



EMPLOYMENT TRIBUNALS

Claimant: Mr K Gelder

Respondent: Whitbread Plc

HELD by CVP at Leeds

**ON: 1 March 2023
11 April 2023**

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Mr M McArdle, Legal Executive

JUDGMENT

1. The claimant's claim for unfair dismissal is hereby dismissed

REASONS

1. **Claim**

- 1.1. Unfair dismissal.

2. **Issues which relate to the law**

- 2.1. The issues in this case relate to whether the employer has shown the reason for the dismissal.
- 2.2. Whether the reason relates to the conduct of the employee.
- 2.3. The question of whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) Depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee.

(b) It shall be determined in accordance with equity and the substantial merits of the case.

(Those issues come from section 98(1)(2) and (4) Employment Rights Act 1996).

2.4. Whether the employer shows it believed the employee was guilty of misconduct.

2.5. Whether the employer can show it had in mind reasonable grounds upon which to sustain that belief and;

2.6. At the stage at which that belief was formed on those grounds it had carried out as much investigation into the matter as was reasonable in the circumstances.

(Paragraphs 2.2 to 2.6 come from British Homes Stores Ltd v Burchell [1980] ICR 303.)

3. **Facts**

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities).

3.1. The claimant was employed by the respondent as a night reception team member at the respondent's Premier Inn, Barnsley Central. Giving evidence to the Tribunal the claimant described himself as experienced and always working at nights.

3.2. On 28 June 2022 the respondent received a complaint from a guest alleging that someone had entered their room, being room number 317 at around 1am.

3.3. CCTV showed that the claimant was on the floor in question at that time. The CCTV also showed that the claimant had not, as alleged, accompanied the guest to their room. In fact it was the claimant who suggested that he had checked the room lock with the guest.

3.4. An investigatory interview took place on 30 June 2022. During the interview the claimant suggested that he had been performing a "walk round" when the guest had approached him and alleged that someone had opened and closed the door to their room.

3.5. Further the claimant said that he tested the lock using his key.

3.6. However the claimant had not recorded that he had checked the lock on the corridor check log.

3.7. It turned out that there was a further incident of the use of the claimant's key in relation to 317 that night. The reason the claimant gave for the second use was because he had listened for noise and his card could have accidentally touched the lock in order to register its use. The claimant did not record this incident either on the corridor check log. Alan Mills, maintenance team engineer concluded that during this

investigatory interview the claimant looked a little uncomfortable and appeared to be agitated.

- 3.8. The respondent concluded from its investigations that the only people who could have accessed room 317 was a Tracey Jenkins a fellow employee of the respondent and the claimant. Miss Jenkins said that the guest in room 317 had found the claimant on the landing of the third floor, who says that he had been cleaning lift doors.
- 3.9. On 1 July 2022 the claimant was suspended.
- 3.10. On 4 July 2022 the respondent undertook an audit of the door locks for 317 on the relevant evening, which it was clear that the claimant had accessed at 00:03am and 00:48am.
- 3.11. On 5 July 2022 Jordan Ruan the hotel manager of two Barnsley hotels concluded that the claimant had accessed room 317 without permission or valid reason.
- 3.12. On 5 July 2022 the claimant was invited to a disciplinary meeting to answer an allegation on gross misconduct, namely that he had breached company safety and security procedures by accessing a guest bedroom without permission or valid reason.
- 3.13. The disciplinary meeting took place on 7 July 2022 and was chaired by Max Shaw another hotel manager (who did not give evidence but whose witness statement was largely unchallenged). Mr Shaw adjourned the disciplinary hearing for further investigations.
- 3.14. On 9 July 2022 the guest who was in room 317 on the relevant night was interviewed. They heard the door lock but assumed it was a system reset. Then it happened again but this time the door opened. They went to reception. The claimant subsequently visited room 317, that is after the incident had been reported but the claimant did not check the lock according to the guest. The guest's evidence was shared with the claimant.
- 3.15. On 12 July 2022 the disciplinary meeting was reconvened and on 16 July 2022 the claimant was summarily dismissed on the grounds of gross misconduct. Mr Shaw found that the complaint by the guest was to a female member of staff and not the claimant. He also found that the claimant changed his story, namely, that if the guest in room 317 did not see anybody then the claimant was not there. Finally Mr Shaw decided that the claimant's suggestion of activity in room 318 which was opposite 318 was invented by the claimant.
- 3.16. The claimant appealed the decision on 15 August 2022 but his appeal was turned down. It was heard by Jenny Smith another hotel manager. She concluded that when the claimant alleged he was listening for noise he had not followed the correct procedure. Further the guest did not corroborate the claimant's evidence in the testing of the lock. Finally the CCTV did not support the claimant's version.
- 3.17. From the hearing when questioned about the music the claimant could not at first remember what the music was and then said it was pop music but he didn't know what.

3.18. It should also be noted that the respondent's health and safety policy made it clear that team members must never enter an occupied bedroom alone (except in exceptional circumstances). The claimant was aware of this and that to do so it would be serious and perpetrators could expect to be dismissed.

4. **Determination of the issues (after listening to the factual and legal submissions made by and on behalf of the respective parties):**

4.1. The Tribunal finds that the employer has shown a reason for the dismissal.

4.2. Furthermore the Tribunal finds that the reason relates to the conduct of the employee.

4.3. Having regard to the test in British Home Stores Ltd and Burchell, that effectively goes hand in hand with the test of whether the dismissal was fair or unfair in this case.

4.4. With regard to the respondent's belief forensically everyone agrees that the claimant's key was recorded twice on the night in question. One recording allegedly related to checking the lock. It is clear from the evidence of the respondent that the claimant was not involved with this until after the guest reported it to reception. So far as the other recording is concerned, namely the one where the claimant was allegedly listening to music of which the claimant was not aware he did not record that incident. How plausible was it for the claimant to accidentally access the lock in the case of listening for the music when he was taking action in a way which he was not permitted to do, namely listening through the door. The answer is for the respondent to believe that the claimant's explanation was not reasonable makes the respondent's belief that the claimant was guilty of misconduct such as to satisfy the first limb of British Home Stores and Burchell.

4.5. Whether the respondent had in mind reasonable grounds upon which to sustain that belief is obviously fundamental to this case. The reasons for the belief are set out in the decisions of Mr Shaw and Miss Smith which I have recorded above and the Tribunal is of the view that those grounds were reasonable.

4.6. Finally it is for the respondent to carry out as much investigation into the matter as was reasonable. There was an investigation interview, other staff were interviewed, there was a disciplinary hearing the first part of which was adjourned to carry out further investigations and there was an appeal. All in all three hotel managers were involved in the process and it seemed to the Tribunal that it was amount of investigation which was reasonable in all the circumstances.

4.7. In all the circumstances the claimant's claim for unfair dismissal is dismissed.

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Employment Judge Shulman

Date: 18th April 2023