegation relates to a number of buy to let properties purchased jointly by the claimant and her husband which were allegedly rented out over a significant period without rental income being declared for tax purposes.
27. In her deliberation document, AS sets out the evidence she relies on in reaching her findings. The Land Registry records showed joint ownership of the properties; a 2006 joint mortgage application on one of the properties refers to receipt of rental income of £24,952; records from LB of Newham show receipt of housing benefit from tenants residing in the properties and the claimant's assertion that the rental income was declared on her husband's self-assessment was contradicted by her husband's own witness statement provided in support [488-490]. AS did not consider it credible that the claimant did not know that the properties were being rented out. AS was entitled to come to that view on the evidence before her. AS main defence was that her culture dictated that she should not question or be involved in the financial dealings of her husband or his business. AS took the view that as an employee, AS had to abide by the civil service code and code of conduct and that this took precedence over cultural beliefs. Again, I consider that AS was entitled to reach this finding. I am satisfied that AS had reasonable grounds for believing that the allegation was made out.

Allegation 2 – Submitting claims for tax credits as a single person and receiving £8,740.26 to which there was no entitlement

28. From the documentation available to AS, the claimant claimed tax credits on 22 October 2002 and received payments, for the tax years 2003/2004, 2004/2005 and 2005/2006. There is no dispute that the claimant declared herself a single person for these purposes. The claimant contended that she did so because she was permanently separated from her husband at the time and they were not living together.
29. In determining whether or not the claimant was single for these purposes, AS relied on, amongst other things, the witness statement of Alison Jones (AJ) Officer, Tax Credit Office. It was reasonable for AS to rely on the statement given AJ's expertise and experience in matters relating to Tax Credits. In her statement, AJ sets out what would normally constitutes a "couple" for tax credit purposes [182]. Based on the general factors set out in AJ's statement and the specific circumstances identified in the claimant's case, it was reasonable for AS to conclude that the claimant was not a single person for tax credit purposes. Those specific circumstances are referred to in the deliberation document and include: the purchase of 3 properties jointly with her husband during the period of claim as a single person; her husband continuing to receive

correspondence at the property occupied by the claimant and their children; her husband being included as an occupier of the property on the electoral roll; her husband paying the mortgage on the said property; the opening of a joint bank account during the period of alleged separation [495]. That conclusion was one which AS was entitled to come to on the evidence.

30. In her statement, AJ calculated what the claimant's Tax credit entitlement would have been had she claimed as a "couple" and this showed that there had been an overpayment to the claimant of £8,740.26.
31. I am satisfied based on the investigation that AS had reasonable grounds for believing that this allegation was made out.

Allegation 3 – Declaring the sale price of her property to be less than the actual price on her self assessment tax return

32. This allegation relates to Flat 24 Crawford Point. The claimant had purchased this property from the council in her sole name on 15 October 2001 under the "right to buy" scheme. The property was sold under a compulsory purchase order on 5.6.09. The deliberation document refers to the Land Registry records as evidence that the property was sold for £148,000 [100a]. The claimant claimed that her Solicitor had made a mistake and that the actual price was £130,000. In support of this, she produced an email from the Chartered Surveyors involved in valuing the property at the time, which confirmed that the value of the lease was assessed at £130,000 by the acquirer. The difference of £18,000 is referred to as a compensation payment from the council. [354] As part of the same documents was an email from Newham council stating that, as far as they were aware, CPO (Compulsory Purchase Order) compensation was not taxable if it was less than £20,000 [353] The claimant also provided a letter from her Accountant, prepared in relation to the criminal investigation, enclosing a tax calculation to show that no CGT was payable, [122a-122d].
33. For this Tribunal hearing, the claimant provided a report from David Kitson, Tax specialist, prepared for Snaresbrook Crown Court in relation to the criminal proceedings against the claimant. In the report, he opined that the purchase price of the property for CGT purposes was £130,000 and that the balance of £18000 was made up of separate compensation in the form of a Home loss payment and a Disturbance payment [C21]. This information resulted in the criminal charge relating to this issue being dropped.
34. Whether the respondent had a reasonable belief in the claimant's guilt must be assessed based on what the respondent knew or could reasonably have been expected to know at the time. David Kitson's report was produced on 25 May 2018, more than a year after dismissal and so could not have been taken into account at the time. However, the documents provided by the claimant at the time (para 32 refers) raised a legitimate query as to which figure (£130,000 or £148,000) should have been recorded in the tax return as the sale proceeds. Given the seriousness of the allegations, a reasonable employer faced with this information would have made further enquiries. Such an approach would have been consistent with the principle that an employer should investigate matters that potentially exonerate an employee not just those pointing to their guilt. A v B [2003] IRLR 405
35. At paragraph 23.3 of her witness statement, AS states that on considering these documents she concluded that they did not alter the position, for the rather circular

argument that the amount declared in the self-assessment was different from that on the Land register.

36. AS told the Tribunal that she had spoken anonymously to a tax expert, yet she was unable to recall what that expert had said about CGT or what she had asked the expert. That advice was not shared with the claimant at the disciplinary hearing so she had no way of challenging it. Neither was the advice checked by the appeal decision-maker, SM. It is unclear why, on such a key issue in the disciplinary proceedings, such advice had to be anonymous rather than being formally obtained and shared. It is inconceivable that in a government department whose stock in trade is taxation, the type of expert opinion obtained in relation to the criminal proceedings could not have been sought.
37. In her deliberation document, AS says that CGT rules require the CGT computation to include all monies received including compensation payments [491]. It is a fact that the £18,000 is not declared anywhere on the claimant's self-assessment. However, that does not address the issue of whether it should have been aggregated with the £130,000 as part of the proceeds of sale or have been declared as a separate payment. The specific disciplinary charge relates to the sale price of the property.
38. In light of the above, in relation to allegation 3, I am not satisfied that the respondent's belief in the claimant's guilt was based on a reasonable investigation of the circumstances. This allegation is not made out.

Did the respondent otherwise adopt a fair procedure?

39. It was submitted by Mr Singh that the process was flawed because AG's involvement was such that, in reality she was the decision maker rather than AS. In support of this contention, Mr Singh provided a document: "References For Closing Submissions" identifying various occasions when, he contended, AG's involvement went beyond that permitted by her role. Having reviewed the reference documents, I do not construe them in the same way as Mr Singh. Whilst AG made a number of suggestions to AS as to how her deliberation document could be improved, I am satisfied that these were about the structure and presentation of the document, aimed at making AS' reasoning clearer. AG told the Tribunal that it is common practice for CHSR caseworkers to review draft deliberation documents to ensure that they have been drafted in line with HMRC policy. I accept that evidence. Nowhere in any of the correspondence referred to does AG suggest that AS' conclusions set out in the deliberation document should be changed in any way. I am satisfied that AG's involvement did not go beyond the remit of her role and that AS was not inappropriately influenced by AG. I am satisfied that the decision to dismiss the claimant was that of AS alone.
40. The claimant contended that AS should not have conducted the disciplinary hearing because she was known socially to her. The claimant refers to a charity event she hosted which was attended by AS and her children. AS told the tribunal that the charity event was about 7 years ago, took place in the office and was attended by 20-40 people. AS also said that it was the school holidays and she popped into the office with her children as they were already in London on a trip to the London Eye. AS said that she and the claimant worked on the same floor and their interactions were limited to a "good morning". That evidence was not challenged. The claimant has not pointed to any other social interaction with AS other than the charity event and I do not consider that sufficient to disqualify AS from being the decision maker in the case. Furthermore, neither the claimant or her companion at the disciplinary hearing raised this as a

problem at the time and it seems to me that this has become an issue retrospectively in response to the dismissal decision.

41. In relation to allegations 1 and 2, I am satisfied that the procedure adopted by the respondent was reasonable. The claimant was notified of the allegations in advance and provided with the evidence relied on by the respondent. She had an opportunity at the disciplinary and appeal hearings to state her case and had the opportunity to produce additional evidence, which she did.

Was dismissal within the range of reasonable responses

42. The respondent's Honesty and Impartiality policy makes clear that it takes a very serious view of anyone acting dishonestly. Examples given of such dishonesty include defrauding HMRC by "*obtaining or attempting to obtain tax credits or benefits to which entitlement does not exist*" and "*having personal tax irregularities*" [621]
43. Allegations 1 and 2 are cited as gross misconduct under the respondent's policy: "HR23007 Discipline: How to assess the level of misconduct" [779]
44. AS told the Tribunal that she considered allegation 2 to be the most serious as the claimant had claimed tax credits knowing that she was not entitled to them. There were no cultural factors that the claimant could seek to rely on here to mitigate her actions and she was satisfied that this allegation alone justified dismissal.
45. The principle of honesty and integrity in work and in private life underpins the civil service code of conduct. These values applied to the claimant and are particularly relevant to the HMRC where maintaining public confidence in its ability to hold the general public to account in respect of their finances tax affairs is of the utmost importance.
46. I am satisfied that dismissal of the claimant in respect of allegations 1 and 2 was within the range of reasonable responses and that dismissal for gross misconduct was in all the circumstances fair.

Judgment

47. The unfair dismissal claim fails and is dismissed.

Employment Judge Balogun
Date: 19 May 2021