EMPLOYMENT TRIBUNALS

Claimant: Mr A Smith

Respondent: Centrica Storage Limited

HELD: **by CVP** **ON:** **5 and 6 January 2021**

BEFORE: **Employment Judge Shulman**

REPRESENTATION:

Claimant: In person
Respondent: Ms A Smith, Counsel

JUDGMENT

1. The claimant's claim for unfair dismissal is hereby dismissed.
2. The claimant's claim for breach of contract is hereby dismissed.

REASONS

1. **Claims**
   1.1. Unfair dismissal.
   1.2. Breach of contract.

2. **Issues**

2.1. Unfair dismissal

If the reason was misconduct did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

2.1.1. There were reasonable grounds for that belief;

2.1.2. At the time the belief was formed the respondent had carried out a reasonable investigation;

2.1.3. The respondent otherwise acted in a procedurally fair manner;

2.1.4. Dismissal was within the range of reasonable responses.

2.2. Breach of contract

2.2.1. Did the claim arise or was it outstanding when the claimant's employment ended?

2.2.2. Did the respondent dismiss the claimant without notice?

2.2.3. Was that a breach of contract?

3. **The law**

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

In relation to unfair dismissal, section 98 of the Employment Rights Act 1996 ("ERA"):

"(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 reason the principal reason) for the dismissal, …

(2) A reason falls within this subsection if it - …

(b) relates to the conduct of the employee, …

(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 substantial merits of the case".

There is no need to have regard to applicable law for breach of contract in this case.

4. **The evidence**

4.1. Mr A Rogers and Dr M Orley gave evidence for the respondent in accordance with their witness statements.

4.2. The claimant gave evidence and did not call any other witnesses.

4.3. The Tribunal recognises the difficulty experienced by unrepresented parties, but that said in his effort to do all he could to win the case the claimant demonstrated difficulty in answering directly questions put and the Tribunal had to intervene on occasion in an effort to indicate to the claimant that he should indeed answer questions as they were put and not as he would have liked them to have been put.

4.4. It is for that reason that where there is a conflict on the evidence between the respondent's witnesses and that of the claimant the Tribunal prefers the evidence of the respondent's witnesses.

4.5. Nevertheless the Tribunal does not expressly or by implication infer any dishonesty whatsoever on the part of the claimant.

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 employed by the respondent as an electrical consultant lead and the claimant had been qualified for a number of years. His date of commencement of employment was 10 September 2007 and he was dismissed on 29 January 2020.

5.2. The reason for the claimant's dismissal, according to the respondent, was the claimant's admission that he installed an overload protection unit into something known as MCC7 without the required permit and this was done on 23 October 2019.

5.3. It happened that the unit was incorrectly installed by the claimant and the electric current from the overload to the motor went over the maximum, which apparently caused wiring to overheat and degrade, leading on 5 November 2019 to an arc flash with sparks, smoke and some damage. There was a significant release of electrical energy.

5.4. The claimant did not deny any of this, that is a failure to obtain a permit nor the incorrect installation and told the Tribunal that he knew that if working procedures were breached he could be dismissed.

5.5. An investigation was commenced and the claimant was put on office duties and the claimant did not dispute the contents of the investigation report.

5.6. The report concluded that there should have been a permit issued for the work carried out by the claimant in relation to MCC7.

5.7. There is a strict permit to work procedure in place within the respondent's organisation, which underpins the respondent's Life Saving Rule, in this case number 3, and a supporting Code. In terms Mr Rogers told us that the following steps were required in relation to the obtaining of permits:

5.7.1. Request.

5.7.2. Approval.

5.7.3. Dealing with any issues.

5.7.4. Signature.

5.7.5. Work.

5.7.6. Closure.

These arise from being health and safety matters and the claimant agreed in cross-examination that the ultimate price for failure could result in death. It certainly did not in this case. The procedures of the respondent show that where an employee faces a dilemma there is indeed a procedure which leads to the ability to stop work. The claimant was familiar with this procedure. He told us he was aware of potential danger but in this case he just got ahead of himself.

5.8. As a result of the investigation the claimant was invited to a disciplinary hearing to take place on 29 January 2020. There was an additional allegation, subsequently dropped, so we need go no further in relation to that. The letter convening the meeting left the claimant in no doubt that he could be dismissed for gross misconduct.

5.9. At the hearing the claimant was represented by two union representatives. The allegation of no MCC permit was accepted by the claimant and the claimant apologised to Mr Rogers. The claimant said he did not want to do the job as he had not previously been involved. He said he received the task late in the day and time was an issue. He said he had a brief discussion about the job with Ian Brewster, his line manager, apparently for the day. There is considerable evidence about what the claimant and Mr Brewster may or may not have done together. We find as a fact that the claimant and Mr Brewster did not agree between them as to what to do about getting a permit and that Mr Brewster did not have the skills possessed by the claimant to make a decision about it.

5.10. The claimant accepted a permit was necessary. He could have asked his shift manager to redline an existing permit (WCC8) which the claimant had available. He did not actually do that. The claimant accepted that he should have had a permit and that he had made an error of judgement. He also accepted, as I have said, the investigation report.

5.11. In a final statement the claimant apologised again and said he felt pressured to complete the job.

5.12. Mr Rogers adjourned the hearing and during the adjournment he took advice from human resources and also carried out some research. Mr Rogers was satisfied that the claimant had done work which needed a permit and considered the claimant's points concerning his line manager and pressure. Mr Rogers was of the view that the correct sanction would be dismissal for gross misconduct, notwithstanding the claimant's length of service and disciplinary record.

5.13. The meeting was reconvened and the claimant was dismissed accordingly. The claimant then sought to raise other matters, having previously been told just to admit his part.

5.14. In the dismissal letter dated 30 January 2020 the claimant was, in accordance with procedure, given a right of appeal which the claimant exercised on 4 February 2020.

5.15. The appeal was conducted on 20 February by Dr Orley and was on several grounds not raised before Mr Rogers. This time the claimant was represented by three trade union representatives. Despite the new grounds Dr Orley told us that his task was to review the appeal points, not to re-hear the evidence.

5.16. The claimant provided an evidence folder of 90 pages, containing 10 sections. In the folder the claimant laid out three options which he could have taken, one of which was to stop work, which Mr Rogers had already identified, rather than the other options, which involved either carrying on or being stopped by Mr Brewster.

5.17. Dr Orley went one by one through the sections raised by the claimant in his appeal:

5.17.1. Complicit behaviour by management – after research Dr Orley found this to be incorrect.

5.17.2. Initial defence position – this relates to the "submissive" line taken by the claimant earlier. Dr Orley found that the claimant knew that the possible penalty of dismissal was gross misconduct. He also found that conversations which resulted in the claimant's submissive conduct took place after the work was done.

5.17.3. Examples of systematic failure – the allegation was that changes in procedure were not clearly communicated to employees. Dr Orley found that the changes to which the claimant was referring were minor which did not fundamentally change the procedures. Under this heading the claimant also averred that pump filters could be changed without a permit. After research Dr Orley agreed that this was so.

5.17.4. Refresher training – the claimant complained about the standard of the training but the claimant had never raised at the time the unsatisfactory nature of it.

5.17.5. Culture – this related to a Point of Work Risk Assessment or POWRA used to assess work site changes impacting on outstanding work. The claimant said there was a lack of clarity in this area. After advice Dr Orley found that this was not so.

5.17.6. Management pressure from Mr Brewster – Dr Orley found there was none such. The rules were there to be observed.

5.17.7. Failure to follow planning procedures – we heard evidence on this (as we did on other appeal issues). If procedures were not in place then the procedures of the respondent provided for employees to stop.

5.17.8. Permit Office closure time – the claimant maintained that the office was closed at the time he was given the job. Dr Orley considered this to be immaterial.

5.17.9. Roles and responsibilities – the claimant maintained that Mr Brewster on the day had four roles. Dr Orley did not think this was relevant.

5.17.10. The Just Culture process was conducted, the claimant said, without his knowledge. Dr Orley found there was no need for the claimant to be involved. It resulted in investigation and discipline which the claimant was involved in and had every opportunity to put his case.

5.18. Dr Orley adjourned the appeal and decided that Mr Rogers had sufficient reason to believe that the claimant committed an act of gross misconduct. Dr Orley looked at a comparative case and read the HSE guidance on permit to work systems and decided to uphold the dismissal which he did by letter dated 26 February 2020.

6. **Determination of the issues**

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

6.1. The Tribunal finds that the reason for the claimant's dismissal was misconduct. The Tribunal finds that that belief on the part of the respondent was a genuine belief. Did the respondent act reasonably in all the circumstances in treating that conduct as a sufficient reason to dismiss the claimant? See below.

6.2. Were there reasonable grounds for the belief that the claimant's dismissal was for misconduct? The claimant admitted that the work to be done required a permit. The claimant admitted that he did not apply for a permit. As it happened, unfortunately, the claimant did not do the work properly (for which he was not dismissed) but the failure to do that work properly led to consequences for which the claimant was responsible.

6.3. At the time the belief was formed had the respondent carried out a reasonable investigation? There was a very detailed investigation report which the claimant accepted. Mr Rogers and, because of the circumstances, more so Dr Orley carried out such additional investigation as was necessary.

6.4. Did the respondent otherwise act in a procedurally fair manner? No points of unfairness of procedure have been taken in this case.

6.5. Was the dismissal within the range of reasonable responses? As a Tribunal we must not substitute our own view for that of the respondent but the crucial issue here is not only the dismissal but also the fact that this was a summary dismissal, because of alleged gross misconduct. Did the punishment fit the crime? The claimant was a long serving employee with an apparently good disciplinary record. On the day in question his service, skills and record deserted him. He knew the rules and yet he allowed himself to be overtaken by events. He told me he got ahead of himself. Unfortunately for the claimant he did it in circumstances where it is clear the respondent, particularly bound by health and safety, had no alternative than to stand by procedures which needed to be enforced in the particular industry in which the respondent is. So the answer to the question, was the conduct so serious as to merit

summary dismissal, as far as the respondent is concerned, must be yes and that, therefore, the claimant's claim for unfair dismissal is dismissed. It follows that his claim for breach of contract also falls, for there was no breach of contract by the respondent.

Employment Judge Shulman

Date 29 January 2021