



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Louise Simpson**

v

**Vulcan Engineering Limited**

**Heard at:** Leeds via CVP                      **On:** 1 April 2021

**Before:** Employment Judge Wedderspoon

**Representation:**

**Claimant:** In Person

**Respondents:** Ms. Marsland, solicitor

## JUDGMENT

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

## REASONS

1. By claim form dated 30 November 2020 the claimant brought a complaint of unfair dismissal.
2. At the commencement of the hearing it was agreed that the following issues should be determined: -

(1) What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

(2) 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:

- 1.1.1 there were reasonable grounds for that belief;
- 1.1.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
- 1.1.3 the respondent otherwise acted in a procedurally fair manner;
- 1.1.4 dismissal was within the range of reasonable responses.
- 1.1.5 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 1.1.6 If so, should the claimant's compensation be reduced? By how much?

- 1.1.7 Did the claimant cause or contribute to her dismissal?
- 1.1.8 If so should the claimant's compensation be reduced? By how much?

- 3. The Tribunal was provided with an agreed bundle of 227 pages. The claimant added to the bundle some additional documents, namely wage slips, the day before the hearing. The respondent called witnesses Michael Barnes, Investigation officer, Louise Ebdon, dismissing officer; and Michael Carter appeal officer. The claimant relied upon her own evidence only.

FACTS

- 4. The claimant was employed by the respondent from 4 July 2010 until 22 September 2020 as a production manager. The respondent is a manufacturer and supplier of mechanical and encapsulated seals (a method of containing fluid within a vessel most commonly used for pumps). The claimant's role included responsibility for FEP production department and line management of the production operatives.
- 5. The claimant's contract of employment stated that the respondent was committed to maintaining a stable and happy working environment in which people feel secure. In a non-exhaustive list of "offences", the respondent stated the normal consequence of deliberate falsification of company documents or sexual or racial harassment would be dismissal. Further, in a document dated 28 August 2019 FEP Productions standards staff were informed they were expected to adhere to the standards and if staff refuse to follow or repeatedly ignore warnings, staff will have disciplinary proceedings taken against them. The standards included members of staff being required to be professional at all times and being courteous, polite, respectful and considerate in manner. Further, behaviour creating an atmosphere of disrespect, pettiness, rudeness, profanity, attitude, belittling others, personal attacks, lies, nastiness, silent treatment were deemed to be unacceptable and could lead to disciplinary action. The claimant was aware at all material times about these standards.
- 6. On 17 June 2020, Thomas Brough a production executive spoke to the claimant about the claimant's behaviour towards colleagues. His concerns included observing the claimant allegedly shouting aggressively (tone and words used) to a colleague near carousel in unit 3. The colleague's first language was not English. Mr. Brough did not agree that speaking to the colleague in this way was acceptable. Mr. Brough also raised an account from another colleague about an incident with the claimant and a radio, where the claimant alleged that someone had changed the stations and was aggressive to her colleague. The claimant became defensive; her account disputed the level of alleged aggression shown and she began to cry when discussing her homelife. The claimant was warned that if this behaviour happened again there would be disciplinary action. Mr. Brough's view at this time was that something outside of work was affecting the claimant's behaviour. He told the claimant this was no excuse for unprofessional conduct.
- 7. For operational reasons during the COVID pandemic the department was split into two. The claimant managed the VULA production team and AW became supervisor of the TANK production team. During AW's time in the production team she witnessed the claimant's behaviour towards members of staff and she did not consider it was appropriate. A number of members of staff AW now

managed, started to open up about their treatment from the claimant and made her aware of their concerns.

8. On 11 September 2020 AW raised the complaints to Ms. Ebdon, the HR executive manager namely that the claimant had spoken very aggressively towards members of staff on a number of occasions and described the claimant's conduct as "bullying" which was causing upset and stress to members of staff.
9. By letter dated 14 September 2020 (page 36) the claimant was informed that an investigation was being conducted into allegations about her attitude, conduct and behaviour and alleged bullying and harassment. The claimant was also informed that if it was found there was a case to answer she would be invited to a disciplinary hearing. The claimant was invited to provide information to assist the investigation.
10. The investigation was conducted by Michael Barnes, quality and operations executive manager. He was provided with the email from AW (p.62-3). Three individuals mentioned namely SL, AH and KG (page 63-7) were asked to provide statements. LT was also requested to provide a statement but refused in fear of repercussions from the claimant.
11. At the interview with AW she stated that she witnessed the claimant referring to members of staff as "shit" and 'crap". SL had complained to AW that the claimant's behaviour had left him feeling as though he was heading for a breakdown. SL described the claimant as confrontational and that this had been going on for a long time. KG stated the claimant referred to members of staff as "arseholes". She described team members being afraid of the claimant that she would belittle them or discipline them. AH described that the claimant's behaviour made her feel stressed and on the edge. Mr. Barnes also approached a number of production operative employees. Some refused to participate citing fear of repercussions from the claimant if they gave interviews. Interviews revealed that the claimant's aggressive attitude towards colleagues had been occurring over a long period of time and that many employees have come to accept that this is the way things are and must be tolerated to work. Examples included the claimant accusing a colleague of tampering with the radio, choosing songs and accusing people of tampering with the radio. An individual described a poor atmosphere; no one was allowed to touch anything; not allowed to use the claimant's bin; and the claimant raising her voice to an employee.
12. Mr. Barnes reached the conclusion that frequent unacceptable behaviour from the claimant was the norm many times per week. He concluded there was a systematic behavioural issue. The language frequently used to staff members "arseholes", "you are all idiots" 'acting like children". She was described as picking on people and describing them as "shit". A large element of control was displayed by the claimant and her ways were described as bullying. She was alleged to be affecting the department and was hostile. An employee described suffering from anxiety as a result of feeling totally on edge around the claimant. The investigation also disclosed that the claimant appeared to have falsified company records by printing labels early to improve production figures by deliberately hiding production material under benches and deliberately blocking suggested improvements for production. It was noted that the claimant was a diligent and hard-working manager.
13. The claimant was interviewed on 15 September 2020. Mr. Barnes read out the invitation letter and the allegations. The claimant denied the allegations. She stated that she did not swear; did not use the word "arseholes". She denied any

wrongdoing. The claimant could not explain why employees had made these allegations; in fact, the claimant stated that she had good relationships with members of staff. Two employees feared repercussions if they spoke out. The claimant did not state she had any problems with colleagues. He concluded the claimant's behaviour had gone unnoticed by people who did not work in her department. The refusal of LT to be part of the investigation process summed up his view there was fear in the team.

14. An investigation report (page 37-44) concluded that the claimant was confrontational and rude to colleagues; the claimant was difficult to work with and members of staff felt trepidation working and interacting with the claimant. The claimant was alleged to have shouted, screamed and used demeaning language. Mr. Barnes concluded that a number of statements were corroborative and there was a case to answer and recommended a formal disciplinary hearing.
15. By letter dated 17 September 2020 (p.77) the claimant was invited to a disciplinary hearing to take place on 22 September 2020 and was suspended on full pay. The claimant was informed that the reason for the hearing was due to bullying and harassment along with her attitude, conduct and behaviour within the workplace. The claimant was asked to be prepared to discuss this at the hearing and any mitigating circumstances. In advance of the hearing, the claimant was provided with a summary of statements describing alleged bullying behaviour and incidents. Names were anonymised. She was warned that the allegations were possible acts of gross misconduct and one outcome of the hearing could be summary dismissal. She was advised about her right of accompaniment and was provided with a summary of the witness statements.
16. The respondent obtained further additional witness evidence. These witnesses expressed confidence now the claimant was off the premises in giving evidence. An updated summary of the witness evidence was prepared. Their statements can be found at pages 71-76.
17. The claimant requested to be accompanied by KJ but she was not in the office and the claimant was not aware she could request her to attend. Upon being informed KJ was unavailable, the claimant was asked by the respondent to provide names of preferred people so the respondent could organise contact and ascertain if they were available to accompany the claimant to the disciplinary meeting. The claimant did not respond. The claimant was not informed that KJ's child was unwell because Ms. Ebdon viewed this matter as confidential nor did she wish to put off the hearing to another date for KJ to accompany the claimant because this may put pressure on KJ.
18. The disciplinary hearing took place on 22 September 2020. It was chaired by Louise Ebdon and Thomas Brough production executive manager was note taker. The claimant was not accompanied. At the start of the hearing the claimant was provided with the updated summary of witness evidence and provided time to consider it. The names of the witnesses were anonymised at the request of the witnesses. The summary did detail incidents. The claimant was given an opportunity to comment upon the witness evidence and the claimant said she was not told what was alleged; she denied the allegations and stated that the statements were lies or exaggerated truths. The claimant disputed falsification of records. The claimant stated she was being personally attacked by a small group of people and the allegations were untrue. The claimant accepted her deliverance was not the best. She disputed printing labels early; she said the work was completed but not wrapped up. She said she had hearing issues so was unable

to say whether she had been shouting. She admitted she was not everyone's favourite but considered herself firm but fair.

19. The disciplinary hearing was adjourned and Ms. Ebdon considered the evidence. Ms. Ebdon concluded that the claimant had been told of the allegations; the claimant had been provided with a summary of the witness evidence and an opportunity to respond to the allegations; the sheer number of witness statements corroborated the claimant had been aggressive to members of staff causing emotional stress and creating a poor environment at work. Ms. Ebdon considered there was compelling evidence to support the allegations; the claimant denied everything but could give no adequate explanation why people said what they did. The claimant stated that LT and RK could provide evidence that the witness statements were untrue. However, LT and RK were amongst the witnesses who had already provided statements about the claimant's bullying behaviour. Ms. Ebdon found this contradictory. Ms. Ebdon accepted the claimant's account that work had been completed but not wrapped. The claimant provided a photograph of her desk but this did not go to the thrust of the allegations of bullying.
20. The respondent concluded that the claimant had been aggressive towards members of staff which caused a poor environment and fear at work. Ms. Ebdon found there was no reasonable alternative but to dismiss the claimant. The severity of the impact of her actions had on members of staff meant she concluded that the decision made to dismiss the claimant without notice was reasonable and no other alternative sanction would be appropriate. The claimant showed no remorse and so there was little confidence that the claimant would not reoffend. The claimant was informed she was being dismissed for gross misconduct.
21. By letter dated 23 September 2020 the claimant was informed she was being dismissed with immediate effect for gross misconduct and she was provided with a right to appeal the decision.
22. On 25 September 2020 the claimant submitted an appeal. The claimant stated that the allegations failed to identify times and dates that incidents took place. She stated that the hearing should have been adjourned to allow her nominated person to accompany her. She stated she presented photographic proof and witness names that could confirm the allegations were fabricated.
23. Ms. Ebdon provided her comments to the claimant's appeal to Mr. Carter pages 100-1. She stated that the claimant did not present evidence to the main allegations of bullying but completely denied all allegations. Further she stated that the claimant's alleged behaviour took place over a long period of time and therefore the summary statements did not include precise times and dates. Although the claimant mentioned other names during the hearing as these individuals had made statements against the claimant there was no need to obtain further evidence. When the claimant's preferred person to accompany her was not available, the claimant was given an opportunity to name another person but she did not respond.
24. Prior to hearing the appeal on 13 October 2020 Michael Carter, Group Managing Director read the investigation report pages 37-67, witness statements pages 71-6; note of the disciplinary hearing and outcome of disciplinary hearing. At the appeal hearing, JM, executive assistant attended as a note taker. The claimant did not submit any documentation in support of her appeal. The claimant attended and was accompanied by Katherine Joel, her preferred person. The claimant was

provided with Ms. Ebdon's response to the claimant's appeal at the start of the appeal hearing.

25. The claimant alleged that from start to finish the proceedings were unfair; the respondent did not follow ACAS procedures; the investigation did not make sense and the complaint spoke about products which she did not understand and got emotional. The claimant stated that the witness statements were false. She disagreed she had been bullying anyone. The claimant could not explain why there were so many statements from different people alleging she had bullied people. She stated that the incidents never happened. The hearing was adjourned for 30 minutes to allow the claimant to confer with Ms. Joel.
26. On resumption of the hearing, the claimant read out a statement (p.115-6). She felt the process was unfair as she did not know the time and date of each incident. Mr. Carter asked the claimant if she had dates and times whether she would be able to refute the allegations or whether she had anything to deny or confirm the statements, the claimant said that she did not.
27. Mr. Carter undertook some further checks. He spoke to Mr. Barnes in respect of the allegation that the reason for the investigation had not been explained to her. Mr. Barnes stated that the claimant had stated at the investigation meeting she did not know what the investigation was about so he had read out the letter 14 September 2020 (which the claimant had received). Mr. Carter also asked why Mr. Barnes had concluded that employees feared repercussions from the claimant and he referred to his written note of the interview of SL which described the claimant singling people out or giving them harder tasks.
28. On 16 October 2020 Mr. Carter concluded that the events had taken place over a long period of time and therefore there were no dates and times of incidents. The claimant had not provided an alternative name of someone to accompany her to the disciplinary meeting when she was requested (p.84-5). He concluded that a number of employees were frightened of the claimant. He was satisfied that the claimant had behaved in the manner alleged; 50 % of the team had complained about the claimant's behaviour. He concluded her actions and behaviours amounted to gross misconduct and the impact was causing stress on employees. He concluded summary dismissal was reasonable. informed the claimant that her appeal was unsuccessful.
29. The claimant raised in her witness statement that the respondent could have checked CCTV to establish her conduct. The claimant had not raised this before in either the disciplinary hearing or the appeal hearing. The claimant also submitted some photographs of the office in February 2021. These do not assist the tribunal since they do not shed any light on the bullying allegations.

#### LAW

30. In an unfair dismissal complaint, the respondent bears the burden of proving on the balance of probabilities that the dismissal was for misconduct. If the respondent fails to persuade the tribunal that it had a genuine belief in the claimant's misconduct and that it dismissed her for that reason, the dismissal will be unfair.
31. If the respondent does persuade the tribunal that it held the genuine belief and that it did dismiss the claimant for that reason the dismissal is only potentially fair. The tribunal must then go on and consider the general reasonableness of the dismissal under section 98 (4) of the Employment Rights Act 1996. That section provides that the determination of the question of whether a dismissal is fair or

unfair depends upon whether in the circumstances (including the respondent's size and administrative resources) the respondent acted reasonably or unreasonably in treating the misconduct as a sufficient reason for dismissing the claimant. This is to be determined in accordance with equity and the substantial merits of the case. The burden of proof in this regard is neutral.

32. In conduct cases, when considering the question of reasonableness, the Tribunal is required to have regard to the test outlined in **British Homes Stores v Burchell (1980) ICR 303**. The three elements of the test are:
- (1) Did the employer have a genuine belief that the employee was guilty of misconduct?
  - (2) Did the employer have reasonable grounds for that belief?
  - (3) Did the employer carry out a reasonable investigation in all the circumstances?
33. The additional question is to determine whether the decision to dismiss was one which was within the range of reasonable responses that a reasonable employer could reach.
34. It is important that the Tribunal does not substitute its own view for that of the respondent **London Ambulance Service NHS Trust v Small (2009) EWCA Civ 220** at paragraph 43 says:
- "It is all too easy even for an experienced ET to slip into the substitution mindset. In conduct cases the claimant often comes to the Et with more evidence and with an understandable determination to clear his name and to prove to the ET that he is innocent of the charges made against him by his employer. He has lost his job in circumstances that may take it difficult for him to get another job. He may well gain the sympathy of the ET so that it is carried along the acquittal route and away from the real question – whether the employer acted fairly and reasonably in all the circumstances at the time of the dismissal."
35. The appropriate standard of proof for those at the employer who reached the decision was whether on the balance of probabilities they believed that the misconduct was committed by the claimant. They did not need to determine or establish that the misconduct was committed beyond all reasonable doubt.
36. In considering the investigation undertaken the relevant question for the Tribunal is whether it was an investigation that fell within the range of reasonable responses that a reasonable employer might have adopted. Where the Tribunal is considering fairness, it is important that it looks at the process followed as a whole including the appeal. The Tribunal is also required to have regard to the ACAS code of practice on disciplinary and grievance procedures.
37. Where a Tribunal considers that if a different procedure had been adopted in the disciplinary process but it would not have made any difference to the outcome, the Tribunal is entitled to reduce compensation accordingly.
38. Furthermore, if the Tribunal is satisfied that the claimant was guilty of blameworthy conduct which caused or contributed to the dismissal, the tribunal is entitled to reduce compensation.

#### SUBMISSIONS

39. Ms. Marsland, on behalf of the respondent, submitted that the claimant was aware of standards and acceptable conduct from the standards of the department document. There was a significant amount of witness evidence that the claimant

had displayed a pattern of behaviour over an extended period; she had been confrontational, aggressive and the claimant's behaviour was in breach of the department standards. It was submitted that the respondent did dismiss for misconduct having held a genuine belief in the claimant's misconduct on reasonable grounds following a reasonable investigation. Ms. Marsland relied upon the investigation undertaken by Mr. Barnes and the fact that the claimant had no explanation as to why so many colleagues (50%) would allege she was a bully; she did not suggest she had relationship issues with the colleagues. In the claimant's witness statement, she raised that the respondent should have checked CCTV. However, this was not part of the disciplinary hearing or appeal hearing.

40. Further Ms. Marsland submitted that the claimant has been informally warned about her conduct on 17 June; she was warned that she could face disciplinary action if her misconduct continued. The claimant stated LT and RK could support her. It was unnecessary for the respondent to further investigate this because they had already received statements from LT and RK against the claimant. Photos submitted by the claimant do not go to the allegations of bullying.
41. The claimant was given a summary of the evidence; witnesses were reluctant to reveal their identities for fear of retribution. The claimant did not request an adjournment when her preferred person was not available for the disciplinary hearing. She was asked to suggest an alternative and she did not do so. In any event by the time of the appeal, the claimant had her preferred person with her.
42. The procedure adopted by the employer was reasonable. Different individuals investigated and heard the disciplinary allegations. The claimant was given the allegations with time to consider and respond. In so far there were any procedural deficiencies, the respondent submitted it made no difference to the outcome. There was a significant amount of evidence available to the respondent to form a reasonable view the claimant was guilty of the allegations; and the claimant could only deny these and provide no explanation as to why the individuals would make such allegations. In any event the weight of the evidence is that the claimant's denial was false; her poor attitude, bullying and harassment of others was blameworthy conduct which caused her dismissal. A 100% deduction is appropriate.
43. The claimant submitted that she had asked for a fair hearing and did not get one. She was unfairly dismissed.

### CONCLUSIONS

44. The Tribunal is satisfied that the respondent dismissed the claimant for the admissible reason of dismissal. No alternative reason has been advanced by the claimant. The respondent has provided a significant amount of material which indicates that following a complaint by AW an investigation was launched into the claimant's behaviour which led to a conclusion that there was a case of misconduct to answer and the disciplinary hearing indicates that the respondent was concerned with the claimant's alleged misconduct.
45. Following the complaint by AW, Mr. Barnes conducted a reasonable investigation into allegations of bullying by the claimant. Mr. Barnes interviewed initially five people who provided evidence of a long-standing pattern on unacceptable conduct and behaviours displayed by the claimant to members of staff including swearing and belittling. The claimant was interviewed as regards these allegations. The summary of the interviews were put to her. There were no dates



or specific times but rather a description of a pattern of inappropriate behaviour towards others. The claimant was aware in general terms that the investigation interview concerned bullying because she received the letter dated 14 September 2020 which stated this. At the investigation interview the claimant was asked about various events mentioned in the witness evidence and the claimant was unable to provide any explanation as to why 50 % of the staff membership would make such serious allegations against her. She did not describe any relationship difficulties with staff members to indicate that there was an axe to grind or bad faith motivation. In the circumstances, the Tribunal finds that Mr. Barnes reasonably concluded that there was a case to answer at a disciplinary hearing.

46. By the time of the disciplinary hearing on 22 September 2020, the claimant had further time to consider her responses. The claimant's explanation as to the possibility of printing labels before the work was done was accepted; namely that the work had been done but not wrapped. The respondent acknowledges that the claimant was an efficient manager.
47. Further evidence was provided to the claimant for her to consider; individuals who were willing to raise complaints following the suspension of the claimant and the claimant was given an opportunity to provide a response. Again, the claimant was unable to provide any explanation as to why so many individuals who she had no relationship difficulties with would make such serious allegations against her.
48. Ms. Ebdon was entitled to make a judgment call and held that the balance of evidence established that the claimant acted unacceptably towards staff in terms of the way she shouted and spoke to them and took into account the detrimental effect on the working environment and staff member; it was a pattern of unacceptable behaviour. Such misconduct was inconsistent with the standards of behaviour required in the department (which the claimant knew about). The respondent formed a genuine belief in the claimant's guilt on reasonable grounds and following a reasonable investigation of a pattern of unacceptable conduct towards staff over a long period of time.
49. The Tribunal does not find that the claimant was disadvantaged by the lack of specific dates and times. The substance of the evidence collected indicated a pattern of bullying behaviour over a period of time which had become systemic. Further the tribunal does not find the fact that the claimant's preferred person was unavailable on 22 September 2020 placed the claimant at a disadvantage. She was asked to provide an alternative and she did not respond and did not request an adjournment. Even if this was a procedural failing, the claimant was accompanied by Ms. Joel her preferred person at the appeal hearing.
50. Ms. Ebdon reached the conclusion that summary dismissal was the only option. The allegations against the claimant were serious and in breach of the standards of behaviour. The claimant denied the allegations, could not explain why individuals would make such serious allegations and appeared to have no insight into her conduct leading to a reasonable conclusion that the claimant could behave like this again. The Tribunal finds that the sanction of dismissal in the circumstances was a reasonable one and it fell within the band of reasonable responses.
51. At the appeal on 13 October 2020, the claimant was accompanied by her preferred person. In so far that this was a failing of the disciplinary process, this was remedied at the appeal stage. She again denied the allegations and could not provide any reasons why any individuals would fabricate these allegations

against her. Mr. Carter considered all the material before him and concluded that the sanction of summary dismissal should be upheld.

52. Overall, the Tribunal finds that the procedure adopted on the particular facts of the case were reasonable. Witnesses were reluctant to be identified because of genuine fears of retaliation. In regard to the nature of the allegations, the allegations indicated a pattern of behaviour over a long period, to this extent times and dates of misconduct are difficult to identify. The Tribunal finds that in itself does not damage the cogency of the allegations. The claimant had a proper opportunity to respond to the allegations and she provided no adequate explanation as to why 50 % of the department described inappropriate behaviour on her part.
53. The claimant was fairly dismissed.
54. In the circumstances the Tribunal concludes in the context that the claimant maintained a blank denial to the allegations and confirmed to Mr. Carter that if she had dates and times she would not be able to refute the allegations that a different procedure would not have resulted in a different outcome.
55. The respondent was clear of the standards expected at work of its staff in the department. The claimant was familiar with the standards. The claimant has been warned in June 2020 about her behaviour and that further misconduct would result in disciplinary action. The wealth of evidence amounting to 50 % of the department staff describing the claimant's unacceptable behaviour in the workplace leads the Tribunal to conclude that the claimant was guilty of blameworthy conduct and that this was the reason as to why the claimant was dismissed. This is the type of case where a 100% deduction for contributory fault is appropriate.
56. The claimant's claim of unfair dismissal is dismissed.

Employment Judge

Date: 3 June 2021

Sent to the parties on:

Date: 4 June 2021