



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Maturine

**Respondent:** Caretech Community Services

**HELD by:** CVP

**ON:** 8 March 2022

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr J Anderson, Counsel

# JUDGMENT

The Judgment of the Tribunal is that the claimant was not unfairly dismissed and further the complaints of no written reasons for dismissal and holiday pay are hereby dismissed.

# REASONS

## 1. Introduction

In this case Mr Maturine was employed by Caretech Community Services as a maintenance operative from 12 April 2009 until his dismissal on 10 December 2020. The claimant complains to this Tribunal that he was unfairly dismissed.

## 2. Issues

The issues in this case relate to what was the reason for dismissal and whether the dismissal was fair, including whether fair procedures were followed by the respondent in dismissing the claimant.

### 3. Matters occurring during the hearing

- 3.1. There was some delay in starting and that was not helped by the submission of last minute bundles by both parties, despite very clear case management orders. Further the claimant not being represented had not prepared a witness statement.
- 3.2. In addition to the complaint of unfair dismissal the Tribunal investigated whether the claimant had other claims, namely, no written reasons for dismissal and no holiday pay. Neither of these were in the claim form and the claimant, in so far as they existed, withdrew them and they are dismissed in the judgment.

### 4. 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):

- 4.1. The respondent is in the care home business and its service users include those with physical and mental disabilities with age profiles of 18 to 60 or 70, with some children service users.
- 4.2. The claimant was employed at the time of his dismissal as a maintenance operative and as such when carrying out his duties he did (but not all the time) come into contact with service users, so there was a safeguarding element to his employment. As has been said earlier the claimant is a long server (11 years) and for a period the Tribunal understood he was doing some care work, so that he would be familiar with the purpose of the business.
- 4.3. In January 2015 the claimant was arrested for damage to property, for which he was cautioned. He reported the occurrence straightaway himself to the respondent.
- 4.4. On a day in 2018 the claimant was arrested for theft and he reported the incident to the respondent immediately he went to work.
- 4.5. On 20 July 2020 the claimant was arrested for alleged offences of possession of cannabis, resisting arrest and sexual assault. He was released in the early hours of 21 July 2020. The claimant went home and at 7.00am the same morning he asked his neighbour to borrow his phone so he could get in touch with his work colleague Matthew Schofield. He did not have a phone himself as the police had it. The neighbour made contact with Mr Schofield. The claimant was working that day, picking up a vehicle, apparently with Mr Schofield, in Birmingham, recovering it to Huddersfield.
- 4.6. Mr Schofield made contact with his and also the claimant's line manager Katie Munt.
- 4.7. The claimant arrived back in Huddersfield between 2.00pm and 3.00pm and went to get a temporary phone. The claimant worked until around 5.00pm and once home at 5.30pm the neighbour told the claimant that Mr Schofield said that the claimant had to meet Katie Munt on 22 July 2020 in Huddersfield.
- 4.8. On 22 July 2020 the claimant went to the office and in the presence of a witness the claimant told Katie Munt what had happened as regards his

arrest and as a result Charlotte Smith suspended the claimant on full pay indefinitely.

- 4.9. The claimant attended an investigatory interview with Deanna Whittle in Manchester on 31 July 2020.
- 4.10. Despite assurances from the respondent the claimant had no contact from the respondent until after his next bail hearing, which was due to take place on 2 October 2020.
- 4.11. It was clear that the claimant's next bail appearance would not be for at least six months and in fact we know now that the sexual assault case is still the subject of bail until 2 May 2022.
- 4.12. The claimant was contacted in early November 2020 by the respondent. The respondent, we find, had to consider its position in the light of the long period for resolution of the outstanding sexual assault case. In fact the cannabis allegation and the charge of resisting arrest had been disposed of and the only outstanding charge at or about the time of dismissal was the sexual assault charge.
- 4.13. The claimant was called before a disciplinary hearing with one day's notice and, to give more time, this was adjourned for six days until 18 November 2020. The claimant had been given a pack of documents for the disciplinary hearing, which included an investigatory report compiled by Deanna Whittle. The claimant was unhappy that he had only just been given it. He was also unhappy that up until he was informed on 11 November 2020 he did not know that he was in line for disciplinary action.
- 4.14. At this stage the respondent had consulted the company handbook, which had in it as an example of gross misconduct failure to disclose any arrest during employment.
- 4.15. The claimant told us that he never broke any policies relating to failure to disclose, but the respondent was aware that the claimant had made two relevant and appropriate disclosures relating to the two previous occasions mentioned above.
- 4.16. The hearing took place and on 10 December 2020 Christine Yewdell, who conducted the hearing, wrote to the claimant stating that the claimant was dismissed, because there was an unreasonable delay in the claimant reporting what she called the concerns to Miss Munt. Miss Yewdell also felt that the claimant rather than Mr Schofield should have highlighted the matter to the respondent.
- 4.17. On 11 January 2021 the claimant appealed. For reasons which are unclear that appeal was never dealt with. The claimant certainly did not pursue a hearing vigorously.
- 4.18. On 21 January 2021 the respondent wrote to the claimant at his correct address a more detailed letter about his dismissal and its reasons which the claimant said he never received. The fact is that the claimant was already dismissed by then and the letter in so far as it may be relevant seeks to deal with some of the claimant's concerns. It also highlights the fact that paid suspension could not in effect go on forever.

**5. The law**

The Tribunal has to have regard to sections 98(1)(2) and (4) of the Employment Rights Act 1996.

**6. Determination of the issues**

6.1. The Tribunal finds that the reason for dismissal related to conduct. The claimant surfaced from his no doubt unpleasant experience at 7.00am on the date that he came out of custody. He did not have a phone, but he could quite easily have made early contact with the respondent, which we find he was supposed to do and that he knew that. Instead somehow he involved a colleague and spent most of the day driving and even when he had finished he had time to contact the respondent after 2.00pm or 3.00pm and therefore in the afternoon. Even if he could not contact Katie Munt, which he maintains was the position, he was long serving and we find that he knew the ropes. The claimant could and should, particularly bearing in mind the charges, have contacted someone in the respondent organisation, bearing in mind the nature of the respondent's business. The respondent's employment handbook dealt in particular with failure to report under the heading of gross misconduct. I also find that the open ended suspension was not a reason for dismissal.

6.2. Was the dismissal fair? The claimant does complain about the manner of his dismissal, not receiving copy documents, not being told that he was in discipline and not having his appeal dealt with. There were other issues. I do not think in this case that these would tip the balance away from the fairness being in the respondent's direction. At the end of the day the claimant was in a serious situation. He did not in the view of the Tribunal take it seriously and dismissal by the respondent was within the band of reasonable responses.

Employment Judge Shulman

Date: 23 March 2022