



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Stafford

**Respondent:** North West Ambulance Service NHS Trust

**Heard at:** Manchester (by CVP)

**On:** 26 April 2023

**Before:** Judge Callan (sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms L Quigley (counsel)

# JUDGMENT

The judgment of the Tribunal is that the complaint of unfair dismissal is not well-founded. This means the respondent fairly dismissed the claimant.

# REASONS

## Introduction

1. The claimant was an Emergency Medical Technician. He commenced his employment on 30/08/2016 and was dismissed for gross misconduct on 07/09/2022. He entered into Early Conciliation on 15/11/2022 and Acas issued the certificate on 21/12/2022.
2. By a claim form presented on 21/12/2022, the claimant complained that he had been unfairly dismissed.
3. The respondent resisted the claim in its response form and maintained the claimant was fairly dismissed by reason of his misconduct.

## Issues

4. The issues to be determined were agreed at the outset of this hearing:
  - 4.1 Whether or not the respondent can prove the sole or principal reason for the dismissal;
  - 4.2 Whether or not that reason was one which related to the claimant's conduct;
  - 4.3 Whether the respondent acted reasonably or unreasonably in all the circumstances of the case in treating that reason as a sufficient reason to dismiss the claimant;
  - 4.4 Did the respondent have a genuine belief that the claimant had committed the misconduct;
  - 4.5 Were there reasonable grounds for that belief;
  - 4.6 At the time the belief was formed, had the respondent carried out a reasonable investigation;
  - 4.7 Did the respondent otherwise act in a procedurally fair manner;
  - 4.8 Was dismissal within the range of reasonable responses;
  - 4.9 If the dismissal was found to be unfair, the respondent would argue that the claimant's compensation should be reduced on the ground that, had the respondent acted fairly, the claimant would or might have been dismissed in any event. The respondent would also seek a reduction in compensation to reflect what the respondent said was alleged culpable and blameworthy conduct.

## Evidence

5. On behalf of the respondent, I heard evidence from Mr. Daniel Peter Smith, Interim Head of Service at the time, who conducted the disciplinary hearing, and Ms Lisa M. Ward, Director of People, who with her colleague Mr. G. Blezard, Director of Operations, heard the claimant's appeal against dismissal. The claimant gave evidence on his own behalf. I was also provided with a bundle of 254 pages, and I read those documents referred to by the witnesses in addition to the pleadings..

## Relevant Legal Framework

6. Section 98(1) and (2) of the Employment Rights Act 1996 (ERA) provides as follows:

- “(1) In determining for the purposes of this Part whether the dismissal is fair or unfair, it is for the employer to show –

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it –

- (a) ...
- (b) relates to the conduct of the employee”

7. Section 98(4) of ERA provides as follows:

“Where the employer has fulfilled the requirement 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 the substantial merits of the case.”

8. It is for the employer to show the reason for dismissal and that it is a potentially fair one, such as conduct: this is not a high threshold – it is designed to deter employers from dismissing for trivial or unworthy reasons. If the reason *could* justify the dismissal, the enquiry moves on to the question of reasonableness (**Kent County Council v Gilham** [1985] ICR 233).

9. In conduct dismissals it is well-established that there are three aspects which have to be considered: did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case? did the employer hold a genuine belief that the employee was guilty of the misconduct alleged? and did the employer have reasonable grounds for that belief. The band of reasonable responses test applies to each stage of the dismissal process, that is, the investigation, dismissal and appeal.

10. Where the dismissal is for alleged gross misconduct, the tribunal must nevertheless determine whether it was within the range of reasonable responses to treat the conduct as a sufficient reason for dismissing the employee summarily (**Burdett v Aviva Employment Services Ltd.** [2014] 11 WLUK 420).

## The Facts

11. The respondent is an Ambulance Service NHS Trust providing emergency services in the North West. The claimant was an Emergency Medical Technician who attended medical emergencies with his colleague, Simon Evens (SE), who was a paramedic. At the time of his dismissal, he was based at the Dukinfield ambulance station.

12. In addition to his duties for the respondent, the claimant undertook voluntary work for Scouts UK.

13. In early May 2022, the Trust received a verbal complaint from SE about the claimant's conduct. This was reduced to writing in an email dated 10 May 2022 (pages 41-42) which SE sent to Christopher Poyser, Senior Paramedic Team Leader. The complaints concerned crude remarks concerning young children, showing photographs of young children in a swimming pool taken when the claimant was acting in the capacity of swimming instructor, and the expression of strong views about paedophilia.

14. The allegations were of a serious nature and were sent to an Operations Manager for initial assessment and risk management pending full investigation. On 16/05/2022, the claimant was suspended pending disciplinary investigation. An investigating officer, Ms. Jones-Roberts, Sector Manager, was appointed to undertake the investigation.

### Disciplinary investigation

15. The investigation was into 6 allegations, which were:

- (a) The claimant was said to have stated "I've just missed all them potholes, this ride is smoother than a 7 year old's cunt";
- (b) The claimant having stated "Go in the back and smell it. It smells fresher than a new-born's pussy";
- (c) The claimant presenting a video of children completing outdoor water activities to another member of staff,
- (d) On the way to an emergency the claimant repeatedly stating he wanted to "fuck a redhead". Whilst at the incident, the claimant commented "oh look, she's a redhead" the patient being a baby under 12 months of age,
- (e) Commenting on a vulnerable 16 years old patient that "at least she had a cracking pair of tits on her". and
- (f) Being involved in a discussion about paedophilia with another member of staff and stating that paedophilia was a condition which should not be criminally punished.

16. The investigating officer reviewed SE's email of 10/05/2022, various photographs and interviewed 7 people, including SE and the claimant.

17. The claimant attended an investigation interview accompanied by his trade union representative. He denied making the comments which formed the bulk of the allegations against him, with the exception of saying that it was possible, if there had been talk about girls, he could possibly have said that he wanted to “fuck a red head”. He denied saying that repeatedly or about a child. He said that he would speak about things of a sexual nature, dependent on who it was he was working with. Initially, he did not recall having a conversation about paedophilia. He said he potentially had a conversation about paedophilia, but the alleged point of view was taken out of context. He admitted showing photographs of children in a swimming pool and undertaking water-based activities. He said that he had their parents’ permission to take the photos and share on social media to advertise the Scout movement.

18. The claimant said that he felt that he had been targeted by colleagues and had been called a “paedo” in the mess room because he volunteers as a Scout leader. He had not reported the alleged treatment.

19. The investigating officer produced a written report which was included at pages 85-99 of the bundle. Her recommendation was that the allegations go forward to a disciplinary hearing to decide if the claimant had contravened the respondent’s policy by committing a serious breach of trust and confidence or any actions bringing the Trust into disrepute, being potentially an act of gross misconduct.

#### Disciplinary hearing

20. On 08/08/2022, the claimant was invited to a disciplinary hearing to be held on 07/09/2022 to hear allegations which were potentially a breach of the gross misconduct rule being “a serious breach of trust and confidence or any actions bringing the Trust into disrepute”. He was informed he could be summarily dismissed and could be accompanied by a trade union representative at the hearing.: Daniel Smith, Head of Service, chaired the meeting and was accompanied by an HR Manager. A note taker also attended.

21. The claimant attended the disciplinary hearing, accompanied by his trade union representative. The allegations were considered to amount to potential gross misconduct. The investigating officer presented management’s case. SE gave evidence and was questioned about a previous disagreement with the claimant concerning an issue over a patient management plan. That issue had been resolved and both worked together thereafter. SE was questioned as to why he had waited a considerable time before raising the allegations, and he said he had raised them because they were repeated behaviour which he believed needed to be addressed. The claimant’s case was that SE had previously fallen out with him, and it was one person’s word against another. SE had been spreading malicious rumours about the claimant. The claimant had worked with a large number of staff and none had raised concerns about alleged comments he had made so it was more likely than not that SE had raised the concerns because he thought the claimant had lied about him when their fall out had been dealt with by management.

22. Before the Tribunal, Mr. Smith stated that it was obvious that a significant part of the claimant’s defence to the allegations was predicated on the fall out in

December 2020 allegedly resulting in SE holding a grudge against him. Mr Smith stated that he had taken time to consider the relationship between SE and the claimant. He had assured himself of the state of the relationship following what had been described as a disagreement, and how that had been resolved. Mr. Smith said he had been told at the disciplinary hearing that the two had disagreed about the transportation of a patient which resulted in a fist being raised. The matter was escalated to a local manager and a mediation took place which resulted in a resolution of the matter. He had noted that following the mediation, SE and the claimant had maintained their relationship, worked together and neither had made a request to transfer. Further, the claimant had called SE when he was put under investigation. Mr Smith said that didn't add up to the relationship between SE and the claimant being poor.

23. The investigating officer stated that she believed the claimant had not been wholly truthful with Scouts UK. On 07/08/2022, safeguarding at Scouts UK had received a concern that the claimant was at a scout camp when he had been suspended from work for issues which could impact upon safeguarding of children. They had contacted the claimant and he told them he had been suspended for sharing photos of a camp. He denied to Scouts UK that he had had any electronic devices seized (which had occurred in or about May 2022). The claimant made a statement at the disciplinary hearing that he had made his Scouts Leader aware of what was happening with regard to his suspension from work. The claimant told the disciplinary hearing that he had had parental consent to take, store and share photographs of children taken during activities at Scouts UK. Mr. Smith put to the claimant that he was struggling to understand his having consent to have photographs of children on his telephone to share on social media. The claimant suggested that he had consent to show photographs for promotional reasons and that is why he had shown photographs to a work colleague. The claimant said he wanted to raise the profile of Scouts UK at the respondent's Trust for social prescribing reasons and that may have been the reason for showing the photographs of children undertaking scouting activities to colleagues. Mr. Smith told the claimant that he would contact Scouts UK during an adjournment and asked for details of the Scouts Leader. It was at this point that the claimant stated that the Scouts Leader was his father-in-law. During the adjournment Mr. Smith contacted Scouts UK's safeguarding lead to obtain information about whether the claimant had consent in relation to the taking and/or sharing of photographs of children taken during scouting activities. Scouts UK informed Mr. Smith that if parental consent is given, the photograph should not show the identity of the child. Also, parental consent does not cover showing the photographs to other individuals.

24. The disciplinary panel took a further adjournment of 1 hour 11 minutes to consider the outcome of the disciplinary hearing,

25. In respect of the allegation of showing photographs of children undertaking water based activities and his less than honest disclosures to Scouts UK about the disciplinary, Mr. Smith was seriously concerned about the impact of that upon the Trust's ability to place trust and confidence in the claimant given he would in the course of his duties attend patients of various ages.. Further, having taken into account the evidence which included the fact that SE and the claimant had worked together without further issue after their fall out, and the claimant had chosen to

discuss sexual preferences with him, Mr Smith concluded the allegations relating to the verbal remarks had been made out.

26. Mr Smith found that the allegations were proven. They had not been fabricated by SE nor were they malicious. They constituted gross misconduct. In respect of the appropriate sanction, having considered downgrading the claimant, he decided the misconduct was so serious that it warranted summary dismissal as the level of potential risk to the public could not be safely mitigated in any other way than by dismissal. The letter of dismissal dated 14/09/2022 was provided at pages 144-150.

### Appeal

27. The claimant appealed against his dismissal. His grounds of appeal were that the allegations were malicious, that he did have consent to take and share photographs and attached documentary proof which had not been available prior to the disciplinary, and some evidence had been disclosed the night before the hearing without the offer of a postponement which breached the respondent's processes and put him at a disadvantage. He also appealed the decision to summarily dismiss him as being too severe a sanction.

28. The appeal was not a re-hearing and therefore the claimant was not permitted to call additional witnesses. The purpose of the appeal was to consider whether the processes and procedures had been correctly followed, and whether the decision was fair and reasonable in the circumstances of the case.

29. The appeal hearing took place on 07/12/2022. The claimant was accompanied by his trade union representative. The appeal was heard by Lisa Ward and Ged Blezad. Lisa Ward gave evidence before the Tribunal. Also in attendance were an HR adviser and a note taker. Notes of the hearing were provided in the bundle of documents. The hearing commenced at 14.00 and adjourned at 16.50. At 17.30, the panel told the participants that they would meet the following day to resume their deliberations.

30. At the hearing, Mr. Smith presented the case for management in respect of the disciplinary hearing and the decision to summarily dismiss the claimant. The claimant's representative raised issues with regard to some of the evidence being twisted. The claimant maintained that he had a poor relationship with SE and the allegations were raised against him in bad faith. Questions were raised on behalf of the claimant in respect of his work with Scouts UK and the alleged failure of candour to Scouts UK about the allegations against him by the Trust. The claimant alleged that Mr. Smith had reached his decision before the disciplinary hearing took place. Mr. Smith confirmed that he had prepared for the hearing by reading the material but had not reached a decision which he did only after hearing all the evidence.

31. The appeal panel found that it was reasonable for Mr. Smith to accept the evidence of SE that there was no ongoing grudge by SE as stated by the claimant. The claimant had admitted showing photographs of children to his colleagues and although the images were not indecent, the claimant's actions were outside the guidelines of Scouts UK. Scout UK's code of practice made it clear that the

claimant did not have permission to show photographs of scouting activities in the respondent's workplace. The appeal panel determined that the showing of the photographs indicated a lack of awareness of issues relating to privacy, safeguarding and the use of personal data. This was of great concern as the claimant's role involved dealing with vulnerable patients on a daily basis.

32. As to the sanction of summary dismissal, the appeal panel concluded that the pattern and nature of the claimant's behaviour undermined the respondent's trust and confidence in him as an employee and an alternative sanction such as downgrading would not have been appropriate. The appeal panel therefore dismissed his appeal and upheld the decision to summarily dismiss him.

33. Ms. Ward's letter dated 09/12/2022 rejecting the appeal was sent on 12/12/2022 and set out at length the panel's reasoning for upholding the decision to summarily dismiss the claimant.

34. During cross-examination at the Tribunal hearing, the claimant accepted that the substance of the verbal allegations, if true, was highly offensive and it would be wholly inappropriate to make such sexual references in the workplace. They could not be passed off as humour and if true, the respondent could not ignore them as they raise safeguarding concerns. He agreed that, ultimately, it would be for the decision-maker to decide who to believe in the situation where one person was saying one thing and another something contrary to that. During cross-examination, he agreed that he had shown photographs of children to colleagues but had not shared them. However, this was not an argument he had advanced in either the disciplinary or appeal hearings. He agreed he had been given a full opportunity to comment on all the allegations brought against him. He accepted that all the relevant witnesses had been interviewed and that during a disciplinary hearing of 6 hours, it was thorough. He didn't criticise anything which took place in that hearing. Nor did he criticise the approach taken in the appeal hearing.

### **Discussion and Conclusions**

35. I now consider the issues in the case as set out above and apply the facts to the law in reaching my decision. Ms. Quigley addressed me in submissions at the end of the hearing and Mr. Stafford also made some brief comments. I have considered all the points raised (whether or not I have expressly referred to them).

#### Reason for the dismissal and genuine belief in that reason

36. The first matter I had to decide was whether the claimant's dismissal was for misconduct. I am satisfied that matters raised by the respondent fell within its disciplinary policy as potential gross misconduct and the reason for the claimant's dismissal was for such acts.

37. The claimant contended that the evidence of the complainant, SE, was not trustworthy as he believed the claimant had lied about him during the investigation of their fall out in December 2020. SE was therefore out to put the claimant's employment at risk and had fabricated the allegations.



38. The evidence was, however, that the claimant and SE had overcome their differences by about March 2021 and the allegations were not brought until about May 2022 (see below). It was therefore reasonable to believe that the allegations were not fabricated.

39. For these reasons, I find that the respondent's belief in the claimant's misconduct was genuine.

#### Reasonableness of investigation

40. The claimant's criticism of the investigation is that the disagreement between him and SE in December 2020 was not investigated and it needed to be investigated as his case was that SE held a grudge against him and had lied in making the allegations which were brought against the claimant.

41. The claimant was interviewed as part of the investigation, as were others, principally Mr. Evens who was the chief complainant against the claimant..

42. I find that the conduct and extent of the investigation was within the band of reasonable responses as the important point made by the claimant was that SE held a grudge against him. However, the two had worked together without either requesting a transfer/change of working arrangements. The claimant said during the investigation that he had not trusted SE since the disagreement in December 2020, yet when he was suspended he had approached SE for support. This militated against the contention that the claimant and SE were on bad terms. Further, an investigation into the disagreement in December 2020 was unlikely to reveal whether there was a grudge held by SE in May 2022.

#### Dismissal and reasonableness of the sanction

43. The claimant contended that the decision to dismiss was based on "one person's word against another". I find that it was reasonable for the decision maker to weigh up the evidence, including circumstantial matters, in determining whether it was more likely than not that the verbal remarks were made. The contention by the claimant that the complaint was made by SE in bad faith was reasonably rejected having assessed the evidence (see above). In addition, the claimant made certain partial admissions, such as having a conversation about red heads (but not about the small child) and showing photographs of children to colleagues at work which pointed towards the acceptance of the allegations made by SE.

44. In respect of the severity of the sanction, the view of Mr. Smith was that the conduct was of a most serious and improper kind and would, in all likelihood, destroy trust and confidence in the claimant as an employee. This was because his daily work brought him into contact with patients, including the vulnerable. I cannot substitute my view for that of the respondent, and in my judgement the summary dismissal of the claimant is within the range of reasonable responses open to an employer in these circumstances which is the test I must apply.

Was the appeal fair and reasonable

45. At the appeal stage, the panel considered the evidence relating to which version of events was the more credible and concluded that it was reasonable for Mr. Smith to have preferred the evidence of SE, taking into account all the circumstances of the case set out above. I find it reasonable, therefore, for the respondent to reject his grounds of appeal.

46. Further, the appeal was a hearing in front of an independent panel of managers who examined the evidence, and heard the appellant's arguments against the finding of misconduct and the sanction of dismissal. For the reasons given above, I am satisfied that the claimant had a fair hearing and that the appeal was conducted reasonably. Having done so, Ms Ward and Mr. Blezard. acted reasonably in dismissing the claimant's appeal.

**Conclusion**

47. In essence, the claimant's attack on the fairness of the dismissal fell short of showing the respondent acted outside the band of reasonable responses at any stage of the process.

48. Fundamental to his case, the claimant maintained that there was a difficulty in his relationship with SE. I reject that contention as it is not made out on the evidence.

49. This decision is reached on the balance of probabilities and applying the range of reasonable responses test having considered the documentary and oral evidence over the course of a day.

50. For these reasons I dismiss the claimant's claim of unfair dismissal.

Judge Callan  
Date: 19 May 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
6 June 2023

FOR THE TRIBUNAL OFFICE

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