



PRESS SUMMARY

14 March 2018

THE COURT ORDERED that no one shall in connection with these proceedings publish or reveal the name and address of the school with which this appeal was concerned or of the Governing Body of that school.

Reilly (Appellant) v Sandwell Metropolitan Borough Council (Respondent) [2018] UKSC 16
On appeal from [2016] EWCA Civ 766

JUSTICES: Lady Hale (President), Lord Wilson, Lord Carnwath, Lord Hughes, Lord Hodge

BACKGROUND TO THE APPEAL

The Appellant, Ms Caroline Reilly, is the former head teacher of a primary school which was, at the relevant time, maintained by the Respondent, Sandwell MBC (the local authority). Approximately ten years before Ms Reilly became the head teacher of the school, she met a man named Ian Selwood, who became her close friend. They were not, however, in a sexual or romantic relationship. In 2003 they bought a property as an investment in their joint names and set up a joint bank account to pay the mortgage instalments. Mr Selwood lived in the property and Ms Reilly sometimes stayed there overnight.

In January 2009 Ms Reilly applied for the position of head teacher at the school. On 25 February 2009, having just stayed overnight at their jointly owned property, she witnessed Mr Selwood's arrest by the police on suspicion of having downloaded indecent images of children. Ms Reilly was subsequently appointed to be head teacher and took up the position on 1 September 2009. Mr Selwood was convicted on 1 February 2010 of making indecent images of children by downloading them onto his computer. Although Ms Reilly became immediately aware of Mr Selwood's conviction, she decided not to disclose it to the governing body of the school. Her close friendship with Mr Selwood continued, and in April 2010 they went on holiday together.

In June 2010 the local authority learnt of Mr Selwood's conviction, and of Ms Reilly's friendship with him. It suspended Ms Reilly and subsequently summoned her to a disciplinary hearing in May 2011. At that hearing, the panel upheld the allegation that, by having failed to disclose her relationship with a man convicted of sexual offences towards children, Ms Reilly had committed a serious breach of an implied term of her contract of employment which amounted to gross misconduct. The panel were particularly concerned by Ms Reilly's continuing refusal to accept that her relationship with Mr Selwood might pose a risk to pupils and the school, and that she should therefore have disclosed it to the governors. Ms Reilly was, as a result, summarily dismissed.

Ms Reilly subsequently brought proceedings for unfair dismissal and sex discrimination in the Employment Tribunal, maintaining that she had been under no obligation to disclose the information. The Tribunal held that, save for an irrelevant procedural element, the decision to dismiss her had not been unfair. Her sex discrimination claim was also dismissed. Ms Reilly thereafter appealed to both the Employment Appeal Tribunal and the Court of Appeal on the unfair dismissal point, but was unsuccessful on both occasions.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Wilson gives the judgment with which Lord Carnwath, Lord Hughes and Lord Hodge agree. Lady Hale gives a concurring judgment.

REASONS FOR THE JUDGMENT

An inquiry into whether a dismissal is unfair is governed by s.98 of the Employment Rights Act 1996. In summary, this requires that the employer show (i) that there is a reason for the dismissal, (ii) that that reason relates to the employee's conduct or is similarly justifiable, and (iii) that they acted reasonably in treating the reason as sufficient for the dismissal [16-18]. On this latter point, i.e. the reasonableness of the employer's conduct, the courts have for many years employed the test set out in the case of *British Home Stores Ltd v Burchell* [1980] ICR 303 [19]. This has been considered, in effect, to require the tribunal to inquire whether the dismissal was within a range of reasonable responses to the reason shown for it, and whether it had been preceded by a reasonable amount of investigation [22].

In this case, Ms Reilly was under a contractual obligation to assist the governing body in discharging its duty to safeguard the pupils, and the question was whether her relationship with Mr Selwood engaged the governing body's safeguarding functions [25-26]. Parliament has previously recognised (for example via the Childcare Act 2006 and the regulations made under it) that sexual offenders towards children can represent a danger to children not only directly but also indirectly by operating through those with whom the children associate. Mr Selwood was the subject of a serious, recent conviction and the basis of his sentence was that he represented a danger to children. As head teacher, Ms Reilly was likely to know important information about her pupils, including their whereabouts, their routine and their circumstances at home. She was also likely to be able to authorise visitors to enter the school premises. Mr Selwood's relationship with Ms Reilly therefore created a potential risk to the children at the school. This risk required the assessment of the governors [27-28]. In these circumstances, the employment tribunal was entitled to conclude that it was a reasonable response for the disciplinary panel to have concluded that Ms Reilly's non-disclosure of her relationship with Mr Selwood not only amounted to a breach of duty, but also merited her dismissal. Ms Reilly's continuing refusal to accept that she had been in breach of her duty suggested a lack of insight which, it was reasonable to conclude, rendered it inappropriate for her to continue to run the school [29].

Lady Hale's Concurring Judgment

Lady Hale agrees, and for the reasons given by Lord Wilson, that Ms Reilly breached her contract of employment by not informing her employers of her connection with Mr Selwood. She also agrees that Ms Reilly's continuing failure to acknowledge that this information should have been disclosed made the decision to dismiss her reasonable [31]. Notwithstanding this, Lady Hale wishes to note that this case might, if argued differently, have presented an opportunity for the Supreme Court to consider two points of law of general public importance which have not been raised at this level before. Namely, (1) whether a dismissal based on an employee's 'conduct' can ever be fair if that conduct is not in breach of the employee's contract of employment [32], and (2) whether the approach laid down by the Employment Appeal Tribunal in *British Homes Stores Ltd v Burchell* is correct [33]. In the absence of any such argument, however, the law remains unchanged, and Lady Hale expresses no view as to whether that is correct [35].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>