Case Number 1302319/2017

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Mr J Griffiths		**FWB Products Limited**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL
RESERVED JUDGMENT

HELD AT Newcastle-under-Lyme **ON** 1, 2, & 3 August 2018
10 August 2018 – Panel Only

EMPLOYMENT JUDGE GASKELL **MEMBERS: Mrs S Petrulis**
Mrs E Shenton

Representation
For the Claimant: **Miss A Chute (Counsel)**
For Respondent: **Ms J Ferrario (Counsel)**

JUDGMENT

The unanimous judgment of the tribunal is that:

1 **The claimant was fairly dismissed by the respondent: his claim for unfair dismissal is not well-founded and is dismissed.**
2 **The claimant was lawfully dismissed by the respondent in accordance with his employment contract. His claim for wrongful dismissal (unpaid notice pay) is accordingly dismissed.**
3 **The respondent did not, at any time material to this claim, act towards the claimant in contravention of Section 39 of the Equality Act 2010. The claimant's complaint of direct age discrimination, pursuant to Section 120 of that Act, is dismissed.**

REASONS

Introduction

1 The claimant in this case is Mr John Griffiths who was employed by the respondent, FWB Products Limited from 30 November 1970 until 21 June 2017 when he was dismissed. At the time of his dismissal, the claimant was employed as Pipeline and Controls Manager. The reason given for his dismissal at the time, was gross misconduct. The claimant was born on 22 April 1946; and so, at the time of his dismissal, he was 71 years of age. He had worked for the respondent for 46 years.

2 By a claim form presented to the tribunal on 12 September 2017, the claimant claims that his dismissal was unfair; that his dismissal was an act of age discrimination; and that he was wrongfully dismissed, in breach of his employment contract, and was entitled to receive 12 weeks' notice pay.

3 In response to the claim, the respondent admits that the claimant was dismissed. The respondent's case is that the reason for the claimant's dismissal was a reason relating to his conduct; and that the dismissal was fair. The respondent denies that it unlawfully discriminated against the claimant on the grounds of his age or otherwise. The respondent maintains that the claimant's conduct was such that the respondent was entitled to summarily dismiss without notice.

The Evidence

4 The respondent presented its case first and called three witnesses: Ms Alison Burrows - HR Manager, who investigated concerns regarding the claimant's conduct; Mr Chris Salmon - Group IT Manager, who conducted the disciplinary hearing, and whose decision it was to summarily dismiss the claimant; and Mr Paul Meehan - Group Managing Director, who dealt with the claimant's appeal.

5 The claimant gave evidence on his own account but did not call any additional witnesses.

6 The panel was provided with an agreed trial bundle running to around 150 pages. We have considered the documents within that bundle to which we were referred by the parties during the hearing.

7 We found the evidence given by the respondent's witnesses to be clear; compelling; and truthful. There were some discrepancies in the documents: but we are satisfied that these were properly recognised and explained. We accept the evidence given by Ms Burrows to the effect that the disciplinary pack provided to the claimant included the documents appearing in the trial bundle at pages 85(a) – (c). It is also clear to us that the claimant had a copy of the note of Ms Burrows investigation meeting with Brian Robson, which appeared at page 86 of our bundle, before he submitted his letter of appeal.

8 The claimant was a less satisfactory witness: his evidence was inaccurate in parts; and his explanations for the inaccuracies not convincing. The following are examples: -

(a) In his claim form, the claimant refers to having "*worked for the respondent for over 46 years and having a clean disciplinary record*": this statement in

the claim form provoked no response from the respondent as previous disciplinary blemishes had played no part in the decision to dismiss. However, in his witness statement, claimant goes further and states "*for the whole of the 46 years that I worked for the respondent, I had never been subject to a disciplinary of any sort and had a totally clean record*". These statements were untrue: disciplinary action had been taken against the claimant on two occasions. In January 1999 he received a final written warning; and, in March 2015, he received a verbal warning and was asked to apologise to a colleague. At the outset of his evidence-in-chief, the claimant confirmed these two disciplinary blemishes and explained that, as he believed that the warnings had expired, it was not inaccurate to describe his disciplinary record as *clean*. This explanation is acceptable so far as the statement in the claim form is concerned; but it cannot possibly, in our judgement, explain the embellishment of the statement contained in the witness statement. In her submissions to the tribunal, Miss Chute criticised the respondent: she suggested that if they had responded to the statement in the claim form then the claimant's solicitors would have prevented the inclusion of an inaccurate statement in the witness statement. But, it is hardly the respondent's responsibility to ensure that the claimant tells the truth and gives accurate instructions to his solicitors. Worse in many ways, when cross-examining Ms Burrows, Ms Chute suggested that details of the warnings had only been included in the respondent's evidence in an unfair effort to discredit the claimant. We entirely accept Ms Burrows explanation that she did not think it was appropriate to allow the inaccurate statement in the claimant's witness statement to stand.

(b) Throughout his evidence, the claimant suggested that the respondent's managers had not fully understood the position because they had disciplined him in the belief that Boole's Tools and Pipe Fittings Limited (Boole's) was one of the respondent's customers rather than a supplier. This alleged misunderstanding was challenged: and nowhere could the claimant point to any meeting; email; other document; or verbal communication justifying his assertion.

(c) The claimant alleged that there had been a conspiracy to dismiss him on false grounds because of his age. In support of this he referred to the fact three senior managers of long-standing and mature years had been dismissed as redundant during the previous 12 months. In broad terms, this suggestion was not disputed by the respondent. The claimant appeared not to understand that the fact of these dismissals rather undermined his case. If the respondents had wished to dismiss him, he could offer no reason why they would not have gone down the redundancy route as they had the others.

(d) We accept the evidence of Ms Burrows, supported by her note of the meeting, that at an investigation meeting with the claimant on 12 June

2017, he claimed not to remember a telephone call with Chris Lowry on 30 May 2017. But, just seven days later, at the disciplinary meeting, and subsequently, he accepted that such a call had taken place. In evidence before us, the claimant's explanation was that Ms Burrows' note of the meeting was inaccurate. But, when the discrepancy was put to him by Mr Meehan at the appeal hearing, claimant did not challenge it. We find that the claimant did initially deny the conversation; only later to admit it; and that his evidence before us was untrue.

(e) We find that the claimants general credibility is substantially undermined by the readiness with which he has alleged a conspiracy involving, at least, Ms Burrows; Mr Salmon; Mr Meehan; Mr Martin Johnson (the claimant's line manager); Mr Stephen Havell; and Mr Neil Tremayne. Allegations of conspiracy and impropriety, which in our judgement, are not remotely justified.

(f) It is an essential part of the claimants age discrimination claim that, in May 2017, he was put under pressure to reduce his working hours from 3 days per week to 2. He claims that this reduction was to enable the enhancement of the role undertaken by Mr Emmanuel Kokoh. However, on 23 May 2017, the claimant was the author of an email addressed to Mr Chris Lowry and Mr Havell confirming that, from June 2017, he was reducing his working hours to 2 days per week by "*mutual agreement*".

9 In the light of our assessment of the witnesses, where there is a conflict of fact between the evidence given by the claimant and that given by the respondent's witnesses, we prefer the evidence of the respondent's witnesses. This is the basis upon which we have made our findings of fact.

The Facts

10 On 30 November 1970, the claimant commenced his employment with the respondent. Over the years he has undertaken several different roles and had different job titles. By the time of his dismissal, the claimant was employed as Pipeline and Controls Manager. The main thrust of this role was to manage the respondent's relationship with suppliers: ensuring that the correct supplies were procured to meet with customer demand. The claimant was responsible for negotiating the best prices with suppliers; and ensuring that any supplies were received on time.

11 The claimant worked closely with Mr Kokoh. Mr Kokoh was employed as a Category Manager, there was a considerable degree of overlap and synergy between his role and that of the claimant. The claimant was responsible for sharing his product knowledge with Mr Kokoh thereby helping him to negotiate the best deal possible with customers and suppliers. It appears to have been intended by all concerned, including the claimant, that when the time came for the claimant to retire, Mr Kokoh would be well placed to take over his role.

12 The REDG Group is a buying group of independently owned businesses for pipeline products. The principal activity of the group is the negotiation of competitive prices on behalf of its members. The group was incorporated in 1983 and is the coming together of a group of small businesses seeking to pool their buying power together to get improved terms from suppliers. This enables them to compete in the marketplace with much larger national enterprises. The members of the group are technically in competition with each other; but they do not operate in the same geographical areas; and it is therefore possible to work together for mutual benefit. the group meets 3 or 4 times a year to discuss outcome/progress of pricing and rebate agreements negotiated with the various suppliers. To share the workload, responsibility for the supplier negotiations was distributed among the member companies: the claimant was the respondent's representative with responsibility for all negotiations on Dual Certified Tube. (The claimant was not responsible for negotiations for Quality Tube which was the responsibility of Neil Ives the representative of another group member.) It was regarded as strategically important to the respondent for the for its REDG Group representative to be the lead negotiator for Dual Certified Tube.

13 In 2012, by agreement, but at the claimant's initiative, the claimant's working hours were reduced from 5 days per week to 4. There was an understanding between the claimant; his line manager Mr Johnson; and Ms Burrows that the claimant would gradually reduce his working hours until his eventual retirement at a time of his choosing. When the claimant started to reduce his hours, Mr Kokoh was retained to provide cover. In 2015, again by agreement, the claimant further reduced his working hours from 4 days per week to 3. In 2016, when Mr Meehan became Group Managing Director, he approached the claimant about possibly increasing his hours again back to 5 days - had the claimant been willing to do this then it seems likely that Mr Kokoh would have been redundant. The claimant preferred to stay at 3 days per week.

14 At a meeting on 3 May 2017, it was agreed that the claimant would further reduce his hours from 3 days per week to 2. To achieve a commensurate reduction in the claimant's workload, Mr Johnson decided that, moving forward, the claimant would relinquish his responsibility as the respondent's representative at the REDG Group - and therefore, his role as the lead negotiator for Dual Certified Tube. Mr Kokoh would become the respondent's REDG Group representative and lead negotiator for the Tube. As previously stated, Mr Meehan regarded it as strategically important for the respondent to retain that lead negotiation role.

15 The change in these arrangements was confirmed to Mr Lowry by Mr Johnson on 24 May 2017. The claimant had already informed Mr Lowry by email the previous day.

16 On 30 May 2017, Mr Meehan received a complaint from Mr Stephen Havell, the respondent’s Procurement Manager. Mr Havell had overheard the claimant engaged in a telephone conversation (Mr Havell did not know with whom) in which the claimant was said to have made disparaging remarks about Mr Kokoh’s abilities. He called Mr Kokoh’s basic maths into question; he didn’t believe Mr Kokoh was capable of completing a deal; Mr Kokoh was not ready to take over as REDG Group lead negotiator. When the conversation ended, Mr Havell asked the claimant who he had been talking to - he replied that it was Chris Lowry.

17 On the same day as Mr Havell’s complaint, Mr Meehan also received a complaint from Mr Neil Tremayne - the respondent’s National Field Sales Manager. Mr Tremayne had been copied into an email from the claimant to Andrew Witter - one of the respondent’s most important customers, in which the claimant had been made disparaging remarks about the respondent overall. He appeared to be commenting specifically on the fact that they had recently been some redundancies.

18 Mr Meehan was concerned at the claimant’s conduct which seemed designed to undermine the respondent in general; and Mr Kokoh in particular. Mr Meehan asked Ms Burrows to investigate.

19 Because of the claimant’s seniority within the respondent’s organisation, and his range of contacts outside, Ms Burrows was concerned that the claimant could very easily hinder a proper investigation of his conduct. Accordingly, she decided that he should be suspended from duty pending the investigation. Ms Burrows, accompanied by Mr Salmon, met the claimant on 31 May 2017 and told him of his suspension; he was told of the two allegations which had been made against him (Paragraphs 16 and 17 above). Following the claimant suspension, Ms Burrows requested the respondent’s IT department to withdraw the claimant’s access from home to the respondent’s network - this was normal practice for an employee when suspended. In the process, the IT department discovered that, following his suspension, but before actually leaving the workplace, the claimant had forwarded a number of emails from his work email account to his private email account. This conduct was a further matter of concern to Ms Burrows.

20 In the light of this latest concern, Ms Burrows asked Mr Salmon to investigate the claimant’s email account. She asked him to look at emails (particularly those which had been sent to the claimant’s private account) in a period of three weeks prior to the date of suspension. Contrary to the claimant’s assertion, we find that this was a legitimate and proportionate enquiry into his conduct. It was not a wholesale trawl for fresh allegations.

21 The investigation of the IT claimant’s emails established two further matters of concern: -

(a) An email dated 8 May 2017 from the claimant to Mr Terry Seville of Boole's; which the claimant asked to be treated in the strictest of confidence and, in particular, not disclosed to Mr Neil Ives. In the email, the claimant discloses to Mr Seville, prices that are available to REDG Group customers from other potential suppliers, in particular, from Ashby Scott - a favoured supplier of Mr Ives. This email was a matter of concern because it was disclosing to one potential supplier the prices which were available from another. This was undermining to the negotiating position of REDG Group; and appeared to be favouring the claimant's favoured supplier over that of other Group members.

(b) A chain of emails in the date range 9 May 2017 - 24 May 2017 between the claimant and Ms Eleonora Maradei of Viking Johnson, another supplier to the respondent. On reading the emails, Ms Burrows was concerned that the claimant was disrespectful to the supplier; questioned her integrity; and again, disclosed information to her which was of a sensitive commercial nature regarding prices available from alternative suppliers.

22 Ms Burrows investigation established that Mr Brian Robson had also overheard the conversation with Chris Lowry; and was similarly concerned about it. Ms Burrows produced a note of a discussion with Mr Robson which took place on 6 June 2017; and prepared a witness statement for Mr Robson which he signed the same day. However, the following day Mr Robson asked for his witness statement to be withdrawn - he did not wish his name to be part of any disciplinary proceedings taken against the claimant.

23 On 12 June 2017 Ms Burrows conducted an investigation meeting with the claimant: Ms Burrows was accompanied by Mr Salmon. At this stage, only the allegations which had led to the suspension were discussed. The claimant did not believe there was anything improper about his email to Mr Witter; and he claimed to be unable to remember any telephone call with Mr Lowry.

24 Ms Burrows concluded that there was a disciplinary case to answer. On 12 June 2017, Mr Salmon invited the claimant to a disciplinary meeting arranged for Frida 16 June 2017. Mr Salmon would be conducting the meeting in the presence of Ms Burrows and a notetaker. The letter set out 4 areas of concern: it has to be said that the letter is not a model of clarity as to precisely what the allegations were. During cross-examination of Ms Burrows and Mr Salmon; and in her closing submissions to us; Ms Chute made much of this lack of clarity. However, the case she put was wholly undermined when the claimant gave evidence: he made clear that he fully understood the allegations which he was facing when he attended the disciplinary meeting - not merely because of the wording of the letter, but because of the documents which accompanied it.

Further, it is clear to us upon reading the notes of the meeting, that the claimant was never confused or in any doubt as to the allegations.

25 The documentation sent to the claimant in advance of the disciplinary hearing did not include the notes of the meeting with Mr Robson nor Mr Robson's witness statement. This was because Mr Robson had asked to withdraw the statement. However, Mr Robson's concerns were discussed at the meeting, and Mr Salmon admitted to us that he had taken Mr Robson's concerns into account when deciding what to do.

26 At the conclusion of the disciplinary hearing which the claimant attended accompanied by a colleague, Ms Vikki Adams, Mr Salmon determined that the claimant was guilty of misconduct in the 4 areas set out at Paragraphs 16,17 & 21 above. Mr Salmon concluded that the appropriate sanction was summary dismissal: he told us in evidence, and we accept, that he did consider lesser sanctions, but decided that a lesser sanction was not appropriate because of the claimant's refusal to accept that there was any wrongdoing and the fact that, during the course of the investigation, the claimant had not been truthful regarding his telephone conversation with Mr Lowry. At the disciplinary hearing, the claimant had admitted the telephone conversation with Mr Lowry but claimed that he was obliged to give Mr Lowry his honest opinion of Mr Kokoh's abilities. What the claimant was unable to explain, either to Mr Salmon or in evidence before us, is why he felt it necessary to express doubt as to Mr Kokoh's ability when speaking to Mr Lowry; but he had not felt it appropriate to express those doubts privately to Mr Johnson or to Mr Meehan.

27 On 21 June 2017, Mr Salmon wrote to the claimant advising him of the outcome of the disciplinary meeting: telling him that he was dismissed with immediate effect. Mr Salmon explained in evidence that, in his judgement, standing alone, the email to Mr Witter and the email exchanges with Ms Maradei would not have justified dismissal. But, either individually or in combination, the email to Mr Seville and the telephone conversation with Mr Lowry were sufficiently serious to justify dismissal. The claimant was advised of his right to appeal; and that any appeal would be considered by Mr Meehan. On 27 June 2017, the claimant submitted his appeal.

28 The appeal hearing was arranged for Tuesday 11 July 2017: the claimant was told that Ms Burrows would be present together with a notetaker. In readiness for the appeal, Mr Meehan provided the claimant with a copy of the meeting notes involving Mr Robson but not the witness statement.

29 The appeal hearing went ahead on 11 July 2017 as arranged: the claimant attended with Ms Adams. At the hearing before us, it was part of the claimant's case that, in advance of the disciplinary hearing, he had not seen nor agreed the notes of his meeting with Ms Burrows on 12 June 2017: he had therefore had no

opportunity to consider the proposition that he had initially lied to her about the telephone conversation with Mr Lowry. At the appeal hearing, this proposition was dealt with expressly: Mr Meehan explained that it was seen as an aggravating feature that the claimant had initially denied the conversation. At no stage did the claimant demur or suggest that this was inaccurate. It is clear that by the time of the appeal hearing the claimant had discussed the position with Mr Robson.

30 On 12 July 2017, Mr Meehan wrote to the claimant advising him that his appeal was dismissed; the decision to dismiss him was upheld. Mr Meehan went into some detail as to his reasons.

The Law

31 **Employment Rights Act 1996 (ERA)**

Section 94: The right [not to be unfairly dismissed]

(1) An employee has the right not to be unfairly dismissed by his employer.

Section 98: General Fairness

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee,
(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(4) ………where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.

32 **Cases on Unfair dismissal**

British Homes Stores v Burchell **[1978] IRLR 379 (EAT)**

In a case where an employee is dismissed because the employer suspects or believes that he or she has committed an act of misconduct, in determining whether that dismissal is unfair an employment tribunal has to decide whether the employer who discharged the employee on the ground of the misconduct in question entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. This involves three elements. First, there must be established by the employer the fact of that belief. Second, it must be shown that the employer had in his mind reasonable grounds upon which to sustain that belief. And third, the employer at the stage at which he formed that belief on those grounds, must have carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

Iceland Frozen Foods v Jones **[1982] IRLR 439 (EAT)**
Post Office –v- Foley & HSBC Bank plc –v- Madden **[2000] IRLR 827 (CA)**

It is not for the tribunal to substitute its own view but to consider whether the respondent's decision came within a range of reasonable responses by a reasonable employer acting reasonably.

Sainsbury's Supermarkets Limited –v- Hitt **[2003] IRLR 23 (CA)**

The objective standards of the reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed.

33 **The ACAS Code**

We considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").

34 **Equality Act 2010 (EqA)**

Section 4: The protected characteristics

The following characteristics are protected characteristics—
age;
disability;
gender reassignment;
marriage and civil partnership;
pregnancy and maternity;
race;
religion or belief;
sex;
sexual orientation.

Section 13: Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

Section 39: Employees and applicants

(1) An employer (A) must not discriminate against a person (B)—

(a) in the arrangements A makes for deciding to whom to offer employment;
(b) as to the terms on which A offers B employment;
(c) by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B)—

(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment.

Section 136: Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(*a*) an employment tribunal;

35 **Decided Cases – Direct Discrimination**

Ladele –v- London Borough of Islington **[2010] IRLR 211 (CA)**

There can be no question of direct discrimination where everyone is treated the same.

Nagarajan v London Regional Transport **[1999] IRLR 572 (HL)**
Villalba v Merrill Lynch & Co **[2006] IRLR 437 (EAT)**

If a protected characteristic, or protected acts, had a significant influence on the outcome, discrimination is made out. These grounds do not have to be the primary grounds for a decision but must be a material influence.

Igen Limited –v- Wong **[2005] IRLR 258 (CA)**

The burden of proof requires the employment tribunal to go through a two-stage process. The first stage requires the claimant to prove facts from which the tribunal could that the respondent has committed an unlawful act of discrimination. The second stage, which only comes into effect if the complainant has proved those facts, requires the respondent to prove that he did commit the unlawful act. If the respondent fails, then the complaint of discrimination must be upheld.

Madarassy v Nomura International Plc **[2007] IRLR 245 (CA)**

The burden of proof does not shift to the employer simply on the claimant establishing the existence of a protected characteristic and less favourable treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that the respondent had committed an unlawful act of discrimination. Although the burden of proof provisions involve a two-stage process of analysis it does not

prevent the tribunal at the first stage from hearing, accepting or drawing inferences from evidence adduced by the respondent disputing and rebutting the claimant's evidence of discrimination.

The Claimant's Case

36 The claimant's case is that, because of his age, the respondent wished to terminate his employment to make room for Mr Kokoh. To achieve this, various officers of the respondent, under the control of Mr Meehan, conspired to create a false disciplinary case against him and bring about his dismissal.

37 Even if there was no such conspiracy, it is the claimant's case that the allegations against him were not properly investigated; and that the sanction of summary dismissal was outside the range of reasonable responses for the misconduct identified.

38 The claimant makes a number of criticisms of the respondent's procedural fairness; these can be summarised as follows: -

(a) It is suggested that the letter of invitation to the disciplinary hearing lacks sufficient clarity for the claimant to fully understand the allegations he faced.
(b) The claimant was not given the opportunity of an investigation meeting regarding the Seville or Maradei emails.
(c) The failure to provide the claimant with a copy of the notes of his investigation meeting denied him the opportunity to challenge the proposition that he had initially lied about his telephone conversation with Mr Lowry.
(d) Mr Salmon accompanied Ms Burrows at the investigation meeting; Ms Burrows accompanied Mr Salmon at the disciplinary meeting.

The Respondent's Case

39 Put simply, the respondent's case is that there is clear and ample evidence of misconduct; that the respondent was entitled to take the misconduct seriously; that there was a proper investigation; and that the decision to summarily dismiss was reasonable and fair. The respondent denies any procedural failings; and maintains that it acted in accordance with the principles of the ACAS Code. Age was not a factor.

Discussion

The Reason for the Dismissal

40 The respondent has proved to our satisfaction that the sole reason for the claimant's dismissal was a reason relating to his conduct. The alleged misconduct is set out above at Paragraphs 16, 17 & 21. Conduct is a potentially fair reason for the purposes of Section 98(1) & (2) ERA.

41 It follows that we find that the claimant's age was not a factor in the decision to dismiss him; it had no influence in the decision at all. To the contrary, the respondent demonstrated that it valued the claimant's experience within the organisation; and had no wish to lose his services until such time as he chose to retire.

General Fairness

Honest Belief

42 Mr Salmon and Mr Meehan have established an honest and genuine belief that the claimant was guilty of all aspects of the misconduct alleged against him. They believed that, in the telephone conversation with Mr Lowry, and in the email to Mr Witter, the claimant had seriously undermined the respondent and Mr Kokoh. They believed that, in the email to Mr Seville, the claimant had risked alienating the respondent within the REDG Group; and that, in the email exchanges with Ms Maradei, the claimant had been gratuitously offensive - potentially bringing the respondent into disrepute.

Reasonable Belief

43 In our judgement, there was ample evidence to justify the belief and conclusions reached by Mr Salmon and Mr Meehan. 3 of the 4 disciplinary offences were documented. Both Mr Salmon and Mr Meehan were clear in their judgment, that the most serious example of misconduct was in the telephone conversation with Mr Lowry. At the disciplinary hearing, and at the appeal hearing, the claimant admitted that that conversation had taken place; he sought to justify what had been said.

Investigation

44 We are satisfied that the investigation conducted by Ms Burrows was adequate in the circumstances. As stated above, 3 of the disciplinary offences were contained in documents available to be read by the disciplining officer. When the claimant initially denied any recollection of the conversation with Mr Lowry, Ms Burrows took proper steps to obtain the necessary evidence: she

obtained statements from Mr Havell and from Mr Robson; and investigated the respondent's telephone records to demonstrate who the claimant had been speaking to. This level of investigation proved otiose when, at the disciplinary meeting, the claimant admitted the telephone conversation and what had been said.

Procedural Fairness

45 Below are our conclusions regarding the procedural criticisms identified by the claimant and set out at Paragraph 38 above: -

(a) Superficially this point is well made. But the force of Miss Chute's submission is totally undermined by the evidence given by the claimant. He accepted that he fully understood the allegations he faced by a combination of reading the invitation letter and perusing the documents which was sent to him in advance. In our judgement therefore, no valid criticism of the procedure arises.

(b) There is no requirement for an investigation meeting at all. The obligation is on the investigating officer to establish the facts. In the case of these 2 disciplinary offences, the entirety of what is alleged is to be found on the face of the document. The claimant was not disadvantaged at all by the absence of an investigation meeting.

(c) The claimant was given the opportunity to challenge the proposition that he had initially lied about his recollection of the telephone conversation with Mr Lowry. If not before, this opportunity was clearly given at the appeal hearing. The claimant did not challenge the proposition.

(d) We have regard to the provisions of Section 98(4)(a) ERA. As explained to us by Ms Burrows, there were a limited number of managerial personnel available at the Stoke-on-Trent site. 3 senior managers (Mr Johnson; Mr Havell; and Mr Robson), featured in the investigation. It was appropriate for Mr Meehan to remain detached and ready ultimately to deal with any necessary appeal. In these circumstances, in our judgement, having regard to available resources, it was not unreasonable, or in any way unfair, for Ms Burrows and Mr Salmon to support each other at their respective stages of the process. We are satisfied, on the evidence, that Ms Burrows made the relevant decisions regarding suspension and investigation; and Mr Salmon independently made relevant decisions regarding the disciplinary hearing and the dismissal.

46 In the circumstances, we find that the respondent followed a fair procedure which fully complied with the requirements of the ACAS Code.

Sanction

47 After 46 years of service to the respondent, the decision to terminate the claimant's employment in these circumstances might be regarded as harsh. But that is not the test which we must apply. The respondent found that the claimant was guilty of serious misconduct - particularly in the telephone conversation with Mr Lowry; and the email to Mr Seville. The claimant was wholly unrepentant; and did not believe that his conduct was culpable at all. In these circumstances, we find that the decision to summarily dismiss the claimant was within the range of reasonable responses available to the respondent.

Conclusions

48 For these reasons we find that the claimant was fairly dismissed by the respondent. His claim for unfair dismissal is not well-founded and is dismissed.

49 We have found that the sole reason for the claimant's dismissal related to his conduct; and that the dismissal was fair. The claimant's age was not a factor in making that decision. The claimant has not established before us facts from which we could properly decide that he had suffered unlawful discrimination. Accordingly, his claim for age discrimination is dismissed.

Employment Judge Gaskell
6 November 2018