EMPLOYMENT TRIBUNALS

Claimant: **Ms T Maddison**

Respondent: **Thorpe Willoughby Childcare Centre**

HELD **at Leeds by CVP** **ON: 17 and 18 September 2024**

Reserved Decision 7 October 2024

BEFORE: **Employment Judge Shulman**

REPRESENTATION:

Claimant: **Mr P Maddison (Former Husband)**
Respondent: **Ms A Dowey (Litigation Consultant)**

RESERVED JUDGMENT

The claimant's claim of unfair dismissal is hereby dismissed.

REASONS

1. **Claim**

   1.1. Unfair dismissal.

2. **Issues**

   2.1. What was the reason for dismissal?

   2.2. Whether the respondent acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the claimant, having regard to the circumstances (including the size and administrative resources of the respondent's undertaking), to be determined in accordance with equity and the substantial merits of the case.

3. **Matters occurring during the hearing**

3.1. At the outset of the hearing it was clear that the parties had not agreed a single hearing bundle. With various amounts of time given to the parties and returns to the Tribunal to assist the parties, the process of agreeing documents between the parties took one hour and twenty five minutes. The result was four documents presented by the claimant, which were added to the hearing bundle by way of a supplemental bundle. The Tribunal took into account that the claimant was not professionally represented.

4. **The Law**

The Tribunal has to have regard to the following provisions of the law:

4.1. Sections 98(1), 98(2) and 98(4) of the Employment Rights Act 1996 (ERA).

4.2. **British Home Stores v Burchell [1980] ICR 303 EAT (Burchell)** which provided a three fold test required to show misconduct was the reason for dismissal. The respondent must show that:

- It believed the claimant was guilty of misconduct.
- It had in mind grounds upon which to sustain that belief, and
- 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.

4.3. **British Leyland (UK) Ltd v Swift [1981] IRLR 91 CA (Swift)** which approved the principal that employers often have at their disposal a range of reasonable responses to matters such as misconduct of an employee, which may span summary dismissal down to an informal warning. Swift approved the fact that it is inevitable that different employers will choose different options. In recognition of this and in order to provide a standard of reasonableness that tribunals can apply the "band of reasonable responses" approach was approved. This requires tribunals to ask: did the employer's action fall within the band (or range) of reasonable responses open to an employer. Lord Denning MR said in Swift "*it must be remembered that in all these cases there is a band of reasonable responses, within which one employer might reasonably take one view: another quite reasonably might take a different view".*

5. **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):

5.1. The claimant was employed by Thorpe Willoughby Childcare Centre from 1 June 2008, at all material times, as centre manager, until her dismissal on 20 September 2023.

5.2. The claimant had a job description, which amongst other things, required knowledge of health and safety requirements and health and safety legislation, and implementation of policies, procedures and practices within the centre. The claimant commenced her association with the respondent as a volunteer. She told us that she had day to day

responsibility for the running of the centre. She also said that she was its lead.

5.3. The chairman of the centre, Ms Laura Howey, gave evidence before us. She was a volunteer and chaired the committee of management. Amongst other things, she had to ensure that health and safety was maintained and ensure that policies and procedures were up to date and reviewed yearly. Ms Howey, like many in the voluntary sector, had no direct management experience or training, in this case, in the childcare sector. She was in business as a plumber. She had three children of her own who attended the centre between 2019 and 2024. In this case as soon as the problems involving the claimant were concerned she sensibly took professional advice.

5.4. On 20 June 2023 a two year old child burned their hand on a light bulb in a lamp, which was on the floor of the centre nursery. The burn progressed from redness to blistering. The child's mother took the child to hospital for treatment. The claimant did not report the accident to the chairman, as required, but once Ms Howey found out about the accident, she took statements from the relevant staff, instead of the claimant. The claimant did not wait for the mother when she came to pick up the child but went back to her office to work.

5.5. The claimant made her own statement in which she said at one point that the child became very distressed and upset. In relation to the condition of the child the claimant made her judgment seeing the red mark but before she saw the blistering and told one of her colleagues to advise "the parent" to take the child to Accident and Emergency to "get checked out". When the claimant saw the child the claimant said that the screaming had stopped and the child was calm. She said there was no need for an ambulance.

5.6. Leanne Chisem's untested statement before the Tribunal made a statement that the child was crying. The child was not screaming in agony when the claimant arrived.

5.7. Stacey Baker's untested statement said that the child was so upset that she, Stacey Baker, asked a colleague to look and was crying on and off.

5.8. Finlay Laverick's untested statement stated that she heard the child crying and in addition to the red mark on the child's hand there was a small bruise in the middle of the hand.

5.9. Nicola Watson made an untested statement describing the child as crying. The child was too upset she said to say what was wrong.

5.10. When the mother came to collect the child the claimant was not there, as described above, her explanation being that she was working.

5.11. When Ms Howey arrived at the centre she asked the claimant what had happened. The claimant's response was "what?" Ms Howey questioned whether there had been an accident and the claimant answered "Oh that's nothing serious." Ms Howey asked the claimant if she had completed her staff statements, to which the claimant replied "No". Ms Howey asked why not, to which the claimant replied "Because I did not know I had to." Ms Howey was not happy with the claimant's attitude. Ms Howey asked

the claimant to check if the accident would be classed as a RIDDOR incident, to which the claimant said "What's RIDDOR?" Ms Howey asked the claimant if she had called the mother to find out how the child was. The claimant did speak to the mother, who had asked for a copy of the accident form. The claimant apologised to the mother but never asked how the child was.

5.12. Nicola Nicholson, the acting deputy manager who gave evidence before us, attended a meeting with Ms Howey and the mother. The mother stated that she was unhappy with the way the claimant dealt with the incident and did not want the claimant to attend the meeting. The mother wanted a verbal apology. The claimant's reply was "There is no way I am apologising to a two year old for the accident. I apologised to mum." Ms Nicholson said that the claimant's attitude was very dismissive and that the claimant did not think the injury was bad, but she did see the blister on the child's hand on the day. Whilst the claimant apologised to the mum the claimant also said she would rather resign than apologise to the child. The claimant thought the injury was minor.

5.13. The centre had an Accident and Injury Policy. It states that if the injury is minor and requires medical assistance, as the Tribunal finds is the case, the parents must be called by the management in the main office. This did not happen, a judgment being made that the mother would soon be there to collect the child. However the policy does not call for a judgment to be made and the need to call the parents is mandatory.

5.14. The claimant did not remove the offending lamp which had been on the floor and the other lamps immediately. The lamps were not removed on the same day and on the next day members of the committee removed them, except that Ms Nicholson removed all the lamps from what is known as the bungalow, which is where the accident happened. The claimant did not want the lamps removing from the main building but they were removed. The claimant admitted that she had not checked the lamps the day after the accident and before they were removed, nor did she ask Ms Nicholson or anyone else to remove them.

5.15. The claimant ruled out an investigation after the accident and she did not stop children playing in the bungalow.

5.16. The claimant had not ensured that it was safe to use the lamps pursuant to the Maintenance and Storage of Equipment Policy, so as to check that they complied with health and safety requirements, which was the responsibility of the management, also making sure that they were safe to use, in good condition and posed no risk to the health and safety of children and staff. The claimant described this omission as "just one of those things". The claimant said she had no idea why the lamp was on the floor and she did not ask why.

5.17. The claimant had not completed risk assessments. Ms Howey asked for health and safety risk assessments to be done in December 2022. After the accident Ms Howey asked the claimant for the risk assessments and none had been done by the claimant after that date. The claimant in her witness statement says that in terms of the lamps "I do have to accept some responsibility for not checking that the RA" (risk assessment) "had been completed." On the other hand Ms Howey as part of the claimant's

appeal said that in December 2022 the claimant assured Ms Howey that the claimant was updating the risk assessments and that Ms Howey believed that the claimant had the ultimate responsibility to ensure completion of such documentation. The claimant did produce an assessment dated 20 June 2023 relating to working around the grounds, but this was never put in the appropriate folder. At the hearing the claimant admitted that she had not carried out any risk assessments before the accident.

5.18. On 3 July 2023 the committee called an emergency meeting to discuss the accident and on 23 June 2023 the respondent instructed its HR consultants to carry out an investigation to the accident.

5.19. A number of complaints about the claimant arose out of the meeting on 3 July 2023:

5.19.1. Hannah Tomkinson, the secretary, volunteer and committee member of the respondent, wrote about the unprofessional and concerning attitude of the claimant. The parent of the girl with the burn had contacted Ms Tomkinson to complain about how the claimant had dealt with the accident. At the meeting the claimant became agitated and annoyed and more and more angry until the claimant stormed out of the meeting, shouting on her way out. Ms Tomkinson did not give evidence at the hearing.

5.19.2. Emma Stretton, a volunteer and committee member, wrote that in the same meeting the claimant was very aggressive and unprofessional. She became very defensive and stormed out of the meeting. Ms Stretton expressed worry about the claimant's behaviour.

5.19.3. Tanie Williams, a volunteer and committee member, wrote that the claimant voiced her concerns at the same meeting in an uncomfortable and unprofessional manner. She felt that the claimant was not able to reflect on and grow with the constructive criticism. Neither Ms Stretton nor Ms Williams gave evidence at the hearing.

5.20. On 1 August 2023 an investigatory meeting took place between the respondent's HR consultants and the claimant, as a result of which there were recommendations to proceed to a disciplinary meeting on a number of counts, which in due course formed the basis of the disciplinary process.

5.21. There were matters not necessarily relating to the accident in respect of which evidence was not directly given at the hearing as follows:

5.21.1. The claimant's behaviour at the committee meeting on 3 July 2023.

5.21.2. The claimant shouting at members of staff in an aggressive manner.

5.21.3. Claiming back hours without approval whilst working from home.

5.21.4. Leaving the centre without approval with a potential breach of adult numbers to child ratios.

5.21.5. Failure to follow the absence notification procedures.

5.21.6. Failure to sign in and out of the fire register.

5.22. A disciplinary meeting was called for 25 August 2023 and the claimant was suspended on 18 August 2023.

5.23. The claimant raised a grievance by a letter dated 23 August 2023 because of her treatment by the respondent. This was fixed for 30 June 2023 presumably was 30 August 2023. The grievance was not upheld and the grievance appeal which followed was not upheld.

5.24. The disciplinary hearing in fact took place on 7 September 2023 and as a result the claimant was summary dismissed for the reasons set out in a letter dated 20 September 2023. This can be found in the bundle at page 216.

5.25. On 23 September 2023 the claimant appealed against her dismissal. The appeal was held on 5 October 2023. The Tribunal did not hear evidence on any of the process but was asked to read the documents. The Tribunal could not find in the bundle an outcome letter of the disciplinary appeal and in the absence of other evidence the Tribunal has relied on the letter dated 20 September 2023.

6. **Determination of the Issues (after listening to the factual and legal submissions made and on behalf of the respective parties)**

6.1. The Tribunal finds that the reason for dismissal was the claimant's conduct. The conduct includes:

6.1.1. The claimant had day to day responsibility for the running of the centre and was the lead.

6.1.2. The claimant failed to adequately manage the accident to the two year old child on and after 20 June 2023.

6.1.3. The claimant failed to report the accident to the chairman.

6.1.4. The claimant did not take statements relating to the accident from the staff because she said she did not know she had to.

6.1.5. The claimant did not attend the mother who was coming to collect the child after the accident.

6.1.6. This was even when the claimant herself witnessed that the child became very stressed and upset.

6.1.7. The claimant made her judgment when only seeing the red burn mark on the child and before the blistering occurred. The claimant thought the injury was minor.

6.1.8. On the arrival of the chairman the claimant was unresponsive and the claimant played down the nature of the accident. The chairman was unhappy with the claimant's attitude. When asked to check the applicability of RIDDOR the claimant said "What's RIDDOR?"

6.1.9. The claimant did not call the mother of the child to see how the child was, and when speaking to the mother did not ask how the child was.

6.1.10. The mother of the child stated she was unhappy with the way the claimant dealt with the incident and did not want the claimant at a meeting with the respondent.

6.1.11. The claimant said she would rather resign than apologise to the child.

6.1.12. In breach of the Accident and Injury Policy the claimant did not ensure that the parents were called from the main office.

6.1.13. The claimant did not remove the lamps immediately. The claimant did not check the position with the lamps the next day.

6.1.14. The claimant ruled out an investigation into the accident, nor did she stop children playing in the bungalow.

6.1.15. The claimant failed to check that it was safe to use the lamps in breach of the Maintenance and Storage of Equipment Policy. The claimant described the failure as "just one of those things."

6.1.16. The claimant failed to complete the risk assessments despite the chairman asking for health and safety risk assessments to be done in December 2022 and despite the claimant's assurances to the chairman.

6.1.17. In an emergency meeting on 3 July 2023 to discuss the accident the claimant's conduct was far from satisfactory leading to complaints about the claimant from committee members. The claimant was described as unprofessional, with a concerning attitude. The claimant was described as agitated and angry, aggressive, defensive and uncomfortable leading to her storming out of the meeting, shouting on her way out.

6.1.18. The claimant shouted at staff in an aggressive manner.

6.1.19. The claimant claimed back hours without approval whilst working from home.

6.1.20. On occasion the claimant left the centre without approval with a potential breach of adult child ratios.

6.1.21. The claimant failed to follow absence notification procedures.

6.1.22. The claimant failed to sign in and out of the fire register.

6.2. The above list of conduct amounts to a catalogue of behaviour from the most senior employee in the centre. Taken individually there is evidence of each type of misconduct. Clearly, and not belittling the rest of the conduct, the accident evidence was the most serious, not necessarily because of the accident itself, but because of the claimant's uncaring attitude to the child, the mother, concerned staff and concerned committee members.

6.3. Given the nature of the conduct did the act reasonably or unreasonably treating it as a sufficient reason for dismissal?

6.4. The Tribunal has regard to the test in **Burchell**. We find that the respondent believed that the claimant was guilty of misconduct and there was plenty of it. The Tribunal finds that the respondent had adequate grounds to sustain that belief. The Tribunal finds that the respondent

carried out as much investigation as was reasonably possible in the circumstances. This is particularly so as the respondent being an organisation with limited resources went outside for assistance to carry out that investigation, which the Tribunal finds was thorough.

6.5. This does not necessarily mean that the conclusion to which the respondent came was the only one. Having regard to the doctrine of the band or range of reasonable responses, as enunciated in Swift, the Tribunal finds that the respondent's action fell within that band of reasonable responses which is open to an employer even though there might be quite reasonably another view that could be taken.

6.6. The Tribunal notes that the claimant was summarily dismissed for ten instances of misconduct in the letter at page 216 of the bundle. The Tribunal takes it that the decision to summarily dismiss the claimant was cumulative, but nevertheless finds that had the respondent dismissed the claimant for the circumstances surrounding the accident then that alone could have amounted to gross misconduct being within the band of reasonable responses.

6.7. In all the circumstances the claimant's claim of unfair dismiss is hereby dismissed.

____J Shulman_____

Employment Judge Shulman

Date: 22 October 2024

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