

EMPLOYMENT TRIBUNALS

Claimant

Respondent

Julian Wilson

v

G4S Care & Justice Services (UK) Limited

Heard at: Cambridge

On: 5 and 6 February 2024

Before: Employment Judge de Silva KC, Mr C Davie, Ms C Smith

Appearances

Claimant: In person

Respondent: Mr A. Clark, Solicitor

RESERVED JUDGMENT

1. The Claimant's claim that he was discriminated against because of his sex pursuant to sections 13 and 39(2) of the Equality Act 2010 is dismissed.

REASONS

A. THE PROCEEDINGS

1. By Claim Form presented on 2 December 2022, the Claimant brought claims of race and sex discrimination. At a Case Management Hearing on 3 July 2023, the race discrimination claim was dismissed on withdrawal and the issue for determination at the final hearing was identified as being whether the Claimant was discriminated against because of his sex, by being dismissed. At that hearing, the Claimant confirmed that the only claim that he was pursuing was for sex discrimination, relying on Tamika Brown as a comparator.
2. On the morning of the first day of the final hearing, the Respondent applied for an adjournment so that the hearing started on the second listed day, asserting that Mr

Clark was unwell. The Tribunal granted the application for reasons given orally so that the evidence started on the second day, with the first day being used as a reading day by the Tribunal.

3. The Tribunal heard oral evidence from the Claimant and from Karl Styles (Deputy Director of Oakhill Secure Training Centre (“**Oakhill**”)) and Michelle Price (Director of Oakhill) on behalf of the Respondent. All witnesses were cross-examined. The Tribunal was referred to a bundle of documents running to 285 pages. The Tribunal heard closing submissions from the parties and the members of the Tribunal then deliberated among themselves.
4. The Respondent asked that two residents of Oakhill be referred to only by their initials in the hearing and in the judgment. The Claimant consented to this. The Tribunal, while having in mind the principle of open justice, granted the request as the two individuals concerned are children, they are potentially vulnerable, their identities are not relevant to the proceedings, their right to privacy is engaged and there is some risk of detriment to them if they were identified in the hearing or the judgment and reasons.

B. FINDINGS OF FACT

5. The Tribunal makes the following findings of fact on the chronology of events which are relevant to the issues between the parties. Where there was no dispute between the parties as to a particular fact, the findings are recorded below without further explanation. Where there was a dispute between the parties on the evidence, the Tribunal explains why it made its findings of fact.

Parties

6. The Respondent operates prisons and provides associated care and justice services to the UK government. It operates Oakhill, which is a small custodial unit where up to 80 young people aged 14 to 18 are housed and educated. The Respondent employs around 196 staff at Oakhill. The children housed at Oakhill have all been remanded or sentenced to periods of detention for a range of crimes, including gang-related offences and the most serious crimes such as murder. In these circumstances, there are significant risks to the safety of the children living at Oakhill who may be vulnerable and a need to safeguard them effectively.
7. The Claimant was employed at Oakhill as a Secure Care Officer (“**SCO**”) from 19 October 2020 until his dismissal on 7 October 2022.

Final Written Warning on 1 February 2022

8. On 1 February 2022, the Claimant was given a final written warning for permitting a child to enter the bedroom of another child on 28 October 2021. The child had been in the room of the other child for just under a minute, in the presence of the Claimant who was trying to get him to leave. A further allegation of falsification of records in relation to this incident, which would have been a matter of honesty and integrity, was not upheld. The Claimant appealed the decision and the appeal was

heard by Mr Styles who dismissed it. Training was recommended for the Claimant but not all of it was provided.

Events on 12 August 2022

9. On 12 August 2022, the Claimant came on shift at 2pm. One of the first things that he did was look for a 'diester'. A diester is a magnet that, when placed on the frosted viewing panel into a young persons' bedroom, clears the frosting so that the panel is transparent and an SCO can see into the bedroom. There is usually one diester per unit but the one for the unit where the Claimant was working had been lost. As a result, the Claimant was told by his manager, Ellis Currie, to carry out verbal checks, that is calling out to the young person when they should be in their bedroom and listening for an answer. The lack of a diester on the unit had been an issue previously and the Claimant had asked for a replacement diester.
10. That evening, the Claimant was asked to take a child (who is referred to in these Reasons as OM) outside as a 'winddown activity' and the Claimant accordingly took him outside to the basketball court. The Claimant was then contacted by radio by the control room who asked him to bring OM back inside.
11. OM's bedroom was on a corridor off a central common room known as the association room. The Claimant took OM into this corridor. OM asked to go into the association room for some food and the Claimant engaged in a discussion with him about this, saying that OM should go to his room and the Claimant would get food for OM from the association room.
12. While this discussion was going on, Tamika Brown, another SCO, opened the door between the corridor and the association room and let another child who will be referred to as AM, whose bedroom was on that corridor, into the corridor. She then shut the door without saying anything to the Claimant. AM then went into OM's bedroom. The Claimant says that he did not notice AM either entering the corridor or going into OM's bedroom and we accept this. OM then told the Claimant that he did not want any food and went into his bedroom. The Claimant closed the door to OM's room just after 8.30pm.
13. The Claimant then went into the association room. The Claimant and other staff members were responsible for checking that the young persons were in their bedrooms but visual observations were not carried out as there was no diester on the unit, as explained above. The Claimant carried out verbal checks at 8.52pm and 9.07pm. He told the Tribunal that there was a lot of noise on the corridor when doing the checks, including music being played, and that he thought OM and AM were each in their own rooms. We accept this.
14. Matthew Hill, an SCO, came on shift at 9pm and went to find a diester. He carried out a check of the bedrooms at 9.17pm but he did not notice that AM was in OM's room. It was only at 10.16pm that another SCO, Dan White, noticed that AM was not in his room and at 10.29pm that OM's room was opened and AM taken to his own room.

15. The above summary of the events is based on the CCTV footage and is not materially in dispute. The CCTV also shows the Claimant writing on some paperwork. There are two different forms which are completed on shift, the bedroom monitoring sheet and the door lock sheet. The sheets for the night in question went missing for unknown reasons.

The Investigation

16. A fact-finding investigation was carried out by Sian Murphy during which a number of employees, including the Claimant, were interviewed. Ms Murphy's investigation report of 14 September 2022 concluded that the Claimant had a case to answer in relation to the incident of 12 August 2022.

The Disciplinary Process

17. By letter dated 16 September 2022, Mr Styles invited the Claimant to a disciplinary meeting to address the following three allegations against him:

- a. Deliberately allowing two children to enter the same bedroom for a significant period of time, which fell below the acceptable standards of conduct, performance and a breach of his duty to safeguard children. The Respondent's witnesses explained, and the Tribunal accepts, that they thought that this was the most serious of the three allegations;
- b. Failure to appropriately monitor children in their rooms in line with required and expected timescales and to obtain regular visuals;
- c. Falsification of records which brought into question his honesty and integrity.

18. The disciplinary meeting took place on 7 October 2022 and was attended by Mr Styles who was supported by Abbie-James Liddiard (HR Officer), the Claimant and a note taker. The accuracy of the note is not disputed. At the meeting, Mr Styles and the Claimant went through the three allegations and the events of 12 August 2022. There was a discussion about the process for opening the door to a young person's bedroom.

19. The Claimant accepted that personally things had gone wrong but management could have been better. When Mr Styles said it had happened before, the Claimant pointed out that the situations were different. This is correct. In the October 2021 incident, a child was in another's bedroom for less than a minute in the presence of the Claimant who was trying to persuade the child to leave.

20. At the conclusion of the meeting, Mr Styles concluded that:

- a. The first allegation (deliberately allowing two children to enter the same bedroom for a significant period of time, which fell below the acceptable standards of conduct, performance and a breach of his duty to safeguard children) was unsubstantiated in that there was no evidence to prove that

the Claimant's actions were deliberate but he had been negligent in enabling AM to enter OM's room and stay for a significant period of time;

- b. The second allegation (failure to appropriately monitor children in their rooms in line with required and expected timescales and to obtain regular visuals) was substantiated;
 - c. The third allegation (falsification of records which brought into question his honesty and integrity) was substantiated as there was evidence that he had signed paperwork.
21. Mr Styles dismissed the Claimant with immediate effect, having noted that the Claimant was on a final written warning from February 2022 for allowing children to enter other bedrooms and falsification of records. However, Mr Styles was wrong about this as the allegation of falsification of records was not substantiated on that occasion, as set out above.
22. Mr Styles further states that the Claimant had not utilised the training provided since the written warning, in order to prevent it happening again. However, as set out above, not all of the training had been provided by the Respondent.
23. In his witness statement, Mr Styles suggested that the difference between an allegation that the Claimant deliberately allowed AM to enter OM's bedroom and an allegation that he carelessly allowing AM to do so was inconsequential. We disagree and take the view that the differences are material in the context of a disciplinary process.
24. Mr Styles also said in his witness statement that the Claimant had not shown much remorse or understanding. Again, we disagree. The Claimant had shown remorse and understanding and was merely putting his own admitted failings in the context of wider failings which Mr Styles appears to have closed his mind to. We also note that Mr Styles did not refer to alleged lack of remorse when setting out his rationale to the Claimant at the disciplinary hearing and we consider that, by raising the issue of remorse in these proceedings, Mr Styles is merely seeking to justify the decision to dismiss after the event.

The Appeal

25. The Claimant appealed in writing on the grounds of:

“Incorrect & lack of evidence (listening to hearsay)

Discrimination

Employees being left in vulnerable situations (unsafe environment for staff & children, no diesters for visuals);

Inadequate training in the workplace”.

26. By letter dated 14 October 2022, Ms Price invited the Claimant to a disciplinary appeal meeting. The letter stated that the Claimant had been dismissed based on three allegations:
- a. Deliberately allowing two children to enter the same bedroom for a significant period of time, which fell below the acceptable standards of conduct, performance and a breach of his duty to safeguard children;
 - b. Failure to appropriately monitor children in their rooms in line with required and expected timescales and to obtain regular visuals;
 - c. Falsification of records which brought into question his honesty and integrity.
27. That is to say that the letter incorrectly stated that the Claimant had been dismissed for deliberately allowing two children to enter the same bedroom, when the Claimant had been dismissed for something different, namely being negligent in allowing this to happen. Mr Price confirmed to the Tribunal in her oral evidence that she had not understood that that he had been dismissed for negligence in this regard and that she had understood that he had been dismissed for deliberately doing so. This error on her part was not identified or corrected by HR, indeed Mr Clark suggested in closing that it may have been caused by HR if they were responsible for writing the letter (although there is no evidence that they wrote it).
28. The appeal meeting took place on 7 November 2022. Ms Price was supported by Sarah Grady (HR Business Partner). The Claimant was represented by Brian McGarry. A note-taker was also present. The accuracy of the note is not in dispute. In the meeting, Ms Price went through the appeal grounds and discussed the events of 12 August 2022.
29. In the course of the meeting, the Claimant made clear that he was pursuing the allegation of discrimination referred to in his appeal letter. Ms Price's evidence to the Tribunal was that the Claimant was somewhat aggressive at the meeting but she does not explain in what way he is said to have been aggressive and it is not apparent from the note that he behaved aggressively (and it was not put to the Claimant in evidence that he had behaved aggressively). Therefore, the Tribunal does not accept that he behaved in this way and takes the view that Mr Price is exaggerating in order to paint the Claimant in a poor light in the context of the present proceedings.
30. Ms Price states in her witness statement that the Claimant was interested in pointing out how poorly managed Oakhill was, how awful it was and at the same time wanted to be reinstated. This is not a fair or accurate summary of what was said at the meeting. He did not say how awful Oakhill was. He was, as he put it in the meeting, defending himself; for example by pointing out some of the failings that had contributed to the incident, e.g. the absence of diesters on the unit. Contrary to Ms Price's implication, the Tribunal sees nothing inherently inconsistent in the approach of the Claimant in the appeal process.
31. By letter dated 14 November 2022, the Claimant's appeal was dismissed. In the letter Ms Price addressed the Claimant's grounds of appeal. In the letter, she

acknowledged that, due to operational requirements, the Claimant had been unable to complete all elements of the refresher training recommended after his final written warning in February 2022.

The Treatment of Ms Currie, Mr Hill and Ms Brown

32. Ms Currie, Mr Hill and Ms Brown were each the subject of an investigation as a result of their own roles in the events of 12 August 2022. Each was alleged to have failed to appropriately monitor children in their rooms in line with the required and expected timescales and to obtain regular visuals. Mr Hill was additionally the subject of an allegation that he had falsified records which brought into question his honesty and integrity.
33. So far as Ms Currie was concerned, it was concluded that there had been a clear failure to ensure that correct oversight, management and bedroom monitoring from SCOs were in line with required standards. Dan Coker (Residential Manager) decided that the matter should be dealt with informally with 'a letter of expectation'. This was communicated by letter from Mr Coker to Ms Currie dated 25 October 2022.
34. As for Mr Hill, the allegation that he had failed to appropriately monitor children in their rooms in line with the required and expected timescales and obtain regular visuals was substantiated and the allegation that he had falsified records which brought into question his honesty and integrity was not substantiated. As a result, Mr Styles decided that the matter should be dealt with informally with a letter of expectation. This was communicated to Mr Hill by letter from Mr Styles dated 4 October 2022.
35. As for Ms Brown, the allegation that she had failed to appropriately monitor children in their rooms in line with the required and expected timescales and obtain regular visuals was substantiated. As a result, Ms Murphy decided that the matter should be dealt with informally with a letter of expectation. This was communicated to Ms Brown by letter from Ms Murphy dated 8 December 2022. The role of Ms Brown in letting AM enter the corridor before he went into OM's bedroom was not the subject of any allegation against her.

C. RELEVANT LAW

36. Section 13(1) of the Equality Act 2010 states: "*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*".
37. Section 23(1) Equality Act states: "*On a comparison of cases for the purpose of section 13 ... there must be no material difference between the circumstances relating to each case*".
38. Section 39(2)(c) of the Equality Act makes it unlawful for an employer to discriminate against an employee by dismissing them.

39. Section 136 of the Equality Act states: “(2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. (3) But subsection (2) does not apply if A shows that A did not contravene the provision*”.
40. In ***Igen Ltd v Wong*** [2005] IRLR 258, the Court of Appeal explained that a claimant must first prove on the balance of probabilities facts from which the tribunal could conclude (in the absence of an adequate explanation) that the respondent has committed an act of unlawful discrimination. The burden of proof then passes to the respondent to prove that it did not commit that act, demonstrating on the balance of probabilities that the treatment was in no sense whatsoever because of the protected characteristic (here, sex).
41. In ***Madarassy v Nomura International plc*** [2007] IRLR 246, the Court of Appeal held that the bare facts of difference in status and difference in treatment are not, without more, sufficient material from which a tribunal could conclude that a respondent had committed the act of discrimination.
42. In ***Royal Mail Group Ltd v Efofi*** [2021] UKSC 33, the Supreme Court, confirming the application of the two-stage approach to the burden of proof, held that a Tribunal may consider all the evidence from whichever party raises it when coming to the conclusion as to whether the burden has shifted.

D. THE TRIBUNAL’S CONCLUSIONS

43. Oakhill is a challenging work environment for staff and management and there are significant risks to the safety of the vulnerable young persons housed there. Two children being in a bedroom together unsupervised creates a serious risk to their safety, the consequences of which are potentially catastrophic.
44. The presence of AM in OM’s room for almost two hours was the result of a number of factors:
- a. The Respondent does not have specific policies, protocols or even written guidance for dealing with young persons at Oakhill, for example how to take them into their bedrooms, referred to as ‘door management’, what to communicate to other SCOs when taking young persons into a corridor and handing over responsibility for them and how the checks on the whether they are in their rooms are carried out. Mr Styles’s witness statement sets out what he calls ‘best practice’ which is not written in a policy or guidance document for staff;
 - b. The training recommended for the Claimant following the February 2022 final written warning was not provided to him by the Respondent, as acknowledged in the appeal letter;

- c. There were no diesters on the unit at the beginning of the Claimant's shift, despite these being essential for carrying out visual checks on the children in their bedrooms;
- d. The Claimant was told by his manager to do verbal checks. As a result he did not obtain a diester from another unit. There was no absolute requirement for visual checks, set out in a written policy or otherwise, even though this was the best way of checking that the children were each in their own rooms;
- e. Ms Brown failed to communicate to the Claimant that she had let AM into the corridor and the Claimant did not then notice that AM was in the corridor.
- f. The Claimant did not notice AM going into OM's room;
- g. Had the Claimant been standing in the doorway to OM's room, it would not have been possible for AM to enter the room (although the Tribunal again notes that there was no specific policy which required him to do so);
- h. The Claimant and other SCOs carried out only verbal checks and did so in a noisy environment where it was not possible to discern with certainty which room each child was in. Again there was no policy which said that verbal checks were insufficient and the Claimant had been told that these were sufficient in the absence of a diester.

45. Thus, while the Claimant bears some responsibility for AM entering OM's room, there were multiple failings by a number of people and the Tribunal was of the view that the Claimant was let down by his colleagues and the lack of specific protocols and written guidance at the Respondent.

The Disciplinary Allegations and the Disciplinary Process

46. The first disciplinary allegation was that the Claimant had deliberately allowed two children to enter the same bedroom for a significant period of time, which fell below the acceptable standards of conduct, performance and a breach of his duty to safeguard children.

47. As set out above, the allegation was not substantiated and Mr Styles changed it to a very different allegation, which is that he had been negligent in allowing the children to enter the same bedroom. Moreover, the precise basis on which the Claimant was said to be negligent was not made clear to him.

48. It was this allegation which was considered to be the most serious and which in effect led to his being dismissed.

49. As for the appeal, Ms Price did not properly understand what the first allegation was, wrongly believing (despite what was said in the meeting note of 7 October 2022 and despite being supported by HR) that the Claimant had been dismissed for deliberately allowing AM to enter OM's room, when he had not. This taken with

her dismissive and incorrect comment in evidence that the Claimant was interested in the appeal meeting in pointing out how poorly managed Oakhill was, how awful it was and at the same time wanted to be reinstated, leads the Tribunal to the conclusion that he was not given a proper opportunity to appeal his dismissal.

50. The second allegation was that he had not appropriately monitored children in their rooms in line with required and expected timescales and to obtain regular visuals. As set out above, the conduct of three other individuals who were subject of the same allegation was dealt with informally.
51. Mr Styles relied on the fact that the Claimant was on a final written warning from February 2022 for allowing children to enter other bedrooms and falsification of records but, as set out above, he was wrong about this (despite having determined the appeal against the final written warning) as the allegation of falsification of records was not substantiated on the earlier occasion.
52. The third allegation was that the Claimant had falsified records which brought into question his honesty and integrity. Even if the information on the bedroom monitoring or the door lock sheets was incorrect (which was uncertain as they had been misplaced), there was no question of the Claimant's lack of honesty and integrity in this regard. The Claimant had carried out monitoring and he did not know that AM was in OM's room (and to be clear the disciplinary process did not conclude that he had known this). This absence of evidence of honesty/integrity had not occurred to Mr Styles or Ms Price at the time, although they accepted at final hearing that there was no question of dishonesty or lack of integrity in this regard.

Alleged Sex Discrimination

53. The Tribunal accepts that Mr Styles's misunderstanding about the basis of the disciplinary warning in February 2022 and Ms Price's misunderstanding about the reason for dismissal in October 2022 was not deliberate and arose out of carelessness on their part.
54. The Tribunal is of the view that that part of the reason for the way that the Claimant was so poorly treated in the process generally was that Mr Styles and Ms Price were keener to pin blame on the Claimant for a serious incident than to explore in depth the reasons why the incident had occurred or to give the Claimant a fair opportunity to address the allegations against him. However, the Tribunal is satisfied that this was because he was the person who had inadvertently let AM into OM's room rather than anything to do with his gender.
55. The Claimant's comparator is Ms Brown. Although Ms Brown was partially responsible for AM being in OM's room, her circumstances were materially different to those of the Claimant. In particular, although she had let AM into the corridor, she was not the person who had (inadvertently) let AM into OM's room. This was the Claimant.
56. It is also relevant that Ms Brown was not the subject of a final written warning as the Claimant was. Although we accept the Claimant's point that the events of

October 2021 which led to his final written warning are different, we accept Mr Styles's evidence that he found them to be similar as they related to a child being in another child's bedroom. Further, the allegations against Ms Brown were dealt with by Ms Murphy who was not involved in the decision to dismiss the Claimant.

57. The Tribunal is of the view that these were the reasons why Ms Brown was treated differently to the Claimant, rather than anything to do with his sex. It also notes that Mr Hill (a man) was not dismissed despite also being found to be responsible in relation to the monitoring failures. Although it did not form part of the Tribunal's reasoning, it notes the Respondent's observation that the Claimant's witness statement makes a number of criticisms about his dismissal but does not allege he was dismissed because of sex.

58. For these reasons, notwithstanding the failures of the Respondent in the disciplinary process, the Tribunal is satisfied that the Respondent has proved a non-discriminatory explanation for the differential treatment of Ms Brown and that Claimant's dismissal, including the decision not to uphold his appeal, was in no sense whatsoever because he is a man.

Employment Judge de Silva KC

Date: ...30 March 2024.....

Sent to the parties on:
3 April 2024

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For the Tribunal:

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