



EMPLOYMENT TRIBUNALS

Claimant: Mr P Beswick

Respondent: First Pioneer Bus Limited

HELD AT: Manchester

ON: 6 and 7 February 2017

BEFORE: Employment Judge Sherratt

REPRESENTATION:

Claimant: Litigant in person

Respondent: Mr M Hutchinson, Solicitor

JUDGMENT having been sent to the parties on 8 February 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The judgment of the Tribunal is that the claimant was fairly dismissed for a reason related to his conduct.
2. The respondent is part of the First Group, a large employer in the travel and transport industry. The claimant was trained by the respondent from January 2013 to be a driver with a passenger carrying vehicle driving licence commonly known as a PCV. He was employed to drive the respondent's service buses around fixed routes in an area of Greater Manchester. The claimant was dismissed with notice after going through various stages of the respondent's disciplinary process and he alleges that the dismissal was unfair.
3. The claimant has given evidence to me on his own behalf and been cross examined. The respondent has called three witnesses who have been cross examined by the claimant. The first was Michaela Bracegirdle who was involved in his first warning and who made the decision to dismiss the claimant; the second was Stefan Ralph who heard the first appeal against dismissal and the third was Ian Hulse who heard the second appeal against the dismissal.
4. It is apparent from their witness statements that all of the respondent's witnesses started with the respondent as drivers and hold PCV licences and so unlike many managers in industry nowadays they are aware of how to do the job in

question and the requirements and difficulties experienced by bus drivers on a day-to-day basis.

5. The claimant, having been trained to the respondent's standard, was checked periodically. It is apparent from the bundle that he was given an on road assessment on 30 September 2013 when he was found to drive to a good standard giving passengers a smooth pleasant journey and he dealt with them in a pleasant manner. There were no problems to report. He was observed again on 20 August 2014. His overall driving standard was excellent as was his customer care. He was subsequently provided with a written document on the basis of a Drive Green score. He was said to indulge in harsh or late braking: the suggestion was he should try planning further in advance and reducing acceleration sooner which would give him a better green score in the future. According to Mr Beswick this was a paper process only and did not involve anyone observing him or talking to him about green driving.

6. The claimant was observed again on 8 May 2015. He was found to be extremely pleasant and polite dealing with his passengers. He drove at a good steady and comfortable pace, taking everything into consideration. He was polite towards other road users and met oncoming traffic with confidence. He made good use of mirrors and handbrake and did not rev the engine unnecessarily whilst stationary. The drive was very good.

7. On all of these reports there is nothing that should cause the respondent's managers to have any concern whatsoever as to the standards of driving carried out by Mr Beswick using their vehicles.

8. The claimant attended a seven hour course on 12 May 2015 when he was trained on the Smith system which appears to be a form of training for people driving buses. He successfully completed that course.

9. The claimant, like all employees, was the subject of the respondent's disciplinary policy that had been agreed with the trade union. The policy had as its primary aim to correct rather than to penalise with the purpose of improving conduct or performance so that the required standards are achieved and maintained but disciplinary action may be taken where the required standard or improvement is not made. All bus drivers, it said, were required to achieve and maintain standards of performance and conduct compatible with their employment.

10. The procedure goes on to say that all separately identified breaches of discipline will result in separate progressive disciplinary action except in cases of serious or gross misconduct. The purpose of the action was primarily corrective, designed to encourage all employees to achieve and maintain standards compatible with employment by the company. An employee who is regarded as being unable or unwilling despite previous corrective measures to meet those requires will be, as a last resort, subject to dismissal. The appeals procedure consists of one right of appeal for sanctions up to and including a final written warning and two rights of appeal against dismissal. As a matter of comment it is unusual for a disciplinary procedure to allow two rights of appeal against dismissal. Normally there is only one such right.

11. Within the process it says that the first sanction can be an informal warning; then it moves on to a formal written warning which will expire after 12 months; then a final written warning which will last for normally 12 months. The employee, it says,

will be informed of the misdemeanour and given details of the improvements required. It will warn of the consequences of any failure to improve or any further unsatisfactory conduct or performance and will confirm the right of appeal.

12. On 19 May 2015 the vehicle driven by the claimant collided with a stationary object next to a road. He was invited to a formal hearing on 26 May 2015 with Mrs Bracegirdle. Before reaching any conclusion she adjourned the meeting and drove a similar vehicle to that used by the claimant when he had the accident and reproduced the turn that the claimant was making when his vehicle came into contact with the stationary object.

13. The claimant met with Mrs Bracegirdle again on 10 June when she gave the claimant a formal written warning for an avoidable collision. The warning would be disregarded after 12 months but if there was any recurrence of this type of offence it was noted this may lead to more serious action being action which could lead to dismissal. In Mrs Bracegirdle's note of the hearing she says that she would like the claimant to have some refresher training for spatial awareness.

14. The claimant did not appeal against this warning, although the right of appeal was confirmed in the warning letter.

15. On 2 October 2015 the claimant braked harshly resulting in a passenger falling from her seat and becoming injured. The claimant was suspended and invited to an interview on 5 October 2015. Mrs Bracegirdle conducted the interview which was adjourned on 5 October and continued on 6 October. The claimant was accompanied by his trade union representative.

16. By a letter dated 6 October 2015 the claimant was invited to a formal interview to face two allegations of gross misconduct. The first related to an alleged serious failure to observe safety rules, policies and procedures affecting himself, other employees or members of the public (including but not limited to driving standards and procedures) and the second allegation was contravention of the mobile phone policy.

17. The disciplinary hearing on Friday 9 October 2015 was heard by Mr B Slater, Team Performance Manager at the Oldham depot. The claimant was accompanied by a Unite representative.

18. On Friday 9 October 2015 the claimant was issued with a final written warning and one day of remedial training. Mr Slater had concluded that in respect of the driving the claimant was guilty of misconduct rather than gross misconduct and the allegation concerning breach of the mobile phone policy was not upheld.

19. On 16 October 2015 the claimant appealed against the final written warning but as he was absent due to sickness the hearing did not take place until 22 December 2015.

20. The claimant went on a training day on 21 December. He went out driving with Mr Kevin Gee an instructor. According to Mr Gee's written report the claimant showed poor observation, reacted late to a vehicle turning right resulting in heavy braking, mirrors were not used efficiently enough and he approached traffic lights at an excessive speed. There was a discussion during which the claimant agreed his standards had dropped but he should and could do better. After this discussion the

claimant's driving for Mr Gee improved, his awareness of other road users improved, mirrors used more efficiently, and there was a safer and better journey and a better approach speed to traffic lights. At the end of the day at the de-briefing it was noted that the claimant found information and corrective tuition useful and constructive. Mr Gee's note was to the effect that the claimant needed to understand the need to be aware of surroundings at all times, avoiding any distractions, and anticipating actions of other road users. So after one day the claimant was returned to duty with some useful and helpful guidance and advice from one of the trainers.

21. The claimant's appeal against the final written warning was heard by Carl Oliver, Operations Manager, at Tameside depot on 22 December 2015. The claimant was present with two trade union representatives. Having heard representations made on behalf of the claimant and reviewed the CCTV evidence Mr Oliver upheld the final warning. He felt that Mr Slater had considered all of the information available to him and he took into account the fact that the claimant already had a formal warning on his record for poor driving standards. With the incident in question being due to careless driving the issue of a final written warning was in his view the only possible next stage, making Mr Slater's decision correct.

22. There was a further incident which resulted in a formal disciplinary interview on Wednesday 24 February at Tameside, again with Michaela Bracegirdle. She decided that there had been a further incident of misconduct involving poor driving standards, a blameworthy accident and careless driving. She decided that it was appropriate to dismiss the claimant with notice. This was because he was already on a final written warning which had included the advice to the claimant that he might be liable for dismissal in the event of a further incident during the currency of that warning.

23. The claimant exercised his first right of appeal which was dealt with by Stefan Ralph, Operations Manager at Oldham depot. He upheld the decision made by Mrs Bracegirdle and the claimant then exercised his right to appeal again on the ground of leniency. That appeal was to Ian Hulse, General Manager Oldham/Tameside depots. Mr Hulse decided that the reason for dismissal was valid and that the dismissal should be upheld. He said he had reviewed all of the notes before coming to the decision that he said he took carefully and objectively looking at all of the information available to him. The notes of the appeal hearings do not include any reference by the claimant to him not having had the training first suggested by Mrs Bracegirdle on 10 June 2015 and by Mr Slater on 9 October 2015.

24. The claimant put in a grievance against Michaela Bracegirdle just before she took the decision to dismiss him. She confirmed in evidence that she was not aware of the existence of that grievance when she made the decision to dismiss the claimant on notice. The grievance was subsequently heard and some parts of it were upheld and the view of higher management was that Mrs Bracegirdle could have behaved differently, possibly better, towards the claimant, and they were going to look at this as a management issue.

25. Both parties have made submissions to me in writing and each has had the opportunity to supplement their submissions orally and to make comments upon the submissions made by the other party.

26. Looking at the submissions on behalf of the respondent first, in simple terms dismissal was for a reason relating to the claimant's conduct. That was a potentially

fair reason. When reaching that decision to dismiss the respondent had followed through its own disciplinary process agreed with the trade union. The claimant had had a first warning, a final warning and then was dismissed with notice for a further offence of misconduct in the currency of the final written warning. It is not, in the submission of the respondent, for the Tribunal to substitute its view for those of the respondent's managers who have particular experience in the bus industry knowing the need for the safety of the bus and passengers, which is obviously paramount in an industry where the purpose of the job is safely to carry passengers throughout the Greater Manchester area.

27. The claimant's submissions were that in each of the incidents where there were problems he was seeking to avoid a more serious collision in each case. It was the unpredictable actions of other road users that had a significant involvement in the incidents that led to him being disciplined and later dismissed. He followed at all times the Smith principles to which he had been trained and refreshed in 2015. He submitted that the respondent failed to provide him with support, in particular that recommended by Mrs Bracegirdle on 12 June 2015 and Mr Slater on 9 October 2015; that did not come until 21 December 2015 after the second incident, and there was no consideration given by those disciplining him in relation to the second incident that he had not yet received further training. He believed Mrs Bracegirdle did not like him. He believed she should have acted differently towards him. That was the subject of the grievance which was successful, but the grievance was not dealt with until after the claimant had been dismissed. The claimant was of the firm view that the company should have provided him with more training to improve and maintain his driving standards. Remedial action should have been taken sooner and/or possibly further remedial action should have been taken in lieu of the decision to dismiss. The respondent, he says, could and should have applied alternative and/or lesser penalties which would have included further training.

The Law

28. The relevant law in this case is to be found in section 98 of the Employment Rights Act 1996 which provides that:

- “(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.
- (3) In subsection (2)(a) –
 - (a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
 - (b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.
- (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."

29. In simple terms it is for the employer to satisfy the Tribunal as to the reason for the dismissal and then it is for me to be satisfied that the dismissal was in all the circumstances fair.

Conclusions

30. I am satisfied that the reason for the claimant's dismissal was one related to his conduct and such a reason can be a potentially fair reason to dismiss.

31. I move on to consider was the dismissal fair? The claimant's training and support as a driver has been detailed above in respect of all matters prior to the incidents that led to the first warning, the final warning and then the dismissal. The claimant might have expected some further retraining after the first disciplinary with Mrs Bracegirdle but it did not happen. Whether had he had it it would have made any difference to the number of subsequent incidents is speculation, but the respondent appears to have been satisfied that the claimant was not a specific danger to other road users because it let him back driving its buses notwithstanding the warnings given to him and before any retraining was provided.

32. I did not find any evidence to support the claimant's contention that he had suggested in the second hearing that the lack of remedial training was a potential thing that should be held in his favour before a decision was made to give a final written warning. I have not found any notice of that in his appeal against the second warning, nor in the documentation emanating from the person who dealt with the appeal.

33. The claimant's complaints regarding Mrs Bracegirdle were accepted by the company but none of those complaints seem to have related to his driving. His first written warning given by her was not appealed. The dismissal appeal was considered by two separate managers who both agreed that her dismissal decision was correct. The final warning was not given by Mrs Bracegirdle but by a completely separate manager and was subject to an appeal that was turned down.

34. The claimant suggests that the respondent's witnesses could have considered other matters than the dismissal, but it is apparent from Mrs Bracegirdle's evidence, in particular her paragraph 79, why she decided to dismiss the claimant during the currency of the final written warning, rather than to invoke a lesser penalty, and those who considered her decision by way of appeal agreed with her rationale.

35. The claimant, it seems to me, has been the subject of fair hearings. He was aware of the accusation against him. The evidence against him in the main seems to have been CCTV evidence from on board the bus that was looked at during his various hearings. He was always represented by a trade union official and the evidence appears to have been considered by the dismissing officers before they reached their conclusions.

36. It seems to me that at each stage in the disciplinary process the conclusions reached by the disciplining officers were ones that they were entitled to reach on the basis of the information before them, therefore they were each within the range of reasonable responses. The outcomes of the appeals that the claimant put forward, it seems to me also were within the range of reasonable responses.

37. Looking overall at the process and the outcome it seems to me that this employer operating a public service with buses was entitled to reach the conclusion that the driving of Mr Beswick was such that he no longer should be employed by the company, and that in all the circumstances the dismissal was a fair one.

Employment Judge Sherratt

20 February 2017

REASONS SENT TO THE PARTIES ON

22 February 2017

FOR THE TRIBUNAL OFFICE