



EMPLOYMENT TRIBUNALS

Claimant: Mr D Shemeld

Respondent: Schütz (UK) Limited

Heard at: Nottingham

On: 13 September 2021

Before: Employment Judge Flint (sitting alone)

Representation

Claimant: In person

Respondent: Mrs M Fletcher, HR Manager

JUDGMENT

1. The claim for Unfair Dismissal is dismissed.

REASONS

2. This hearing was conducted remotely (by cloud video platform) with the consent of the parties. The Claimant was unable to join by video due to unidentified technical issues. He participated by telephone with the agreement of the parties.
3. The Claimant informed me that he had intended to be represented by a friend, Mrs Staniland, but that she was unavailable. He further stated that he suffered from dyslexia and he would find it difficult to read documents during the hearing. Nevertheless, he requested the hearing proceed. I adjourned the case for ten minutes for the Claimant to consider his options. When the hearing resumed, I suggested to the Claimant that I could read out the statements of the witnesses as they were called and also read out the evidence as it was referred to. The Claimant said he was satisfied with that and that he wished for the hearing to proceed.
4. The parties agreed that the Claimant had commenced employment in 2011 and that the date of dismissal was 14 May 2020.
5. The relevant law is contained within the Employment Rights Act 1996. In summary, section 94 sets out an employee's right not to be unfairly dismissed. Section 98 places the burden of proof on the employer to show that a dismissal is for a lawful reason and that the decision to dismiss is a fair and reasonable one made after a fair and reasonable process.
6. The issues for me to decide were identified at the preliminary hearing of 18 May

2021. They were as follows:

- a) Was gross misconduct the real reason for dismissal?
- b) Did the Respondent have a genuine belief that the Claimant had committed the act of gross misconduct alleged?
- c) Did the Respondent have reasonable grounds for that belief?
- d) Did the Respondent form that belief after conducting a reasonable investigation?
- e) Did the Respondent conduct a fair disciplinary process in accordance with ACAS guidelines?
- f) Did dismissal fall within the band of reasonable responses?

7. In determining the issues and reaching my decision, I considered the bundle of documents and statements of the Claimant, Mr Michael White, Mr Mark Wood, and Mr Simon Jordan, as well as their evidence during the hearing.

8. My findings on the issues were as follows:

- a) The real reason for the dismissal was gross misconduct. I was satisfied of this because no other reason for dismissal was alleged by the Claimant and the Respondent was consistent in its evidence that the Claimant was dismissed because he brought weapons to work. I also noted that the Claimant had previously withdrawn his claims regarding whistleblowing and discrimination.
- b) The Respondent did genuinely believe that the Claimant had brought weapons to work premises. I was satisfied of this by Mr Wood's evidence, in which he described assessing the statements of the witnesses and the Claimant's responses and considering the matter at length before coming to a belief that the Claimant had brought the weapons onto the premises.
- c) The Respondent had reasonable grounds for that belief. I was satisfied of this by Mr Wood's and Mr Jordan's evidence: They had considered the credibility of the witness allegations, its consistencies and inconsistencies. They had considered the Claimant's comments in his defence. Mr Wood and Mr Jordan had come to the reasonable conclusion that the evidence of the four witnesses was reliable and outweighed the Claimant's denials.
- d) The Respondent formed that belief after conducting a reasonable investigation. I was satisfied of this because statements were taken from the witnesses promptly and other reasonable lines of enquiry followed. This included examination of CCTV, although that evidence was inconclusive and of no assistance in proving or disproving the allegations.
- e) The Respondent conducted a fair process in accordance with ACAS Guidelines. I was satisfied that the Respondent's Disciplinary Procedure Policy (contained in the bundle) was compliant with the ACAS Code of Practice on Disciplinary and Grievance Procedures. I was further satisfied from the chronology and evidence that this procedure was properly followed.

Firstly, the Respondent allocated separate roles in the disciplinary process: Mr White was the investigating officer, Mr Wood was the decision-maker and Mr Jordan was the appeal decision-maker.

Secondly, all steps of the disciplinary procedure took place within a reasonable time and the Claimant was given adequate notice of them: the Claimant was immediately called into a meeting on 21 April 2020 and informed of the allegations. He attended an informal meeting with Mr Wood on 1 May 2020 to discuss the matters further. The Disciplinary hearing took place on 7 May 2020, during which the Claimant was able to respond to the allegations and present

his own evidence to Mr Wood. The final hearing took place on 14 May 2020, when the Claimant was dismissed. On 18 June 2020 the Claimant's appeal hearing took place with Mr Jordan.

Thirdly, I am satisfied that the Claimant's dyslexia was taken account of during the disciplinary process and the Claimant was not unfairly treated with respect to it. Whilst there was a dispute between the Claimant and Respondent as to when the Respondent became aware of his condition, the Claimant accepted that he was able to understand and participate in the various meetings because the allegations and information was always read out to him. He further accepted that when he mentioned his condition to Mrs Fletcher on 14 May 2020, she took reasonable steps to enable the Claimant to fully participate.

Fourthly, I am satisfied that the Claimant was given reasonable opportunity to be accompanied during the disciplinary process. At the first meeting of 21 April 2020, the Claimant was accompanied by his partner, Ms Cawthorne, after the Respondent advised the Claimant that he may wish to bring her. At the meeting of 1 May 2020, the Claimant was accompanied by another employee, Mr Kirkwood. On 7 May and 14 May 2020, the Claimant was unaccompanied but conceded to me today that he was aware of his right to be accompanied. On 8 June 2020 (the appeal hearing) the Claimant was accompanied by his friend Mrs Staniland.

Fifthly, when an employee, Mr Hodgson, made Mr Wood aware of evidence that could potentially assist the Claimant's case, the Respondent acted entirely appropriately by calling a meeting to give the Claimant an opportunity to respond. This further demonstrated to me that the Respondent was acting reasonably and fairly.

- f) Dismissal was within the band of reasonable responses. I was satisfied of this because of the very serious nature of the misconduct. Once the Respondent had concluded that the Claimant brought a knuckleduster and cosh to work, it was reasonable for the Respondent to dismiss the Claimant forthwith. The health and safety risk, coupled with the inevitable inference that, to bring the weapons to the workplace, the Claimant had been in possession of them in a public place, justified summary dismissal.

- 9. I therefore find that the claim of unfair dismissal is not well founded and must be dismissed.

Employment Judge Flint
Date: 13/9/2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE