# EMPLOYMENT TRIBUNALS

**Claimant:** **Mrs A Plewa**

**Respondent:** **I Holland Limited**

**Heard at:** Nottingham
**On:** 31 October, 1, 2, 3 and 7 November 2022
**Before:** Employment Judge Cansick

**Representation**
Claimant: Mr V Neagu, Lay Representative
Respondent: Mr C Peel, Legal Representative

# RESERVED JUDGMENT

The claimant's claim of unfair dismissal is not well-founded and is dismissed.

# REASONS

**Introduction**

1. The claimant was employed by the respondent as a Quality Inspector at the time of her dismissal. The respondent is a manufacturer of compression tablet tooling and associated products.

2. The claimant claims she was unfairly dismissed. The respondent denies this and states that the claimant was dismissed for a fair reason, that being misconduct.

3. The claimant was represented by Mr Neagu, a Lay Representative. The claimant gave sworn evidence with the assistance of a Polish interpreter. The respondent was represented by Mr Peel, a Legal Representative. The respondent's sworn witness evidence was given by Mr Robert Chatwin, Mr Robert Blanchard, Ms Louise Lavendar, Mr Philip Coles, Mr Matthew Pullen and Mr Javier Raposo.

4. I had access to an agreed bundle of documents which ran to 369 pages. There was a further bundle of 90 pages which was labelled as 'Disputed Documents Bundle', which comprised documents that has not been agreed for inclusion

between the parties. The parties were informed that I would only consider documents that I was directed to in evidence or submissions.

5. At the start of the hearing, I asked, given the issues to be decided, if all of the respondent's witnesses were required. I was informed by both parties they were. Mr Coles, Mr Pullen and Mr Raposo were respectively the Investigating Officer, the Disciplinary Officer and the Appeal Officer in the dismissal. There evidence is therefore relevant to the issues detailed below and they are all referred to in my factual finding.

6. The other witnesses for the respondent gave evidence of matters relating to earlier disciplinary proceedings involving, or grievances raised by, the claimant. Mr Chatwin (Finance and IT Director at the respondent) chaired the appeal hearing in an earlier disciplinary matter. Mr Blanchard (Research Development and Quality Systems Manager at the respondent) chaired the hearing in regard to a grievance the claimant had raised regarding her line manager. Their evidence was mostly limited to these matters. Similarly, Ms Lavender (Human Resources Manager at the respondent), gave evidence mostly on previous matters rather than the dismissal. I do not consider the majority of the evidence of these three witnesses, or the concerns raised by the claimant about such evidence, relevant to the determination of the issues detailed below. I have therefore not referred to such in my findings of fact except where I consider such relevant.

7. The claimant also gave considerable evidence regarding the previous disciplinary proceedings. I again have not considered this in detail in my findings of fact, as I do not consider it relevant to the issues in the case.

8. At the conclusion of the respondent's evidence Mr Neagu made an application to admit new evidence. He detailed that whilst the claimant had been in meetings and hearings with the respondent, she had called him covertly on her mobile phone. He had then made recordings of the meetings and hearings. Mr Neagu detailed that these were recordings of hearings in previous disciplinary proceedings, the investigation and disciplinary hearings leading to the dismissal, a grievance meeting and other meetings. Mr Neagu stated that the recordings would demonstrate the premeditated conduct of the respondent. It was also stated that they would demonstrate the respondent lying and mocking the claimant. Mr Neagu stated that they could be played in the hearing or transcripts could be prepared and read out. Mr Peel opposed the application noting the late stage it was made and that the respondent's witnesses had finished giving evidence.

9. I refused the application. Considering the overriding objective, I did not consider it would be fair and just to allow the application. I did not consider it had been demonstrated that the recordings were central to the issues to be decided. I further considered that the application was made at a very late stage in the proceedings and there would not be sufficient time to now play and transcribe such. It would be disproportionate for the case to go part heard to accommodate such. The respondent's witnesses had also already given evidence and it would be unfair for them to have to do so again.

**Issues to be decided**

10. At the start of the hearing, I agreed with the parties the issues to be decided. These can be summarised as follows:

    (i) What was the principal reason for dismissal? The respondent states it was misconduct. The claimant challenges such and considers the alleged misconduct was a pretext to dismiss her.

    (ii) If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will decide, in particular, whether:

    - there were reasonable grounds for that belief;
    - at the time the belief was formed the respondent had carried out a reasonable investigation;
    - the respondent otherwise acted in a procedurally fair manner;
    - dismissal was within the range of reasonable responses.

    (iii) If the claimant was unfairly dismissed is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

    (iv) If the claimant was unfairly dismissed, would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal. If so, to what extent?

11. It was agreed that if I found that the claimant was unfairly dismissed then remedy would be dealt with at a separate hearing. However, I requested that matters in (iii) and (iv) be considered at this hearing. Both the claimant and respondent were invited to address such in their evidence and submissions at the hearing.

## Findings of fact

12. The respondent is a leading manufacturer of compression tablet tooling and associated products. The respondent employed around 156 employees at the time of the hearing. The claimant started her employment with the respondent on 2 June 2015 as a General Operator. She worked in various roles in the Inspection Department with her role at the time of dismissal being a Quality Inspector.

<u>Relevant Background</u>

13. On 19 October 2020, the claimant was given a first written warning at a disciplinary hearing chaired by Mr Pullen (Operations Director for the respondent). This was detailed in the letter from the respondent, following the hearing, as being for:

> *Serious breach of our Covid-19 Risk Assessment, failure to wear a face covering in communal areas away from your workstation.*

14. The claimant did not appeal.

15. On 3 December 2020, the claimant was given a final written warning following a disciplinary hearing chaired by Mr Pullen. This was detailed in the letter following the hearing to be for two conduct matters. The first matter was:

> *Serious breach of our Covid-19 Risk Assessment, failing to wear a face covering in communal areas away from your workstation on 20 November 2020.*

16. The second matter was:

> *Serious breach of procedures, namely using personal mobile phone and wearing a personal headset during working hours with combined dates of, 10th, 11th, 12th and 17th November 2020.*

17. The claimant appealed the decision. On 16 December 2020, an appeal hearing was chaired by Mr Chatwin and was attended by the claimant. The claimant also set out her reasons for the appeal in emails dated 11 and 22 December 2020. Mr Chatwin upheld the decision to issue a final warning.

18. On 18 January 2021, the claimant raised a grievance against the respondent's shift manager, Mr Peter Cox. In that grievance the claimant raised several complaints, including bullying and not wearing facemasks during shifts. In a letter, dated 10 February 2021, the claimant was informed by Mr Blanchard, who chaired the proceedings, that he has not found evidence of Mr Cox having carried out any of the allegations made and the grievance was therefore not upheld. On 11 February 2021, the claimant wrote to Mr Blanchard detailing she did not agree with the outcome but stated she did not want to appeal.

<u>The Dismissal</u>

*The Investigation*

19. On 10 February 2021, the claimant recorded that 25 dies (a tool to cut and form a tablet) were out of specification. The claimant's line manager, Mr Phil Coles (Process Improvement Manager at the respondent), checked the dies again and considered they were within specification. He was informed by the claimant that she had been using a micrometer to measure the dies.

20. The claimant attended an investigation meeting with Mr Coles on 12 February 2021. In that interview the claimant was told she should be measuring with a clock. She stated she was unable to do so as she had no slip gauges. She also stated that she had also been told it was okay to measure with a micrometer by Steve Osborn (Senior Product Design Manager at the respondent). She further stated she had been told by another employee, Ian Pynegar, that when there are no slip gauges she could use a micrometer. She denied anyone had told her before not to use a micrometer.

21. As part of the investigation Phil Coles took statements from Steve Osborn and Ian Pynegar.

22. Steve Osborn's statement is dated 15 February 2021. He stated that he had not sanctioned measurements with a micrometer but instead had made clear that the claimant was to use a clock and stand for measurements. He detailed he had spoken to the claimant on a number of occasions about the correct method of die measurements. He stated he had reported the claimant to Human Resources on the 29 May 2020, for using the micrometer. He had made clear to the claimant that micrometers could only be used for non-standard dies. In regard to slip gauges, he stated that he had informed the claimant that if slip gauges were missing and causing delay she should advise him of such. No further requests were made to him for such by the claimant.

23. Ian Pynegar's statement was also dated 15th February 2021. He detailed that he had only told the claimant she could use the micrometer for non-standard dies. Even then he stated he informed her the micrometer must be set with the master beforehand.

*The Disciplinary Hearing*

24. By a letter dated 17 February 2021, from Ms Lavendar, the claimant was invited to attend a disciplinary hearing on 23 February 2021. The letter detailed that the relevant allegation was:

> *Failure to adhere to method of measurement detailed in the work instructions.*

25. The letter informed the claimant that the hearing would be conducted by Mr Pullen. It further detailed that if the allegation was substantiated it would be regarded as misconduct. The letter informed the claimant she could be accompanied at the meeting by a fellow colleague or trade union official.

26. The letter informed the claimant that: 'If you are unable to provide a satisfactory explanation for the allegations set out above, then you may be given a warning in accordance with our procedures.'

27. The letter also detailed that documents to be used in the disciplinary hearing were enclosed with the letter. These documents were the investigation meeting minutes, the statements of Mr Osborn and Mr Pynegar, the relevant work instructions and the respondent's disciplinary policy.

28. The claimant attended the meeting unaccompanied on 23 February 2021.

29. At the hearing the claimant was reminded of section 2.3 of the respondent's Work Instructions that stated not to use a micrometer to measure standard dies.

30. At the hearing the claimant maintained that she could not use the clock because she did not have slip gauges and that she had been told she could use the micrometer.

31. At the end of the hearing the claimant was dismissed with immediate effect.

32. In a letter dated 25 February 2021, from Mr Pullen, the respondent informed the claimant of the outcome of the hearing. The claimant was informed she had been dismissed by the respondent on grounds of misconduct. It was stated that her explanation was unsatisfactory. The letter detailed:

> *The company will not tolerate your blatant disregard of our work instructions. Using a micrometer to measure can seem to be a quicker method, however, this method results in inappropriate measurements, which would need to be revised, resulting in excessive hours being used for rework to correct the errors and possible scraps when parts cannot be salvaged. We rely on Inspectors to follow work instructions. In this instance for whatever reason you have decided not to follow process. Although you stated you did not have gauges, you could have gone to the QA department, but you didn't go to the QA lab, you didn't raise the issue with Phil Coles on that day.*

33. The letter continued to detail that the allegation was upheld, that the claimant had been given a final written warning on 3 December 2020 and the decision had been made to dismiss. Mr Pullen considered lesser sanctions, but due to the claimant's previous warnings (including a final warning), decided there was a pattern of non-compliance with management instructions and deemed dismissal the appropriate sanction.

*The Appeal*

34. The claimant appealed the decision in an email, dated 1 March 2021, to which she attached five pages of submissions.

35. In the appeal the claimant raised a number of issues which included the following:

    (i) That she has been following the instructions of Steve Osborn and Ian Pynegar to use the micrometer.
    (ii) That what Steve Osborn and Ian Pynegar stated in their statements was false reporting.
    (iii) That the allegation Steve Osborn had reported her to HR on 29 May 2020 was a fabrication.
    (iv) That she had been targeted with disciplinaries for raising issues with managers.
    (v) That whenever she had previously asked for feedback about her job she was told she was doing well. She was not told before she was doing something wrong.
    (vi) That she never received the updated work instructions dated 8 September 2020 and was using instructions dated 12 March 2018. She should have been given training on the new methods once updated.
    (vii) That after the first disciplinary in November she had complied with rules and procedures.
    (viii) That she had worked with the company for six years.
    (ix) That other measures could be imposed such as salary sanction, training or demotion.

36. In the email the claimant stated she did not want to attend an oral hearing and instead requested the letter be considered as the appeal. In an email, on 1 March

2021, the claimant was still offered a Teams meeting on 3 March 2021 to discuss the appeal in more detail. The claimant declined the offer to do so.

37. The Appeal Officer was Mr Javier Raposo (Managing Director at the respondent). He considered the appeal on the 3 March 2021 and informed the claimant of the outcome in a letter dated the same. He upheld the dismissal and made the following findings:

    (i) Regarding the allegation that the 29 May 2020 report was fabricated, he had looked at the Human Resources log and noted that it was recorded that day, at 13:45, that the claimant was using a micrometer and was told not to do so by Mr Osborn. He also detailed that he has seen an email dated 24 April 2020 documenting Mr Osborn challenging the claimant about using a micrometer. He considered there was no evidence of such being fabricated.
    (ii) That both Mr Osborn and Mr Pynegar had stated that the claimant was told that the micrometer was only to be used for non-standard dies.
    (iii) In regard to the availability of slip gauges, other people doing the same job had been able to follow the processes as per the work instruction.
    (iv) That he accepted that the revised September 2020 instructions were not sent to the Claimant, however, the revisions of the instructions did not affect the instructions on the use of micrometer.
    (v) Regarding the suggestion that other measures could be taken it was considered that the disciplinary process was followed and that as a final warning had been issued the next stage was dismissal.
    (vi) It was not accepted that the claimant had been targeted with disciplinaries.

*The work instructions*

38. The revised September 2020 Work Instructions state in a note after 2.3.

> *Do not use micrometer for standard die measurements*.

39. This is not stated in the 2018 Work Instructions. Both work instructions at 2.2, however, state:

> *When satisfied dies match the ticket, set up the inspection jig to the correct size using the master die supplied (For non-standard sizes a master die may not be available so a die from the set will need to be manually checked with a micrometer to establish it as the master die).*

**Relevant Law**

40. Section 94 of the Employment Rights Act 1996 ("the 1996 Act") confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that she was dismissed by the respondent under section 95.

41. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially

fair reason for the dismissal within section 98(2). Second, if the respondent shows that it has a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on party, whether the respondent acted fairly or unfairly in dismissing for that reason.

42. Section 98(4) of the 1996 Act addresses fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonable in treating it as a sufficient reasons for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

43. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in **Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonable and unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the event or what decision it would have made, and the Tribunal must not substitute its views for that of the reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 2 3**, and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**).

## Conclusions

44. There is no dispute between the parties that there was a dismissal in this case.

45. I find that the respondent held a genuine belief that the claimant was guilty of misconduct. The dismissal and appeal letters were unequivocal. There was nothing in the evidence given by the officers for the respondent, involved in the dismissal, which would lead me to doubt that they held a genuine belief. It was clear there was evidence before them of what they considered amounted to misconduct. I note it is argued by the claimant that she was targeted by the respondent but the evidence presented established the claimant had a genuine belief of misconduct, which the reasonableness of such is considered below.

46. I now consider if the respondent acted reasonably in treating misconduct as a sufficient reason to dismiss the claimant. I have kept in mind throughout that the respondent is a large employer with access to sizeable administrative resources. I consider each of the issues that were identified at the start of the hearing.

<u>Reasonable grounds for that belief of misconduct</u>

47. I consider there were reasonable grounds for the belief. The work instructions detailed that a micrometer should not have been used and there was evidence that

the claimant had also been told previously not to use a micrometer on a number of occasions. The claimant was able to put forward her defence that she had been told she could use the micrometer, but it was in the band of reasonable responses for the claimant to reject such in light of the evidence.

At the time the belief was formed the respondent had carried out a reasonable investigation

48. The claimant was interviewed in the investigative meeting and disciplinary hearing regarding the allegations. She was also given the opportunity to attend an appeal hearing but chose not to do so. She, however, made detailed written representations for that hearing. At the investigative stage the respondent took statements from the individuals the claimant stated told her she could use the micrometer. At the appeal stage the respondent investigated further whether the complaint by Steve Osborn had been made to Human Resources in May 2020 and which Work Instructions the claimant had received. The respondent responded to relevant matters raised by the claimant. I take into account that the respondent is a fairly large company, but I am not able to identify what other investigation the respondent could reasonably have been expected to carry out. I consider a reasonable amount of investigation had been conducted.

The respondent otherwise acted in a procedurally fair manner

49. I have not identified any procedural unfairness. There was an investigatory meeting and a disciplinary hearing which the claimant attended. The claimant declined to attend the appeal hearing but made written submissions. The claimant was informed of the allegation for the disciplinary hearing, provided with relevant documentation and given sufficient time to prepare. The appeal was also to an independent person who had not previously been party to the procedure. The procedure adopted falls within the band of reasonable responses.

50. I note that the letter dated 17 February 2021, stated that the claimant could be subject to a warning if she did not provide a sufficient explanation and it did not mention dismissal. However, given that the claimant had recently been given a final warning and was able to put forward her defence in the disciplinary hearing I do not consider this error led to an unfair procedure.

51. Mr Neagu made submissions that the appeal procedure was unfair as Mr Raposo was wrong when he stated that the revised work instruction in 2020 had not changed regarding the use of a micrometer. I note that after 2.3 in the 2020 instructions it explicitly states not to use a micrometer for standard dies. Such was not in the original instruction. However, 2.2 in both the original and revised instructions make clear that a micrometer should be used for non-standard dies in contract to standard dies where there is a master die. I consider, therefore, it was reasonable for Mr Raposo to conclude the instructions for using a micrometer were the same. I do not consider such demonstrated an unfair appeal procedure.

The dismissal was within the range of reasonable responses

52. The respondent did consider other sanctions but concluded dismal was the only option. I note the respondent's disciplinary policy allows for dismissal after a final warning if conduct does not improve. The claimant had previous warnings for conduct including a final warning. I also note the importance of correct inspection procedures for the respondent. I consider in such circumstances dismissal, rather than a lesser sanction, was in the range of reasonable responses.

53. As a result of the above findings, I find the dismissal by the respondent was fair. The claimant's claim of unfair dismissal falls to be dismissed.

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**Employment Judge Cansick**

Date: 7 February 2023