



# EMPLOYMENT TRIBUNALS

**Claimant:** Anthony Trueman

**Respondent:** Vertu Motors PLC

**Heard at:** **Birmingham** **On:** 3th 4<sup>th</sup> August; 10<sup>th</sup> October  
Deliberations 11<sup>th</sup> October

**Before:** **Employment Judge Ae Pitt**

**Representation**

Claimant: Mr Manley Counsel

Respondent: Miss Souter Counsel

## JUDGMENT

1. The claimant was not unfairly dismissed
2. The claimant was not wrongfully dismissed

## REASONS

1. The claimant Anthony Trueman (Tony) brings claims for unfair dismissal and wrongful dismissal in relation to his employment with the respondent. He was employed as a General Manager at the respondent's Ford dealership in West Bromwich. He was employed from 9<sup>th</sup> September 2009 until 13 September 2016 when his employment was terminated. There was a claim for unlawful deductions from wages but this has been withdrawn.

2. I read statements and heard evidence from Ian Harrison; Operations Director of the Ford Division; Karen Anderson Company Secretary; David Allen; Group Franchise Director VAG (VW) Division; Anthony Trueman, claimant. In addition the claimant produced a number of witness statement from former colleagues, Chris Tyler; Ashleigh Hirst; Emma Green.

3. I had before me a bundle of documents including the claimant's contract of employment; the Colleague Purchase Policy; Notes of investigatory and disciplinary meetings.

### Facts

4.1 Many of the facts agreed. The respondent is a national company selling new and used cars and other motor services. The claimant was employed at its West Bromwich Ford Dealership as the General Manager. He had control of a number of members of staff. He reported into Ian Harrison.

4.1.2 His contract of employment as General Manager required him to lead and uphold the highest ethical standards; to be a champion of Group Policy and processes and ensure they are explained and understood and implemented by all colleagues. To work closely with the Dealership Accountant to understand, monitor, control and reduce costs.

4.1.3 In 2015 the claimant lodged a grievance in relation to bonuses which were not paid; this was rejected.

4.1.4 In 2016 the claimant purchased two cars one for his wife one for his son. It was this second purchase which became the subject of the disciplinary proceedings.

4.2.1 The respondent is able to offer discounts to purchasers in a number of ways; for example if they are an existing ford fiesta owner they may be entitled to a discount if they purchase another fiesta. In addition when an employee buys a car they may be entitled to a further discounts; this is known as the D plan. All these are referred to as Front End Bonuses'. After a car is sold it may attract an additional bonus; for example if the franchise has hit a target for a number of sales or passed a customer service survey (audit). These are known as back end bonuses.

4.2.2 When a package to purchase a car is being put together (or stacked) it is entered onto a computer system known as Showroom. This tracks all deals which are stacked and shows the front end bonuses each deal attracts. Once a deal is finalised it is entered on to the Kerridge system which is the accounting system used by respondent. There may be differences because on the Kerridge system a deal may be reconciled to show back end bonuses. The final figure showing on Kerridge shows the profit or loss made on any one vehicle.

4.2.3. Unsurprisingly the respondent has a policy in relation to the sale of cars to staff and family and friends. There are two version in the bundle however for the purposes of these proceedings the relevant one appears at pg. 158. This sets out when authority is required; limits on the number of vehicles which may be purchased and how discounts are applied. The policy makes reference to both new and used cards. The important sections for the purpose of this hearing are:

'All dealership Colleague vehicle purchases must be authorised by the relevant Group Operations Director'

'Additional target of quarterly bonuses received by the dealership at a later date will be passed to the colleague, but only if they are guaranteed and approved by a CEO Director.'

4.3.1 In June 2016 the claimant's son was involved in a road traffic collision and his car, a Ford Fiesta was written off. The claimant duly sourced a car for his son

and a deal was stacked on 11<sup>th</sup> June. However the deal was changed because of the insurance company and the deal was restacked on 30<sup>th</sup> June.

4.3.2 In between those events a meeting was held with the sales team. I have seen the minutes of that meeting (pg. 221); during the meeting Martin Leach informed the team that it was 40 units (cars) short of hitting its end of month/quarter target. Each dealership therefore needed to sell 10 cars before the end of the month. As I understand it if the target was reached a bonus of some £130,000 was payable by Ford to the respondent. Other than selling cars to customers the other option available to the respondent to achieve the target was to pre-register a number of cars but Mr Leach told the team that the company didn't want to do that as it would eat into the June accounts. I understand that a pre-registration costs the respondent approximately £1000.

4.3.3. The deal which was stacked for the claimant's son can be seen on a document headed Vehicle Deal Summary. This shows that the retail loss on the deal was £475.36. It also shows the bonuses that the deal attracted. The Kerridge system (page 209) shows the vehicle made a loss of £725.

4.3.4 Following an audit the respondent instigated disciplinary proceedings against the claimant for this sale; There was an investigatory meeting conducted by Jim Higgins on 1<sup>st</sup> September 2016. During that meeting the claimant accepted that Kerridge was showing loss of £725.60. He accepted he had not sought approval from anyone. His case was that if certain back end bonuses were attributed to the sale there would be a profit. He questioned how many General or Sales Managers had sought authorisation. The claimant was suspended pending a disciplinary hearing. The misconduct cited was:

Serious breach of Vertu policies (Colleague Purchase Policy) which resulted in a loss to the company  
Behaviour not in line with the core values of the company in relation to professionalism and integrity

4.3.4 The disciplinary hearing was held on 6<sup>th</sup> September David Allen was the Chair. The hearing was adjourned for further investigation and resumed on 13<sup>th</sup> September. In essence the claimant's case was; no-one else sought authorisation for purchases; the deal didn't make a loss if the back end bonuses were added. This latter appears to have been conceded by Mr Allen. The claimant was dismissed and a letter confirming this was sent to him (page 450).

4.3.5. The claimant appealed by letter dated 21<sup>st</sup> September setting out 13 grounds of appeal which included; the process was flawed; the claimant's lack of knowledge of the policy; victimisation by I Harrison; his position is already being advertised.

4.3.6 The appeal was heard by Karen Anderson. Prior to the actual hearing Ms Anderson, on the basis of the grounds of appeal conducted enquiries into the matters raised including a review of other colleague

purchases in the last 12 months. She sent this information to the claimant prior to the hearing.

4.4.1 The hearing took place on 19<sup>th</sup> October and lasted for 2 half hours. At the conclusion of the meeting Ms Anderson asked the claimant whether he had had a fair hearing to which he responded; 'I think I have been listened to'. When Ms Anderson queried an earlier assertion by the claimant that the decision had been made prior to the hearing, he responded; 'I feel that you would not be bullied to make a decision. I believe that you will give me a fair hearing.'

4.4.2. By letter dated 25<sup>th</sup> Oct Ms Anderson upheld the decision to dismiss. In her letter she addressed each of the issues raised by the claimant in his appeal letter, In particular in relation to a lack of knowledge of the policy she wrote;

'If there was any doubt over the policy...you should have sought clarity'

In relation to the penalty

'This leads me to conclude that far from considering a loss making a deal a personal gain to the colleague at the companies expense you viewed these as acceptable in that such sales helped achieve sales volume targets.'

4.5.1 Much of the evidence I heard was concerning the deal as it was stacked and the claimant's assertion that the loss shown at the time of sale would be less when the bonuses he expected to achieve were attributed during a Kerridge reconciliation. He accepted that Kerridge was sacrosanct and that at the time of the disciplinary proceedings Kerridge showed a loss.

## The Law

5.1 In relation to the unfair dismissal claim I had regard to the definition of unfair dismissal in section 98 Employment Rights Act 1996. In relation to this it is for the respondent to establish the reason for the dismissal and if it is once falling within section 98(2) the Tribunal must then go on to consider whether the dismissal was fair in all the circumstances taking account of the size and resources of the respondent. Conduct may form a fair dismissal.

5.2 The leading authority on misconduct dismissals is British Home Stores Ltd V Burchell [1978] IRLR 379. Which sets out the test as follows an: '... employer must entertain a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what in fact more than one element is. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the

employer who manages to discharge the onus of demonstrating those three matters....’

5.3 In addition Counsel referred me to Iceland Frozen Foods Ltd. v Jones [1982] ICR 142 which established the principle of the range of reasonable responses test.

5.4 Graham v Secretary of State for Work and Pension s [2012] EWCA Civ 903; an employment tribunal is permitted to find that the finding of misconduct was not based on reasonable grounds and therefore dismissal was outside the range of reasonable responses.

5.5 In relation to wrongful dismissal the burden is on the claimant to establish that the respondent breached his contract by dismissing him summarily. The conduct of the employee must so undermine the trust and confidence which is inherent in the contract of employment that the employer is able to dismiss the employee

### Submissions

6.1 The claimant’s case is that this was not a genuine misconduct case. Ian Harrison wanted him out of the business because of the grievance the claimant had lodged previously. To this end the claimant asserts that Jim Hughes and Dave Allen were told to dismiss the claimant. This claim, it is suggested, is supported by an email from Matthew Barr to I Harrison on 31<sup>st</sup> August. (Page 258) where Mr Harrison asks whether this would amount to gross misconduct. In addition the position for General Manager was advertised after the dismissal but prior to the time running out for an appeal.

6.1.2 In addition there was a lack of consistency between the claimant and other employees who had purchased vehicles at a loss and without approval.

6.1.3 If this was misconduct then it does not amount to gross misconduct; all the claimant has done is failed to follow a policy especially as the respondent admits it failed to follow and enforce the policy.

6.1.3 Finally the respondent failed to consider any other sanction that may be available and in not doing so failed to take account of the claimant’s length of service and previous good record; not only a clean disciplinary record but a record of achievement in his role as General Manager.

6.2.1 The respondent’s submission were that the respondent followed a proper procedure and came to conclusion to dismiss based on the evidence before them. There no is evidence of a conspiracy to dismiss the claimant. If there is any discrepancy then this is because others were junior to the claimant and indeed in some circumstances the claimant was the line manager.

### Discussion and Conclusion

7.1 Looking at the policy first, whether it was in force and the claimant’s knowledge of it. The claimant’s case and evidence on this was contradictory. In

his ET 1 it is asserted that the Colleague Purchase Policy had never been provided to him and he indeed was not aware of it until it was provided to him in the disciplinary proceedings. In his evidence he told me that all policies were provided to him when he commenced his job. Whilst he maintains the policy is not referred to in the company handbook he was aware of the policy in the terms of the bonuses that could be attributed to any colleague purchase in particular the D plan. I ask myself where he would get that information from other than the policy itself. Finally it was the claimant's assertion that he knew he required authorisation for used cars. I find it difficult to accept that a General Manager of 7 years standing, who on his own account had purchased numerous cars was unaware of the restriction on the policy but was well aware of the benefit he derived from it. I concluded that the claimant was aware of the policy but was lax in enforcing it amongst his staff in particular where deals were not loss making. I am satisfied that the Policy was in use and the claimant was aware of it.

### The Conspiracy

7.2.1 This boils down to the question did Ian Harrison instruct other members of staff to ensure that the claimant was dismissed. The reason for this is the claimant asserts is that the claimant lodged a grievance the previous year. The reason itself does not seem to have much merit in it as the claimant's grievance was not upheld. If it had there may be merit i.e. have considered the email chain between Mr Harrison and Mr Barr and concluded that this is nothing sinister. Mr Harrison as a manager was seeking advice from his HR department as to the level this type of conduct may fall within. In particular Mr Harrison indicates that he is going outside the Ford brand to hear any disciplinary matters that arose. This is a clear indication that he wants an independent manager to assess the situation. In addition Ms Anderson did not strike me as a person who would bow to such pressure; in particular I note that at the appeal the claimant seemed happy with her handling of it. When asked why he had changed his mind all he could point to was the fact that she had turned down his appeal.

7.2.2 The last issue on this point was the advertising of his position prior to time running out for his appeal. The claimant was at pains to point out that he didn't receive confirmation of his dismissal until the time for an appeal had expired. It seems he is tying the two together. If the claimant had been refused an appeal again I may see some merit in it but he wasn't. A retail company would want to recruit to such a pivotal role as soon as possible and I see nothing sinister in that.

7.2.3. Overall I concluded that there was not a conspiracy to dismiss the claimant.

### The Reason For The Dismissal

7.3.1 The respondent asserts that the reason for dismissal was misconduct namely the breach of the Colleague Purchase Policy which in turn led to a conclusion by Mr Allen that it raised concerns about the claimant's failure to ensure that as General Manager he understand and executed the Company's policies within his dealership.

7.3.2 Having considered the alternative put forward by the claimant and rejected it I am satisfied that the respondent has shown that the reason for dismissal was conduct. This may found a fair dismissal under section 98.

#### Fairness of the dismissal

7.4.1 I first considered the investigation undertaken by the respondent. Mr Higgins carried out investigatory meetings with the claimant. As a result of what was said by the claimant Mr Higgins also spoke to Mr Howe, Andy Kyriacou and Chris Harper. After the first disciplinary hearing Mr Allen carried out further investigations with three general managers namely Wayne Murray, Stuart Lamb and Neil Bianchi. The claimant was able to address issue raised at the adjourned hearing. After the claimant appealed Ms Anderson conducted further investigations in particular into the claimant's assertion that other staff were purchasing without authorisation. I am satisfied that the respondent carried out a reasonable investigation into all matters that were raised by the claimant during the disciplinary proceedings.

#### Belief

7.5. I am satisfied that Mr Allen believed the claimant was guilty of misconduct complained of namely that the claimant breached the Colleague Purchase Policy by not seeking authorisation for the purchase; the claimant admitted he purchased the vehicle without. I do not accept that he was involved in a conspiracy. He came from a different division within the organization

#### Reasonable

7.6.1 Did Mr Allen have reasonable grounds for his belief? In looking at this critical question I considered the information before Mr Allen which includes matters put forward by the claimant at his disciplinary and the reasons why they were rejected by Mr Allen.

7.6.2 On the basic facts the claimant admitted he had purchased the car without authorisation; throughout the disciplinary the claimant was simply trying to explain his actions. He did this by pointing to his previous record of car purchases, and the fact that he never sought authorisation for them; he would seek authorisation for a used car; it is not custom and practice to seek authorisation in the Ford division. As it was the last day of the month the deal was required to avoid pre-registration. There is no specific mention of knowledge of the policy however Mr Allen does refer to it in his letter of dismissal

7.6.3 In relation to the claimant's previous purchases this only made matters worse for Mr Allen as he points out ' this...raises concerns about your failure to ensure that as General Manager you understand and execute the Company's policies within your dealership' He rejected the claimant's assertion that the policy was only applied to used cars stating ' The process for purchasing used cars is detailed in the same document....there is no good reason why you should be unaware of the process when purchasing new cars'

7.6.4 As to the custom and practice he says 'my investigations have established that whilst a signed authorisation form may not exist for all colleague new car purchases, authorisation is obtained verbally or by email....I am satisfied that this demonstrates a general understanding and awareness of the [Policy]...As a General Manager you are expected to make yourself aware of company policies.

7.6.5 Therefore Mr Allen had before him an admission as to the basic facts and information which contradicted the claimant's assertions as to custom and practice. Finally he concluded that the claimant had 'no good reason' to be unaware of the policy.

7.6.6 Based upon this information I am satisfied that Mr Allen's belief in the claimant's guilt was reasonable.

7.7.1 In order to found a fair dismissal, dismissal must fall within a range of responses open to the reasonable employer. I remind myself that I must not substitute my view for that of the respondent. Mr Allen considered this to be a serious breach of policy which is out of line with the core values of the company.

7.7.2 I note that the role of General Manager is a senior position and consider that dismissal fell within the range of reasonable response.

7.7.3 I mention here the appeal; Ms Anderson as I noted above carried out further enquiries based upon the claimant's appeal. In writing her outcome Ms Anderson especially deals with the issue of the sanction as rehearsed above she conclude by writing

It is your means to an end assertion that confirms to me not only your serious lack of judgment in this case, but also a fundamental deficiency in commercial understanding on you part in particular on the financial impact of pre-registration and new vehicle bonuses.

7.7.4. I considered the issue of the appeal as the claimant asserted in his appeal letter some procedural flaws in the original hearing. This included a failure to provide information as to the number of purchases by colleagues. As noted above Ms Anderson investigated this and provided the information to the claimant for his appeal. She concluded 'I have found only one dealership systematically generating losses on management purchases ...your dealership'. If there were any flaws in the process, and I do not considered there were Ms Anderson rectified them with her through and robust appeal. She also considered the issue of whether Mr Allen had pre-determined the issue and she concluded that he had not.

### Wrongful Dismissal

8.1 As I have already noted above it falls to the claimant to establish that the respondent was not entitled to terminate the contract. I looked at the terms of the employment contract as set out above. I note that the claimant was the Senior Manager of a dealership. In particular under the terms of the contract he was to lead and uphold the highest ethical standards. I note that Ms Anderson's



investigation revealed that the breach of the Colleague Purchase Policy occurred with junior staff at the claimant's dealership.

8.2. I considered the claimant's assertions that the policy was not followed, whilst it is true that the letter of the policy, namely authorisation in writing was not followed. The evidence I heard was that, other than at the claimant's dealership the policy was followed. I note the claimant's witness statements on this point but can give them little weight.

8.2.3 I also had regard to the claimant's account that the deal would have made a profit once the back end bonuses were attached to it. Although this is important it is not as important as the failure to follow a policy.

8.2.4 I considered the claimant's assertion that he wasn't being dishonest, whilst this may be the case it does not address the issue of the breach of policy

8.3 I concluded that the claimant deliberately failed to follow a policy; a policy that he must have been aware of; a policy that was followed by other members of staff including General Managers. When challenged about it his account was an explanation for that breach not a defence to it. In all the circumstances I concluded that the respondent was entitled to terminate the claimant's contract summarily.

### Conclusion

9.1 I concluded that the respondent dismissed the claimant for conduct and that there was a genuine belief of his guilt based on a reasonable investigation. The dismissal was fair.

9.2 As to the wrongful dismissal I concluded that the claimant failed to establish that the respondent was not entitled to dismiss. In particular I am satisfied that the claimant's conduct by breaching the Colleagues Purchase Policy, which was a deliberate breach, so undermined the trust and confidence that the respondent was entitled to dismiss.

Employment Judge AE Pitt

23<sup>rd</sup> Oct 2017

JUDGMENT & REASONS SENT TO THE PARTIES ON

30 October 2017