



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

MR GARETH BRADSHAW

AND

Respondent

SECURITAS SECURITY
SERVICES (UK) LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: CARDIFF ON: 28TH / 29TH JANUARY 2019

EMPLOYMENT JUDGE MR P CADNEY

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MS J YOUNG

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim of unfair dismissal is not well founded and is dismissed.

Reasons

1. By this claim the claimant brings a claim of unfair dismissal. He was employed as a security officer by the respondent between 19th January 2017 and 23rd April 2018. As he does not have two years' service the tribunal has no jurisdiction in relation to any claim for "ordinary" unfair dismissal. However the claimant contends that the true reason for his dismissal is that he lodged a grievance asserting the failure of the respondent to allow him to take rest breaks pursuant time the Working Time Regulations which, if true, arguably brings him with in the provisions of section 100 ERA 1996 or section 104 ERA1996, neither of which has any length of service requirement.

2. The respondent contends that the grievance played no part in the decision to dismiss which was on the grounds of gross misconduct.
3. The claimant was employed as a security guard at a site in Newport. There was a team of security guards with one being on duty at the main gatehouse at any given time. The claimant contends that from approximately April 2017 onwards the site became busier, and in reality too busy for one man to operate it and also be able to take appropriate statutory breaks. Taking matters shortly he alleges that he raised this on many occasions with Mr Scott Ridley his line manager but that nothing was done about it.
4. The first documentary evidence before me is an email from Mr Ridley of 18th December 2017. This encapsulates the dispute between the parties. The respondent does not dispute the claimant's right to take rest breaks but asserts that the requirement that he use his discretion to do so at quiet times falls within the Working Time Regulations. The claimant's case is that this may be legally correct but was factually impossible as the site was too busy for this to be achieved.
5. As a consequence on 13th January 2018 the claimant lodged a grievance about Mr Ridley, one aspect of which was his inability to take breaks. The grievance was investigated by Leigh Dyer (Area Human Resources Business Partner for South West and Wales). She interviewed the claimant on 13th February 2018 and Mr Ridley on 16th February. On 22nd February she wrote dismissing his grievances. In relation to the issue of breaks she accepted the position as set out above in Mr Ridley's email that security staff were permitted to take statutory breaks but should use their discretion to do so at quieter times. Again for completeness sake, in evidence before me Mr Ridley contends that the site is busy at the beginning of day, around 7.00 to 9.30 am, at lunchtime and after 4.30pm. However he maintains as he has done throughout that during the mornings and afternoons the site is quieter and that it is possible to take breaks. His evidence both to Ms Dyer and before me is that he specifically asked the other security guards and that none had any complaints about having difficulty finding time for their breaks. The claimant also lodged another grievance on the same day about the conduct of a colleague but that has no bearing on the issues before me.
6. The claimant contends that the investigation of Ms Dyer was biased and inadequate in that she accepted the account of Mr Ridley, in particular as to the absence of complaint by the other security guards and the relative quietness during the morning and afternoons, without coming to the site and speaking to the other guards and observing for herself. Ms Dyer's evidence is that she had no reason to do so. The only complaint she had was from the claimant and not the other guards and she had no reason not to accept what Mr Ridley said. Whilst the claimant may be unhappy with the outcome she maintains that she investigated impartially and based her conclusions on the evidence she received. Whilst it is not strictly necessary for my decision (as the case turns on the response by the respondent's management to the claimant's grievance not the outcome itself) having heard from Ms Dyer I have no doubt that the grievance outcome represented her genuine view based on the evidence she had received.

7. It is not in dispute that on 19th January 2018 a colleague Mr Spooner lodged a formal complaint about the claimant threatening him at the morning handover on 17th January 2018. It was this that ultimately lead to the claimant's dismissal. The allegation was investigated by Mr Gareth Edwards who interviewed the claimant on 29th January 2018. On 11th April 2018 the claimant was invited to attend a disciplinary hearing in relation to the allegation. That hearing was conducted by Mr Gary Moore Protective Services Branch Manager. The hearing took place on 23rd April 2018 and the claimant was summarily dismissed on that day, with the dismissal subsequently being confirmed in writing. The claimant appealed. His appeal was heard by Mr Paul Robinson on 10th May 2018 but was not successful.
8. The claimant does not accept that a belief in his having committed misconduct was the genuine reason for dismissal. His case, as it has emerged in the course of the hearing, is that by lodging a grievance he had put both the respondent and the client on notice that he was not going to accept their failure to provide appropriate breaks and that in effect both engineered his dismissal. Whilst he was off sick, on 21st March 2018 Mr Windsor of the client notified the respondent that he was no longer permitted to be on site. This was specifically, alleges the claimant, because of the earlier grievance. As a consequence both of the grievance itself and the action of the client the respondent resolved to dismiss him and did so by resurrecting the earlier disciplinary allegation which had fallen way as no action had been taken since Mr Edwards' investigatory interview on 29th January 2018. Given that this is the allegation it is implicit that Mr Moore and Mr Robinson were parties to this decision as otherwise there would be a risk that they would not respectively dismiss the claimant or dismiss the appeal. Accordingly their positions are central to the determination of the case.
9. Before dealing with their reasoning it is necessary to deal with the question of the evidence before them. In addition to making a complaint Mr Spooner provided them with a recording of the incident. Although in both the investigatory and disciplinary interviews the claimant appears to have accepted that it was a genuine recording but one which the respondent could not rely on as it had been obtained surreptitiously and in breach of the respondent's own rules, the claimant asserts before me that that is not true. He contends that in those meetings he was referring to the tape recording in the third person and expressing views as to what appeared to be being said, not accepting that he was the person on the recording. In the hearing he has variously alleged that Mr Spooner has either edited the recording or completely fabricated it and denies that it is his voice or that he ever made the threat recorded on it. Whilst none of this is impossible it is extremely unlikely and in an event the question for me is whether Mr Moore and Mr Robinson accepted it as genuine and if so whether this formed part of the evidential basis for their decisions to dismiss, and dismiss the appeal respectively.
10. The respondent contends that essentially that the claimant's case both as to the tape recording and the conspiracy theory are both convoluted means designed to avoid a simple explanation. Mr Spooner had made an allegation about the claimant threatening physical violence against him (to "chin" him). This was supported by

evidence, in that Mr Spooner had recorded the encounter. Whilst doing so was against the respondent's rules it took the view that where there was specific evidence supporting a disciplinary allegation that it could not be ignored despite its provenance. Moreover in both the investigatory and disciplinary hearings the claimant had accepted that he had been recorded, and there was essentially no dispute of fact. In the appeal the claimant contended that it was not him on the recording but Mr Robinson did not accept this.

11. The respondent therefore submits that there was direct evidence supporting the allegation, which the claimant did not initially dispute. Indeed by way of example in the disciplinary hearing he specifically accepts making the threat and goes to describe how in the "...heat of the moment.." he "snapped". Accordingly the conclusion that he was guilty of the misconduct was not simply reasonable but inescapable. Moreover all of the elements that caused the claimant to be suspicious had a reasonable explanation. Firstly the reason for the delay between 29th January and 11th April was that the claimant was absent from work thorough sickness. Once he returned on 9th April it was immediately pursued. Moreover he complains that after 21st March 208 attempts were made by Mr Ridley amongst other to attempt to find him alternative positions. Whilst the clamant concludes that this is inconsistent with the disciplinary process and contends that it demonstrates that the disciplinary allegation was subsequently resurrected; the respondent submits that all it shows is that the process of finding alternative employment and the disciplinary process were being kept separate and that no assumptions were being made about its outcome. Far from being suspicious this evidence that the respondent was acting in good faith.
12. For completeness sake I should say that he respondent's representative makes legal submissions of considerable force as the applicability of sections 100 and 104 of the ERA, but the central question is the factual one of why the claimant was dismissed. Having heard evidence from Mr Moore and Mr Robinson in particular (they being the decision makers, although I accept the evidence of all the respondent's witnesses) I am entirely satisfied that the reasons they gave were genuinely the reasons for dismissal and the dismissal of the appeal. Given, as set out above, that there was the clearest possible physical evidence that the claimant had committed the misconduct alleged the conclusion that he had done so was effectively inevitable and I do not accept that here was any other reason for the dismissal than that given by the respondent. It follows that I do not accept that there is any causal connection between the grievance and dismissal and that the claimant's claim must be dismissed.

**Judgment entered into Register
And copies sent to the parties on**

.....9 February 2019.....

**.....
for Secretary of the Tribunals**

EMPLOYMENT JUDGE Cadney

Dated: 5 February 19