



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs M Martin

**Respondent:** Edward & Blake Ltd

**HEARD AT:** NORWICH ET                      **ON:** 21<sup>st</sup> & 22<sup>nd</sup> June 2017

**BEFORE:** Employment Judge Postle

## REPRESENTATION

**For the Claimant:** Mr K Martin, Husband.

**For the Respondent:** Mr O Brabbins, Solicitor.

## JUDGMENT

1. The Claimant was not unfairly dismissed.

## REASONS

1. The Claimant brings a claim to the Tribunal on the grounds that she was unfairly dismissed particularly that there were procedural flaws, and that the decision to dismiss was substantially unfair.
2. The Respondents resist the claim and advance the reasons for dismissal as gross misconduct.
3. In the course of this Tribunal we have heard evidence from Mrs Crawford who investigated the allegations and was the note taker at the Disciplinary Hearing and Mrs Wilford who conducted the Disciplinary Hearing.

4. The Claimant gave evidence and called a Mrs Bevan, a previous temporary worker at the Respondents. All the witnesses gave their evidence through prepared witness statements and the Tribunal has the benefit of a bundle of documents consisting of 224 pages.
5. The facts of this case show that the Respondent is a contract catering company operating across the Education Business and Industrial Sectors. The Claimant was employed as a Chef Manager working within a school kitchen, and outside school terms the Claimant worked as a mobile chef at various sites and was provided with a company car for that purpose.
6. The Respondent's Disciplinary Procedure and its Terms and Conditions provide that bullying is an act of gross misconduct and you see that at page 38. There is also a Bullying and Harassment Policy which sets out clear guidelines to employees about how they should conduct themselves within the workplace and we see that at page 95.
7. In March 2016 Caroline Blake one of the Respondent's Directors attended the school site at Thorpe where the Claimant was based and during that visit two employees apparently broke down in tears, were upset upon being asked what the matter was, they complained to Miss Blake that they had been subjected to bullying by the Claimant, and we see Miss Blake's note of that attendance at page 103. She was sufficiently concerned and passed the matter to Mrs Crawford who was then the Respondent's HR Manager to investigate these serious allegations.
8. The Claimant was suspended on the 26<sup>th</sup> March 2016 and the allegations were investigated, a number of witnesses were interviewed and complained that the Claimant had subjected them to diverse shouting, foul language, abuse, intimidation and bullying, throwing things around and swearing.
9. At the conclusion of the investigation the Respondents decided to instigate a formal disciplinary procedure and the Claimant was invited to a Disciplinary Hearing to determine the allegations that she had demonstrated bullying behaviour by subjecting her team in the kitchen to persistent offensive and aggressive behaviour and language. The Claimant at that stage was given a copy of the evidence that had been obtained and that was Caroline Blake's note of her visit to the school and then Whitbread & Goodwin's statements. The letter inviting the Claimant to the Disciplinary Hearing is at page 107, she was informed of her right to be accompanied and a warning that a possible outcome of the hearing was dismissal.
10. Subsequent to that a number of other interviews took place, and these were with Matthew Carnell (page 115), Roxy Denham (page 115), Sharon Edwards (page 115), Sarah Kelly (page 115A), Elaine Rowles (page 115A), Stewart George (page 116), Briony King (page 116),

Mike Wilden (page 116), Lynn Stebbards (117), Scott Elliott (Page 118) and Gillian Dereham (page 118).

11. There was a theme from a number of those witnesses, particularly Denham, Edwards, Kelly, Wilden, Elliott and Dereham that there was bullying, offensive language and the like and in particular we see various allegations being made ranging from “it was pretty hostile working in the kitchens”, one other witness said “I have witnessed something but I’m not going to say who I witnessed it from”. Sarah Kelly says “it wasn’t very nice working in the kitchens, I have witnessed the Claimant using the fuck word, the cunt word and calling people fucking wankers and behind their backs knowing they can hear”. We also have Mike Wilden saying “he hadn’t been working there for a while, not the happiest place, it’s tense, couldn’t put my finger on it”. We then have Lynn Stebbards saying fairly neutral things I think about what went on in the kitchen, and Scott Elliott saying that he’d heard that Monica was strict and swears a lot. Gillian Dereham saying “the reason I left was the Claimant. I’d had enough of the language and swearing in the kitchen.” There is a general theme that there was offensive, intimidating and bullying behaviour going on. It is true that some of them didn’t see or hear anything as well but they were the minority.
12. The Disciplinary Hearing was held on the 12<sup>th</sup> April, it was Chaired by Mrs Wilford the Claimant’s then General Manager. The Respondents allowed the Claimant to be accompanied by her husband Mr Martin although this is not usually the Respondent’s policy, normally it would be a Trade Union representative or a colleague.
13. At the Disciplinary Hearing the Claimant was represented by her husband, it is clear the Claimant was given a reasonable opportunity to state her case, ask questions and present what she wanted to say. It’s clear that it was a lengthy hearing lasting approximately 2 hours, the Claimant read an open statement upon which she largely based her defence. Her defence was that the witnesses were lying, she claimed that particularly the two witnesses Beverly Whitbread and Liz Goodwin were making false allegations and were effectively conspiring together with others to get the Claimant removed from her post. It’s clear that during the Disciplinary Hearing the Claimant focused on Messers Whitbread and Goodwin being what she considered the instigators and really the whole thing was a conspiracy. Effectively the Claimant’s denial that any of this behaviour as indicated by the witnesses had occurred.
14. Now the Claimant had a number of questions she wanted to put to each of the witnesses. Most of those questions she wanted to put to the witnesses were considered irrelevant by the Respondents and the reason for that, and with some justification was that the Claimant wanted to ask the witnesses whether she had been nice to them bought them chocolates, promoted them or praised them. The Respondents viewed that as irrelevant, quite rightly to the issues that they had to determine,

and that is whether the Claimant had in fact exhibited a bullying intimidating behaviour and used foul and abusive language. The Claimant also wanted the Respondents to look over some 800 text messages. The Claimant wanted further questions put to these witnesses, and effectively to cross examine them over these text messages. She wanted the Disciplinary Hearing adjourned for a lengthy period of time so these could be considered. The Respondents again considered the majority of the questions were irrelevant rightly to the issues to be determined, and felt it was disproportionate. However, Mrs Wilford did adjourn the Disciplinary Hearing to conduct further investigations with the individuals in order to ask some of the questions posed by the Claimant that were relevant to the allegations, and also to test Messers Whitbread and Goodwin's evidence particularly as the Claimant was advancing her defence that they were effectively lying, coercing others and the whole thing was a conspiracy. Mrs Wilford made it clear that the Disciplinary Hearing would be adjourned for a short while to carry out these further investigations.

15. Mrs Wilford did indeed carry out further investigations and what she did is to phone witnesses to avoid any collaboration or pre-warning, she decided to phone them and speak to four of the witnesses I think it was including Goodwin and Whitbread and to test their evidence and see whether in her view their had been some form of collusion. And I repeat without pre-warning them so that they did not have a chance to effectively get their stories straight. It is true that Mrs Wilford found those witnesses seemed genuinely nervous and concerned about potential ramifications about how the Claimant might treat them if they were to come forward. Mrs Wilford found there was a reticence by these witnesses. What she did find also was that the witnesses raised additional examples of the Claimant's behaviour but nevertheless decided not to raise them as they had not been originally put to the Claimant.
16. Mrs Wilford reconvened the Disciplinary Hearing on the 15<sup>th</sup> April having made her own notes to ensure that she covered all the matters, and we see those at pages 164-165. At that reconvened Disciplinary Hearing I am satisfied that she explained to the Claimant the steps that she had taken in the intervening period, and the reason why she hadn't asked all the scripted questions or read all the text messages. Following that the Claimant was asked if she had anything further to add and Mrs Wilford took the view that given what had been said by a number of witnesses that she didn't believe in some way the witnesses had colluded or conspired to make this up. She believed that the appropriate sanction was to dismiss the Claimant for gross misconduct and this was after she considered the Claimant's length of service and her previous seemingly unblemished disciplinary record. What she believed was that the behaviour of the Claimant however long she'd been there was unacceptable in the workplace and it was clear that a majority of the witnesses interviewed there was a theme of bullying and harassment, and to repeat that was not acceptable. She confirmed her decision to

dismiss the Claimant by letter of dismissal and we see that at page 169 and that sets out the Claimant's right of Appeal.

17. The Claimant subsequently appeals by letter of the 25<sup>th</sup> April and we see that at page 172 and she says her appeal is based on the grounds that she was not allowed to present the whole of her evidence in her defence. She then elaborates on that and believes at that stage, "that it was appropriate to say that she would not answer any further questions as she has set out her reasons clearly in her letter". That was duly acknowledged and given the fact that the Claimant had raised concerns in the manner in which she believed the Disciplinary had been conducted in her view it wasn't fair, the Respondents instead of following the Appeal by way of just a review of the sanction indicated that if the Claimant thought she had not really been able to put all the evidence before the Respondents they would conduct a re-hearing. The Claimant mistook that to believe that that was some form of admission by the Respondents that they believed that the decision or the process was unfair, clearly that is a misapprehension by the Claimant. Ultimately for reasons best known to the Claimant or indeed her husband they decided not to engage in the Appeal process and that was their decision.
18. Dealing with the Law, Section 98(2) of the Employment Rights Act 1996 sets out a number of potentially fair reasons to dismiss. One of those is of course conduct, that is not the end of the matter, one then has to have regard in dealing with the question of whether it is fair or unfair by considering the matters set out in Section 98(4). And in considering Section 98(4) regard should be had to that well trodden case and the principles laid down on *British Home Stores v Burchell [1980] ICR 303* and, there is a three fold test and it is quite simply this;

*The Employer must show that it believed the employee was guilty of misconduct, it had in mind reasonable grounds upon which to sustain that belief and at the stage at which that belief was formed on those grounds it had carried out as much investigation into the matter as was reasonable in the circumstances. An investigation has to be reasonable, it does not have to be a counsel of perfection, it is not the sort of investigation you would expect to find in a criminal prosecution.*

19. What all of that means is that the Employer need not have conclusive direct proof of the employee's misconduct, only a genuine and reasonable belief. And just dealing with the question of sanction, i.e. whether it's within the band of a reasonable response of a reasonable employer. What one has to look at is across the spectrum of reasonable employer's sanctions some would dismiss and some would impose a sanction short of dismissal. If that is so then the dismissal falls within the band and it is fair. The dismissal will only be unfair if dismissal is a sanction outside that spectrum that no reasonable employer would have dismissed the employee for the employer's reasons.

20. So my conclusions here are quite simply this, looking at the investigation there clearly was a thorough and reasonable investigation. Information came to light from Caroline Blake, she passed it to Mrs Crawford, she interviewed initially again Messers Whitbread and Goodwin, subsequent to that she interviews a number, a considerable number of employees as referred to above, all of that information was passed to the Claimant before the Disciplinary Hearing, what else was the employer expected to investigate. Indeed when matters were raised by the Claimant which were irrelevant at the Disciplinary Hearing Mrs Wilford quite rightly and properly adjourned the Disciplinary Hearing to make further investigations. I am satisfied in this case there was a reasonable investigation.
21. Turning to the question of did Mrs Wilford believe the employee was guilty of the conduct complained of? She had it is true overwhelming evidence that the Claimant appeared to conduct herself in the kitchens in a thoroughly distasteful manner which was intimidating, using abusive and foul language towards employees to such an extent that some had left or found the atmosphere in the kitchen horrible to put not too finer point on it. It is true some of the witness statements were neutral, but on the balance of probabilities is clear that Mrs Wilford on the evidence before her believed the employee was guilty of misconduct. She had clearly reasonable grounds upon which to sustain that belief for the reasons I've already advanced, and I repeat at that stage she'd formed that belief there had been as much investigation as was reasonable.
22. Clearly given the conduct complained of the sanction of dismissal was a sanction the Respondent could rightly impose being clearly within the bands of a reasonable response of a reasonable employer.
23. Just dealing with a couple of points that arise on the procedure, much has been made of the fact that the Disciplinary Notes weren't signed – that may have been unfortunate, that may have come about as a result of the investigators holiday. What I am satisfied is that had there been an Appeal the notes of the Disciplinary Hearing would have been sent to the Claimant at that stage. So I am not satisfied in any way the procedure was flawed and even if there was some minor flaw this would not have made the dismissal unfair.

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Employment Judge Postle, Norwich.  
Date: 10 July 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS