



EMPLOYMENT TRIBUNALS

Claimant

Ms A Hamilton

Respondent

Abellio East Anglia
Limited t/a Greater Anglia

Heard at: Watford (CVP)

On: 19 November 2024

Before: Employment Judge S Moore (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr M Montgomery, Counsel

JUDGMENT

The claim for unfair dismissal is dismissed.

REASONS

Introduction

1. The Claimant was employed by the Respondent between 6 March 2002 and 2 May 2024 when she was dismissed for gross misconduct.
2. ACAS Conciliation took place between 6 September and 28 September 2023.
3. On 13 May 2024 the Claimant brought a claim for unfair dismissal.
4. I heard evidence from the Claimant and, for the Respondent, from Mr Michael Wyatt, the dismissing officer. I was also referred to a bundle of documents.
5. On that evidence, I make the following findings of fact.

The Facts

6. The Claimant was employed as a Train Presentation Team Member at Norwich railway station.

7. On 26 March 2024 she left work about 25 minutes early and on the train home, while still in Company uniform, opened and drank from a bottle of wine in front of other passengers. The conductor on the train spotted her and reported the matter to his manager.
8. The Claimant was interviewed the following day. She admitted her shift was from 14.30 to 21.30 but said that she had caught the train home at 21.05 because she had done all her work. She further admitted she had drunk a little from a bottle of wine on the train while in her Greater Anglia uniform.
9. The Claimant was suspended, and an investigation took place, which included, amongst other things, an interview with the conductor who had spotted the Claimant, examination of CCTV on the train and a further interview with the Claimant. The investigation also revealed that the morning after the incident the New Trains and Fleet Director for Transport UK had sent an email complaining about the state of the toilets on the train the Claimant was supposed to have cleaned the previous evening.
10. In her interview as part of the investigation the Claimant said she was suffering with poor mental health, and she had been getting death threats that someone was going to harm her at the station or follow her home. The Claimant was asked why she had not brought this up with management and she said she had had a conversation with Mr Martin Wink on 12 March 2024. She said she was under a lot of stress because she had just moved house. That she didn't get authorization to leave early because she panicked. She said the reason she drank wine on the train was to try to release some stress and she didn't think because her head was all over the place. She was told about the email complaining about the state of the toilets and asked about the fact she had previously said she had done all her work before leaving. The Claimant said she had gone through the train, but very quickly.
11. The investigating officer subsequently contacted Martin Wink who said the Claimant had called him and said she was stressed due to a recent move and issues at home, and the fact she had been absent and triggered a particular stage in the Respondent's absence policy for a second time. Mr Wink said he had intended to schedule a meeting with the Claimant, but he had then been on leave for two weeks and during that time the incident in question had occurred.
12. A disciplinary meeting took place on 2 May 2024.
13. Mr Wyatt, who was chairing the disciplinary meeting, asked the Claimant about the threatening phone calls. She said she thought the calls were related to an ex-partner. The last phone call had been on 7 March 2024, after which she had changed her number and received no more calls. Nothing more had happened since then or on 26 March 2024, however her mental health had been declining and she was feeling stressed and anxious and thought a bottle of wine might calm her down, although she only took a couple of sips on the train.
14. She said she had seen Robert Avins, the Presentation Operational Production Manager, that morning, but hadn't approached him or her Team Leader about changing her start or finish times and hadn't sought authorization to leave early. She said she understood the implications of leaving early as regards the fire register, and that she also understood the Respondent's Drugs and Alcohol

policy, namely that employees were not allowed to consume alcohol on duty and if they were off duty but still in uniform, they were required to try to cover up the logos. She also accepted that at the time of the incident she was still wearing her Greater Anglia red gilet.

15. The Claimant was asked if there was anything else she considered important to tell Mr Wyatt and she said she “wasn’t in a good mindset with the stress of moving house, the threatening calls, being in a bit of debt, it just all got on top of me. I’m moving to an area where I don’t know anyone so I’m away from my support network. I’m pretty much on my own.”
16. Mr Wyatt concluded that the Claimant’s mitigation really came down to not being a good mindset and not thinking straight. However, he considered that what the Claimant had done was very serious and she had shown no remorse. Further the Claimant had not completed her full duties to an adequate standard before leaving work, despite saying that she had in her initial Q& A,
17. He therefore upheld the disciplinary charge and, despite the Claimant’s long service, concluded that summary dismissal was the appropriate sanction. He confirmed his decision by letter the same day.
18. On 7 May 2024 Mr Wyatt emailed the Claimant a copy of the disciplinary hearing notes. The Claimant replied stating she had notified ACAS about suffering years of bullying and harassment; however, she did not appeal the dismissal decision.

Conclusions

19. In her statement to the Tribunal the Claimant referred to alleged incidents of sexual harassment and bullying that date from 2002. However, the only claim before the Tribunal is that of unfair dismissal and during the Respondent’s disciplinary process the Claimant did not raise any matters of harassment or bullying.
20. Accordingly, since the reason relied upon for the dismissal is conduct, which is potentially a fair reason, the issues for determination are:
 - (i) Did the Respondent have a genuine belief in the guilt of the Claimant?
 - (ii) Did the Respondent have reasonable grounds for that belief, following a reasonable investigation?
 - (iii) Was a reasonable disciplinary procedure followed?
 - (iv) In all the circumstances was the sanction of dismissal within the range of reasonable responses open to a reasonable employer?
21. The essential facts are that on 26 March 2024 the Claimant left work 25 minutes early without authorization, having failed to complete her full duties to the required standard, and was seen drinking alcohol on the train she took home while still wearing uniform, namely her red Greater Anglia gilet.
22. The only part disputed by the Claimant is that she now says she told her Team Leader she was leaving early. However, she accepts she did not say that during the disciplinary process and that during the investigation and at the disciplinary

hearing she accepted she had left early without telling anyone and without authorization.

23. Accordingly, the Respondent plainly had a genuine belief in the guilt of the Claimant and had reasonable grounds for that belief.
24. Further, the Claimant has not suggested the Respondent did not conduct a reasonable investigation or that the disciplinary procedure was not fair or reasonable, and indeed the evidence is that the whole disciplinary process was very thorough.
25. Accordingly, the only question is whether in all the circumstances the sanction of dismissal was within the range of reasonable responses open to a reasonable employer.
26. In this respect the Claimant was well aware that she was not supposed to leave her shift early, that she had not completed her duties to the required standard, and that the Company's Code of Conduct and Standard relating to Alcohol and Drugs provides that "Colleagues must not consume drugs or alcohol whilst on duty."
27. In her evidence to the Tribunal the Claimant said that shortly before the incident she had recently come off anti-depressants, that a man had been staring at her on the train she took home and making her feel uncomfortable, that she had started to have a panic attack and that she had drunk from the wine bottle to take a tablet. However, she did not say any of those things during the disciplinary process although she was given every opportunity to explain the reasons for her actions, both during the investigation and at the disciplinary hearing itself.
28. As regards the reasons she did give at the time, namely the the phone calls and a decline in her mental health, I consider the Respondent was entitled to take the view that these matters were not adequate mitigation in the circumstances. There was no suggestion that anything had happened on 26 March 2024 to particularly upset or stress the Claimant, either in respect of phone calls or threats or anything else. Further, the evidence before the Respondent was that she had not sought authorization to leave early, although she could have done so as she said she had a good relationship with local management. Although it is true that the Claimant had very long service with the Respondent, and that in such circumstances another employer might have taken a more lenient view, I consider Mr Wyatt was entitled to regard what the Claimant had done as being very serious and to further take into account that she did not appear to show any remorse for her actions. Accordingly, I find that dismissal was within the range of reasonable sanctions open to a reasonable employer.
29. It follows that the claim for unfair dismissal is dismissed.

Case Number: 3305135/2024 (CVP)

Employment Judge S Moore
Date: 19/11/2024

Sent to the parties on: 2/1/2025

For the Tribunal: N Gotecha