



EMPLOYMENT TRIBUNALS

Claimant: Mr P Williams

Respondent: Yorkshire Water Services Limited

HELD at Leeds by CVP

ON: 10 April 2024

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Mr C Maclean, Solicitor

JUDGMENT

1. The proper title of the respondent is Yorkshire Water Services Limited.
2. The claimant's claim for unfair dismissal is hereby dismissed.

REASONS

1. Claims

- 1.1. Unfair dismissal.

2. Issues

The issues in this case relate to:

- 2.1. What was the reason for dismissal?
- 2.2. Did the respondent act reasonably in treating the reason as a reason for dismissal?

3. **The law**

The Tribunal has to have regard to the following provisions of the law:

3.1. **Section 98(1) Employment Relations Act 1996**

“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 - ...

(b) ... that it is .. some other substantial reason of a kind such as to justify dismissal of an employee holding the position which the employee held.”

3.2. **Section 98(4) Employment Relations Act 1996**

“Where there 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.”

4. **Matters occurring within the hearing**

The witness statements and the bundle contained matters relating to possible settlement, including without prejudice discussions as between the claimant and the respondent, and I informed the parties at the outset that such evidence would not be admissible as it was privileged.

5. **Facts**

The Tribunal, having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities):

5.1. The claimant was an instrumentation control and automatic (ICA) technician in the North East team of the respondent at the material time. He was employed from 17 May 2021 until 6 September 2023.

5.2. His line manager, Ben Walker, who gave evidence before us, became aware that the claimant had a criminal conviction. This related to possession of three indecent photographs and one extreme photograph, in respect of which the claimant was convicted in September 2022. Mr Walker learnt of this at the time of his appointment as manager of the North East team in January 2023.

5.3. Mr Walker discovered that members of his team were not prepared to attend a team meeting which the claimant himself was due to attend in March 2023 because of his above conviction.

5.4. Although in breach of his contract of employment the claimant failed to notify the respondent at the time of his conviction of it, in due course the matter came in the hands of the respondent’s human resources department and efforts were made by the respondent to try to safeguard the claimant’s position.

- 5.5. Apart from the failure by staff to wish to attend the above meeting there was unrest in the team and over a period the respondent received 10 letters from the team confirming this unrest, principally in the form of unwillingness to work with the claimant.
- 5.6. Mr Walker recognised the importance of getting the team together but realised with the claimant's presence this could not be done.
- 5.7. Some of the claimant's colleagues even indicated that if the claimant stayed in the team they would leave the employment of the respondent.
- 5.8. Mr Walker tried to change the minds of the relevant employees but failed.
- 5.9. The GMB trade union became involved and their action reflected the outcome of a meeting with members and the meeting reflected the same views as had the individual members displayed. We heard about this from Mr Brett Marshall, the branch secretary.
- 5.10. Whilst the claimant worked alone on occasions there were also occasions when he had to work with others, not only because of the nature of the job but also because he needed to aspire from his level, level 2, upwards. To do this he needed the assistance of a mentor. The Tribunal finds that this aspiration and the need for a mentor was part of an employee's performance plan, which plan also had provision for performance reviews should there be failure.
- 5.11. At the hearing the claimant laid great stress that he was a lone worker. The Tribunal finds that the reason for this was that if a lone worker he would not need to work with any objecting colleagues which would mean that the claimant could carry on his work. The Tribunal further finds that this was simply not the case and although the claimant did work alone on occasions he also needed to work with others at other times.
- 5.12. Indeed Mr Walker stated that the claimant was only being deployed at low level maintenance tasks to accommodate his lack of skills/qualifications and that the claimant needed to go from level 2 to levels 3, 4 and 5.
- 5.13. The identification of a mentor was essential to allow the claimant to progress in this way. Mr Walker was unable in the circumstances to identify anyone in the team suitable for the task. Mr Walker looked to the North West team for a mentor but again he met similar resistance.
- 5.14. There were also issues of the claimant being on the stand-in "rota" due to his level of experience and skill, although the Tribunal finds that there were stand-in jobs that the claimant could do, for this he needed to be a duty holder in the claimant's own right, which he was not.
- 5.15. The fact of the claimant's conviction was out in the open and Mr Walker even received a letter from a member of the public complaining about the respondent employing the claimant. Graffiti also appeared about the claimant at one of their sewage treatment works.
- 5.16. The respondent was also concerned about the claimant's personal safety in his role.
- 5.17. The time came in or about June 2023 when matters had to be regularised and the claimant was suspended on full pay and was invited to a meeting on 9 June 2023. The purpose of the meeting was to discuss potential

solutions to support the claimant being able to remain in employment but making it clear that the claimant was at risk of dismissal.

- 5.18. The possibility of a transfer to the North West was investigated and subsequently discounted because colleagues there would not work with the claimant.
- 5.19. The possibility of a fork lift truck driving job was looked at because the claimant had that skill but the proposed venue was turned down by the claimant as being too far away from his home. In any case there was no such vacancy at the time.
- 5.20. On 11 June 2023 the claimant went into grievance but that does not form part of this decision. For the record the grievance and its appeal were turned down.
- 5.21. On 25 August 2023 the meeting of 9 June 2023 was reconvened and re-scheduled for 6 September 2023. At the meeting amongst other things there was discussed team members' concerns, the claimant's personal safety and the claimant's personal training/development.
- 5.22. Mr Walker expressed the view that all available options to retain the claimant's employment were exhausted and that as a last resort the claimant would be dismissed.
- 5.23. I asked the claimant what the respondent could have done other than dismiss him. He said that the respondent should have sat down with his colleagues to discuss the matter. The claimant did not know however whether or not this had happened. Mr Walker said it had. The claimant also accepted that to begin with the respondent did try to help the claimant save his job. He fairly said that one could not "knock" Yorkshire Water.
- 5.24. The claimant appealed against his dismissal. On 22 September 2023 this was heard by Dave Wilson who gave evidence before us. The claimant's appeal was dismissed.

6. **Determination of the Issues**

After listening to the factual and legal submissions made by and on behalf of the respective parties:

- 6.1. Has the respondent discharged the burden on it to prove that some other substantial reason was the principal reason for dismissal?
- 6.2. The respondent does not seek to show any other reason for dismissal. The claimant was dismissed principally because colleagues would not work with him because of his conviction. That made it difficult or impossible for the respondent to run the North East team with the claimant present in it.
- 6.3. The claimant maintains that he could work alone and therefore did not need to work with other team members. That does not seem to work. The claimant was insufficiently qualified and needed regularly to work with others and he needed to aspire in his career from level 2 to levels 3, 4 and 5. For that the claimant needed a mentor. There was not one available.
- 6.4. None of this worked for the claimant or the respondent and the respondent tried to find the claimant something else to do which also did not work. In the circumstances the Tribunal finds that the respondent had

no alternative than to dismiss the claimant and that the reason for dismissal was some other substantial reason.

- 6.5. On the question of reasonableness this was a difficult case for the respondent. The respondent supported the claimant initially and then the respondent held properly convened meetings including disciplinary and appeal meetings. The Tribunal finds that the dismissal was fair, the respondent treating some other substantial reason as a sufficient reason for dismissing the claimant. Therefore, the respondent has complied with section 98(4) Employment Relations Act 1996 in full and the claimant's claim for unfair dismissal is hereby dismissed.

Employment Judge Shulman

Date: 24 April 2024

Sent to the parties on:0

25 April 2024

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