



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE BALOGUN

BETWEEN:

Miss S Bakulumpagi

Claimant

AND

Anchor Trust

Respondent

ON: 31 January 2018

APPEARANCES:

For the Claimant: In Person

For the Respondent: Mr Nathan Roberts, Counsel

RESERVED JUDGMENT

The claim of unfair dismissal fails and is dismissed.

REASONS

1. By a claim form presented on 26 September 2017, the Claimant contends that s/he was unfairly dismissed. The Respondent admits dismissal but denies that it was unfair. I heard oral evidence from the Claimant on her own behalf. The Respondent gave evidence through Miss Shelley Rabbitt, District Manager. The parties presented a joint bundle of documents.

2. It is for the Respondent to show that there was a potentially fair reason for dismissal and in this case it asserts that dismissal was by reason of conduct.
3. In conduct cases the relevant authority is the case of *British Home Stores v Burchell [1980] ICR 303*, which provides that the Tribunal must consider whether the Respondent held a genuine belief in the Claimant's guilt based on reasonable grounds and following a reasonable investigation.
4. Once that reason for dismissal is established, the Tribunal must have regard to the matters at section 98(4) of the Employment Rights Act 1996, that is; whether in all the circumstances of the case the Respondent acted reasonably or unreasonably in treating the conduct as sufficient reason for dismissing the employee having regard to equity and the substantial merits of the case.
5. I reaching my decision, I have reminded myself that it is not for me to substitute my view for that of the Respondent but only to consider whether or not the processes and the decision to dismiss fell within, what is known as, the "range of reasonable responses" open to an employer in such circumstances. The *range of reasonable responses* test applies to both the decision to dismiss and the procedure applied. *Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA*.

Findings of Fact

6. The Respondent is a not for profit organisation providing housing, care and support for people over 55.
7. The Claimant was employed by the Respondent between 17 July 2006 and 20 June 2017, latterly as a Night Team Leader at its Ridgemount Care Home (the Home). The home provides residential care for the elderly, providing specialised services for those with dementia, learning or physical disability or sensory impairment.
8. On 28 April 2017, the Claimant was suspended from work, on full pay, pending investigation into allegations of neglect of duty. Specifically, she was accused of failing to record and report a safeguarding issue involving a resident and failing to properly supervise her colleagues. [95-96].

9. The allegations arose out of an incident in the early hours of 8 April 2017. It is the Respondent's case that at around 01:45 on that day, a resident, suffering from dementia, who for confidentiality purposes shall be referred to as JH, left his bed unnoticed, made his way to the nurse's station in reception (which was unmanned) and proceeded to call 999. According to the call transcript from the Ambulance Service, JH was confused as to his whereabouts and was heard by the call operator wandering up and down the corridor shouting hello and knocking on doors but could not find anyone to assist him. Upon tracing the call, the Ambulance Service attended the Home but was unable to gain access for approximately 45 minutes, despite there being 6 members of staff on site. They therefore called the Fire Brigade. The Claimant was eventually alerted to their presence by another resident, PW (also suffering from dementia and who had also made her way to reception unnoticed) and she opened the door prior to the Fire Brigade forcing entry.
10. The Respondent contends that the Claimant did not formally report the incident and that it only became aware of the matter on 26 April when Surrey County Council raised it with Shelley Rabbitt, District Manager, at a quarterly contract meeting. As Night Manager, the Claimant was the most senior person on duty at the time and was the person responsible for reporting the incident. She told the tribunal that she reported it in the communication book and verbally to the day shift manager. However the Respondent contends that the communication book was an informal handover arrangement locally and not part of or replacement for the formal reporting procedures, which the Claimant would have been aware of.
11. The Respondent is legally obliged to report safeguarding incidents to the relevant authorities. To that end, it requires such incidents to be logged onto its computer system so that they can be audited by the correct chain of command. In this case it would have been Shelley Rabbitt, who was responsible for overseeing the Home, as well as 8 other of the Respondent's care homes across Surrey.
12. Each resident at the Home has a personal night care plan. JH had a habit of waking up during the night, wanting to eat or drink something. He had a known history of calling 999, albeit before he arrived at the Home, and his night care

plan stated that he needed to be checked hourly at night. Further, each resident has a daily record of the care provided to them. JH's daily record for 8 April 2017 made no mention of the events of that day or any aftercare received.

13. The investigation was carried out by Sean Robbie, Employee Relations Investigator. As part of the investigation, Mr Robbie interviewed the Claimant who said that one of the care assistants had been responsible for JH on the evening in question, that the doorbell to the Home was not working and that she had been busy assisting another care assistant with a resident and so could not hear the phone from her location. It was the Respondent's case that there was a portable cordless phone that the
14. The Home comprised 5 wings, 2 each on the ground and middle floor and one on the top floor. Each wing housed 5 residents. The Home was fully staffed on the night with 5 Care Assistants, one on each wing. The Care Assistants' role was to monitor the residents on their wing through the night and keep records. JH lived on the middle floor. They reported to the Claimant.
15. A review of the night duty check sheets by Sean Robbie appeared to show that 4 of the 5 care assistants in attendance on the night in question had made false entries and that one of them had left their unit unattended for 35 minutes. Stella Mangwa, Care Assistant, had recorded that JH was asleep at 02.18 when in fact he was in the corridor on the phone to emergency services. Her records also suggest that she inspected 6 residents' rooms between 2.17 and 2.18, which the Claimant conceded in evidence was insufficient time to perform proper checks. [146]. All the care assistants on duty that night were interviewed as part of the investigation. There was also a statement from the Ambulance Service [93-94]
16. On 7 June 2017, Sean Robbie produced his investigation report in which he concluded that there was sufficient evidence to support the allegations against the Claimant, and the separate allegations against the care assistants, and recommended that the matter proceed to a formal disciplinary hearing. [134]
17. On 9 June, the Respondent wrote to the Claimant inviting her to attend a disciplinary hearing in order to respond to the allegations. Enclosed with the invitation was a copy of the investigation report and appendices along with a

copy of the Respondent's disciplinary procedure. [127-128]

18. The disciplinary hearing took place on 20 June 2017 chaired by Shelley Rabbitt. At the end of the hearing, Ms Rabbitt informed the Claimant that based on the evidence, the allegations were upheld and that she was dismissed for gross misconduct with immediate effect. [240-242]
19. The Claimant appealed against her dismissal on the basis that the sanction of dismissal had been severe and disproportionate and that no account had been taken of her clean record and length of service. [243-246]. However, following an appeal hearing on 26 July, chaired by Andrea Keen, District Manager, the dismissal was upheld. [255-257]

Submissions

20. The parties made oral submissions which I have taken into account. In brief, the Respondent submitted that the reason for dismissal was conduct and that the investigation and sanction were well within the band of reasonableness. In the alternative, it submitted that the Claimant contributed 100% to her dismissal by conduct which was evidentially proved and reasonably believed. The Claimant submitted that the dismissal was unfair as she had worked for the Respondent for 11 years and had received no verbal or written warnings during that time. Also, that she had not been trained for her new role and that other factors had not been considered.

Conclusions

21. I am satisfied that the Respondent had a reasonable belief that the Claimant was guilty of the alleged misconduct. In reaching that belief, the Respondent relied on the investigation report and the Claimant's account given at the disciplinary and appeal hearings. The incident involving JH was largely admitted by the Claimant. Further, she admitted that she had not formally reported the matter. Although the Claimant claimed that she had recorded the matter in the communication book, the Respondent did not consider this sufficient and the Claimant conceded in evidence that this was not an official log but an informal method used locally by team leaders to leave notes for each other. I have seen the Claimant's entry in that book and it provides very limited information about the event; simply referring to the fact that JH dialled 999. It makes no reference to JH being away from his bed and in the corridor for 45 minutes without

anyone's knowledge, which in the Respondent's view, was the main safeguarding issue. [83]

22. In terms of culpability for the incident, the Claimant made a number of points, all of which were rejected by the Respondent. She claimed that the door bell to the home was not working and that she had been out of range of the phone because she had been dealing with an incident with another resident. However, it was the Respondent's case that there were portable phones in all of their homes and that it was standard practice for team leaders to carry one around when away from the main office so that staff and others could get hold of them. The Claimant claimed in evidence that she did not know about the cordless phones until after the incident and that she had not been trained on how to use them. I considered that response lacking in credibility, and the Respondent was entitled to reject it. The Claimant also claimed that she had not received sufficient training. The Claimant had been a team leader for a year before the incident and a care assistant with the Respondent for just under 11 years before that. Further, her CV showed that she had received training in care provision and safeguarding and had a Bachelor of Arts in Public Health and Social Care. Her claim that she was not sufficiently trained to deal with the events that had occurred did not stand up to scrutiny and the Respondent was entitled to reject it.
23. The Claimant blamed the care assistants for the events that had occurred, claiming that they were not properly trained and had let her down by not carrying out proper checks on the residents when they should have and for their actions in falsifying the records. Although the care assistants' conduct was dealt with separately by the Respondent, Ms Rabbitt took the view that the Claimant was ultimately responsible for what occurred. It was her role to supervise the staff on shift (as confirmed by the Team Leader Role Profile) and she conceded in evidence that she was responsible for the performance of the team on shift. That included ensuring that inspections were carried out and that records were completed accurately. The Claimant conceded that she had not check the records on the night and it is common ground that the care assistants did not carry out inspections as they should have, neither did they complete the records accurately.

24. I am satisfied that the Respondent's investigation was reasonable and within ACAS guidelines. It was thorough and involved interviews with relevant individuals, including the Claimant, who was given every opportunity to defend herself against the allegations and did so. I heard evidence from the dismissing officer, who gave reasoned explanations for her conclusions, which I am satisfied, were reached in good faith. I find, based on the Respondent's investigation that it was entitled to reach the conclusions it did on the evidence before it.

25. I am also satisfied that the Respondent was entitled to conclude that the Claimant was guilty of gross misconduct. This was quite clearly a serious safeguarding issue involving a vulnerable person who was put at risk because of the Claimant's neglect. This was compounded by the Claimant's failure to report the matter as required by the Respondent's procedures, of which she was aware. Safeguarding issues relating to care homes for the elderly have been in the public spotlight in recent years following a number of scandals in the sector. The Respondent has legal obligations and reporting requirements in relation to the care it provides to the elderly and the Claimant's actions put it at risk of serious reputational damage.

26. The Claimant raised by way of mitigation her length of service and hitherto clean disciplinary record. The Respondent considered these but weighed against them the Claimant's failure to grasp the seriousness of the incident and her failure to accept responsibility for it - blaming her staff and lack of training. Ms Rabbitt said that she was not confident that if the Claimant remained employed that she would ensure residents safety and mitigate risks to them. I noted that during her evidence, the Claimant still would not accept that a person with dementia wandering around the unit for 45 minutes unchecked was a safeguarding issue or that JH was at risk, which for somebody with her experience and qualifications was remarkable. I find that the Respondent was entitled to conclude that the relationship of trust and confidence had irretrievably broken down.

27. Taking all of the above matters into account, I am satisfied that the sanction of dismissal was one which the Respondent was entitled to impose and that in all the circumstances, the Claimant's dismissal was fair.

Judgment

28. The claim of unfair dismissal fails.

Employment Judge Balogun
Date: 16 March 2018