



# EMPLOYMENT TRIBUNALS

## BETWEEN

Claimant  
MR M LOCKE

AND

Respondent  
WESSEX AUTO CENTRES LTD

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL      ON:    7<sup>TH</sup> / 8<sup>TH</sup> NOVEMBER 2022

EMPLOYMENT JUDGE MR P CADNEY  
(SITTING ALONE)

MEMBERS:

### APPEARANCES:-

FOR THE CLAIMANT:-      MR N O'BRIEN

FOR THE RESPONDENT:-    MR A PECK (COUNSEL)

## JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim that he was unfairly dismissed is not well founded and is dismissed.

## Reasons

1. By this claim the claimant brings a claim of unfair dismissal. He submits in summary, that his dismissal as an employee was not justified by the incidents themselves and that it forms part of a wider conspiracy to unlawfully remove him as a director/ shareholder and "steal" his company from him. The respondent contends that he was dismissed for a potentially fair reason; either misconduct or in the alternative some

other substantial reason; and that the dismissal was procedurally and substantively fair.

### Preliminary / Procedural Issues

2. The tribunal has heard evidence from the claimant, and on behalf of the respondent from Mr Nygel Locke the claimant's father, Mr Chris Barnes, and Ms Emma Barnes.
3. The claimant had not prior to the hearing prepared or exchanged a witness statement, in breach of the case management orders. Following the resolution of preliminary issues as to some of the documents in the bundle (set out below) Mr O'Brien applied for an adjournment to 10.00 a.m. on the second day to allow him to prepare and exchange one, and for permission to rely on it despite the fact that it had not been exchanged in accordance with the case management directions. As I took the view that the case could still be concluded in the time allocated and that any prejudice to the respondent would be minimal I acceded to the claimant's application
4. The tribunal spent the first part of the first morning reading the bundle, except for the parts in dispute, and the respondent's witness statements. There was a dispute as to the admissibility of some of the documentary evidence the respondent sought to rely on. The respondent sought to rely on, and included in the bundle, a non-molestation order made by the County Court and the materials relating to it. The claimant objected on the basis that the respondent could not use the order or supporting documentation without the consent of the County Court, which they had not obtained. I was informed that it was obtained following undertakings given by the claimant and not on the basis of any findings of fact made by the County Court as to the underlying allegations; and I took the view that in those circumstances it was either of no evidential value, or that the evidential value was so peripheral that it would be disproportionate to admit it, and I did not read or take into account either the order itself or the background material.
5. As a result the outcome of this case has been determined entirely by the evidence placed before me by the parties at this hearing; and, as is set out below, I have focussed on the evidence directly relating to the decision to dismiss the claimant and have not sought to disentangle or make findings of fact about other matters such as the shareholdings in the company which as I understand it either are or may be litigated elsewhere.

### Background Facts

6. The background to this case is that the respondent is a business of which the claimant, his father and Mr Barnes are shareholders, directors and employees. Almost everything about the founding of the company and the current shareholding is in dispute. Mr Barnes' evidence is that the company was incorporated in June 2019 at which point he was the sole shareholder. The claimant joined as a director and shareholder in September 2019. Mr Nygel Locke subsequently joined the company

- and was allocated a fifty percent shareholding. This occurred at the claimant's suggestion as, in the event that their relationships foundered, he did not want either Mr Barnes wife or his own girlfriend to have a significant claim to a shareholding in the company.
7. The claimant denies this, saying that the allocation of a fifty percent shareholding to his father occurred without his knowledge or consent. He essentially alleges that there has been a conspiracy between his father and Mr Barnes to "steal" from him what he refers to as, and believes to be, "his" company, of which the allocation of the fifty per cent shareholding to his father is a significant example. He states that he remains a fifty percent shareholder and refutes the allegation that any part of his shareholding was given to his father.
  8. In addition to the disputes about the company and its structure there are disputes about the relationship between the claimant and his father, and the claimant's conduct, before the specific events which led to his dismissal; and allegations as to his conduct made by Mr and Mrs Barnes.
  9. Whilst some of those matters are set out in the witness statements and referred to in evidence, in determining whether the claimant was fairly or unfairly dismissed I have confined myself to the specific incidents and procedure which led to the claimant's dismissal.

#### Incidents Leading to the Claimant's Dismissal

10. The first incident occurred on 30<sup>th</sup> November 2021. Mr Nygel Locke, whose evidence is supported by Mr Barnes, alleges that he and Mr Barnes were working in an upstairs office when the claimant said that he wanted to talk to them. Both were working and neither replied immediately causing the claimant to call them "ignorant pricks", and Mr Locke a "fat cunt". He then struck his own company laptop, struck Mr Barnes' monitor and struck another computer and screen to the floor. Mr Locke picked up his own laptop and went to leave the room, and whilst doing so the claimant continued to abuse him in similar terms and punched him twice in the head.
11. The second occurred on 2<sup>nd</sup> December 2021. Mr Locke, Mr Barnes and others were in the office when the claimant entered. As the claimant walked towards him Mr Locke went to leave saying that he wasn't prepared to be hit anymore, when the claimant stated "I didn't hit you, I just tapped you like this", and then hit (tapped in the claimant's description) Mr Nygel Locke again. Mr Nygel Locke ran from the office and drove away but was pursued to a garage by the claimant, where the claimant continued verbally abusing him. Mr Locke subsequently returned to the respondent's premises as the police had been called.
12. On or about 14<sup>th</sup> December 2021 the claimant transferred £10,000 from the companies bank account into his personal bank account. He accepts that he did this and asserts that he was entitled to do so as he feared the respondent would stop paying his salary.

13. The final incident concerned the company van. The company had paid for it to have signwriting and graphics on the body. The van was in the claimant's possession and he does not dispute that he removed the signwriting and graphics. He contends that he was entitled to do so as he was the owner of the van.
14. Mr Locke and Mr Barnes decided that disciplinary proceedings should commence but concluded that they were not trained to do so, and instructed an HR consultant Ms Teresa Rice. By a letter dated 15<sup>th</sup> December 2021 the claimant was invited to a disciplinary hearing on 11<sup>th</sup> January 2022. At that stage the allegations were damaging a laptop and computer screen, hitting Mr Nygel Locke twice in the head, and the fraudulent transfer of the £10,000. He was informed that all were regarded as serious misconduct and, if upheld, could result in summary dismissal. By a subsequent letter dated 21<sup>st</sup> December 2021 he was suspended pending the outcome of the disciplinary hearing.
15. Although not strictly relevant for my purposes, on 20<sup>th</sup> December 2021 the claimant lodged a grievance in respect of a number of actions taken by Mr Locke and Mr Barnes since the events of 30<sup>th</sup> November / 2<sup>nd</sup> December 2021 including, the obtaining of the non-molestation order, a proposal they had made to buy his shares, his being blocked on Facebook and Whatsapp, the locks of the garage being changed, his purportedly having resigned as a director, his being denied access to the work email or use of the company bank card, and his company mobile phone contract being cancelled, the institution of disciplinary proceedings, and other similar matters of which he had had no prior warning..
16. The grievance hearing was heard on 30<sup>th</sup> December 2021 by Ms Rice. The claimant had requested that he be accompanied not by a colleague or trade union official, but by his partner Ms Gilligan, to which Ms Rice agreed. One of the grievances relating to the procedure used to remove him as a director of the company was upheld, but the rest were dismissed.
17. The claimant appealed the grievance outcome. The appeal was heard on 14<sup>th</sup> January 2022 by Ms Heidi Skirrow. On this occasion the claimant was not accompanied but was happy to proceed his own. The appeal outcome was sent on 17<sup>th</sup> January and was partly upheld in relation to one allegation relating to his removal from a Whatsapp group.
18. By a letter dated 18<sup>th</sup> January 2022 the disciplinary process was resumed and the claimant was invited to a disciplinary hearing on 20<sup>th</sup> January 2022 at 2.00pm. At approximately 1.30 pm on 20<sup>th</sup> January the claimant emailed saying that he was too ill to attend.
19. By a letter dated 4<sup>th</sup> February 2022 the disciplinary hearing was rescheduled to 10<sup>th</sup> February 2022. Two further disciplinary allegations were added at that stage, that of contacting the company's employees whilst suspended; and of removing the company's signwriting and graphics from the company van without permission. The claimant did not attend the meeting, but did not request any postponement or indicate that he was unable to attend for any reason. Ms Rice decided to continue in his

absence and concluded that from his own written account the claimant did not dispute four of the allegations, of damaging the laptop, striking his father, transferring £10,000 and removing the signwriting and graphics from the van. In his absence she was not able to establish the facts about contacting employees and this allegation was not upheld. For the matters she had upheld she recommended dismissal for gross misconduct.

20. On the advice of Ms Rice, Mr Locke and Mr Barnes concluded that the claimant was guilty of gross misconduct in relation to each of the upheld disciplinary charges. By a letter of 10<sup>th</sup> February 2022 and was summarily dismissed; and was notified of his right of appeal within five working days. In fact the claimant notified the respondent of his request for an appeal on 30<sup>th</sup> March 2022, which was declined as it was out of time.

### Conclusions

21. The primary contention of the respondent is that the claimant was dismissed for misconduct. Misconduct is a potentially fair reason for dismissal within s98(2) Employment Rights Act 1996. The questions for the tribunal in respect of a misconduct dismissal are firstly whether the respondent has satisfied the burden of proof, showing that the genuine reason for dismissal was a belief in the misconduct alleged. If the respondent satisfies that burden there are the three well known Burchell questions. Did the respondent conduct a reasonable investigation, did it draw a reasonable conclusion as to the misconduct from that investigation, and was dismissal a reasonable sanction. In relation to those latter three questions at the range of reasonable responses tests applies.
22. In addition I remind myself but that in answering those questions the tribunal should not substitute its own opinion for that of the decision makers; and that the decision of the decision makers must be judged against the information before them at the time, and not the information before me, in so far as there is any difference between the two.
23. As is set out above I have focused on the specific allegations which led to the claimant's dismissal and have not, unless they are directly relevant to the dismissal, attempted to make any finding of fact about the background disputes.
24. The first question for me is whether the respondent has satisfied the burden of proof in demonstrating a potentially fair reason for dismissal. The respondent relies both on misconduct and some other substantial reason. I will focus firstly on the misconduct as that is the primary reason for dismissal. In the event that I'm not satisfied that the respondent has proved that misconduct was the genuine reason for dismissal, or I conclude that dismissal for that reason was not fair, I will consider the dismissal against the alternative ground of some other substantial reason.
25. The evidence of the respondent is that it was the claimant's conduct as set out above which caused it to set in train the disciplinary process leading to his dismissal, and that, as is set out in greater detail below, the factual allegations are not broadly in

- dispute. Secondly the matters relied on by the claimant as demonstrating a desire to remove him from the company, as set out in his grievance and summarised above, all occurred after the incidents of 30<sup>th</sup> November and 2<sup>nd</sup> December 2021. It submits the evidence clearly indicates that it was the claimant's own behaviour which was the trigger for the events of which he complains, and that necessarily they have satisfied the burden of proof of demonstrating that the claimant was genuinely dismissed for misconduct.
26. The claimant contends that the real reason for his dismissal was a part of the scheme to remove control of "his" company from him. His dismissal should not be seen in isolation but as part of a sequence of events which including starting the disciplinary process, suspending him, removing him as a director and removing access to company email, bank card and mobile phone. He is clearly correct that disciplinary process was part of a much wider attempt to limit his involvement with the company. However that does not in and of itself mean that his dismissal was not genuinely a consequence of a belief in the misconduct. Having heard from Mr Nygel Locke and Mr Barnes I accept their evidence, firstly that the events which followed were prompted by the claimants actions and were not part of a pre-existing plan to remove him, and that the dismissal was genuinely on the basis of a belief that he had committed the misconduct.
27. Before dealing with the Burchell questions I will briefly deal with procedural questions. As set out above the decision to recommend dismissal was made at a meeting which the claimant did not attend; and he was not permitted an appeal as the application was out of time. The claimant has not advanced any argument before me that here was any procedural unfairness, but for completeness sake I should record that both decisions were in my judgement reasonably open to the respondent. In addition in terms of any prejudice, in my judgement this was minimal, given that the claimant had set out a detailed account in writing in respect of the events of 30<sup>th</sup> November and 2<sup>nd</sup> December 2021 and did not dispute the facts of the other allegations.
28. That leaves the three Burchell questions. In terms of the investigation it required that the claimant be given an opportunity to challenge Mr Locke and Barnes version events, and to explain them from his perspective. On 16<sup>th</sup> December 2021 he sent a detailed account of the events of 30<sup>th</sup> November and 2<sup>nd</sup> December 2021. His account of the 30<sup>th</sup> November is almost identical to theirs except that he describes Mr Locke pushing past him and him "slapping" not punching him in the head; and he expresses regret for his "anger problem" getting the better of him. He does not dispute "attacking" his laptop and pushing the other computers. Similarly his account of the 2<sup>nd</sup> December is not significantly different from the other accounts. Equally he had accepted transferring the £10,000 and did and does not dispute removing the signwriting /graphics from the van. It is hard to see what more investigation was required, and certainly in my judgement the investigation falls on any analysis well in the range reasonably open to the respondent.

29. Similarly in terms of the conclusions, other than a dispute as to the strength of the blows with which he struck Mr Nygel Locke there is almost no factual dispute and the conclusion that he as a matter of fact carried out the acts alleged was inevitable.
30. That leaves the question of sanction which is in reality the primary focus of the claimant's challenge to the fairness of the dismissal. He contends that the dispute between himself and his father is a private family matter, and that irrespective of the rights and wrongs of the events, and irrespective of the incidents taking place on the premises at which he was employed, that they should not be regarded as related to or concerning employment at all. Secondly he contends that the incidents were exaggerated by Mr Barnes and Mr Locke, and that they should be regarded as minor incidents not meriting dismissal in any event. In support of the latter point he contends that he did not punch but only tapped or slapped his father, and any damage to the laptop should be ignored as he had placed the order for it and it should be regarded as his property; and therefore that he was entitled to damage it if he chose to, irrespective of the fact that it had been paid for by the company and was used for the purposes of the business. Similarly in respect of the withdrawal of the £10,000 he had the authority to do so as a director of the company, and was entitled to do so as he reasonably suspected that the respondent would stop paying his salary and reasonably used his access to the company's bank account to obtain it in advance. In relation to the van he contends that he owned it and was entitled to remove the signwriting/graphics, again irrespective of the fact that they had been paid for by and were the property of the company.
31. The respondent submits that it is not open to the claimant to divorce himself from responsibility for his actions in his way. He was an employee of the company and it was entitled to determine whether it wished to continue to employ him. The misconduct included violence towards another director/employee; damage to the laptop, the unauthorised transfer of £10,000 and damage to company property in the removal of the signwriting from the van. All of the misconduct occurred on the company's premises, or involved and was directed towards other employees/directors, concerned damage to the company's property or the unauthorised transfer of company funds. In those circumstances it is not open to the claimant to assert that the misconduct should be held to fall outside and not be considered in the context of the employment relationship. Any one of these would be sufficient to justify terminating the employment relationship, and taken together dismissal self-evidently and on any analysis must fall within the range of reasonable responses.
32. In my judgement the respondent is correct and dismissal necessarily falls within the range of reasonable sanctions.
33. Having answered all of the Burchell questions in the respondents favour it follows that the claim for unfair dismissal must be dismissed.
34. In the circumstances it is not necessary to consider the alternative basis for contending that he dismissal was fair.

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**EMPLOYMENT JUDGE Cadney**  
**Dated: 25<sup>th</sup> November 2022**

**Judgment sent to parties on**  
**06 December 2022**  
**By Mr J McCormick                      For the**  
**Tribunal Office**