



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Wild

**Respondent:** Veolia ES (Sheffield) Limited

**HELD in Leeds by CVP**

**ON: 8 January 2025**

**BEFORE: Employment Judge Shulman**

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr J Feeney, Counsel

# JUDGMENT

1. The claimant's claim for unfair dismissal is hereby dismissed.
2. The claimant's claim for unauthorised deduction of wages is hereby dismissed.

# REASONS

## 1. Claims

- 1.1. Unfair dismissal.
- 1.2. Unauthorised deduction of wages.

## 2. Issues

- 2.1. Unfair dismissal
  - 2.1.1. What was the reason for dismissal?
  - 2.1.2. Was it a potentially fair reason?
  - 2.1.3. Did the respondent act reasonably in all the circumstances in treating the reason as a sufficient reason to dismiss the claimant.
- 2.2. Unauthorised deduction of wages
  - 2.2.1. See 6.7 below.

3. **The Law**

The Tribunal has to have regard to the following provisions of the law:

- 3.1. Sections 98(1)(2) and (4) Employment Rights Act 1996. I am not setting this out as it is easily obtainable.
- 3.2. **British Home Stores Limited v Burchell [1980] ICR 303 EAT** which decided that the employer must show that:
  - It believed the employee guilty of misconduct.
  - It had in mind reasonable grounds upon which to sustain that belief, and
  - At the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.
- 3.3. **British Leyland (UK) Limited v Swift [1981] IRLR 91 CA** where Lord Denning MR stated:

*“The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view; another quite reasonably take a different view.”*

This is known as the band of reasonable responses test.

4. **Evidence**

- 4.1. The Tribunal heard from two witnesses for the respondent, Ms E Johnson and Mr N O'Neill. The claimant gave evidence himself. The claimant was naturally keen to try to win his case, but on occasions he showed reluctance to accept evidence which was clear and relatively uncontentious from the documentation and in cross-examination. Mr Johnson and Mr O'Neill were not so inclined and, therefore, where there was a conflict on the evidence the Tribunal prefers the evidence of Ms Johnson and Mr O'Neill to that of the claimant.

5. **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):

- 5.1. The claimant was employed by the respondent as a driver/loader from 1 November 2006 until his dismissal on 8 April 2024.
- 5.2. The claimant gave the impression and it is accepted by the Tribunal, that the claimant was a friendly member of the team, although he did in some respects have a less than satisfactory record, which we will visit at paragraph 5.19, although the conduct for which he was ultimately dismissed we find was sufficiently serious for it to stand alone without regard to the claimant's previous record.
- 5.3. On 18 March 2024 in what is known as the tipping hall, the claimant was driving a vehicle in which he was unloading and/or had unloaded waste

collected in the vehicle. There was another vehicle, driven by Gary Mitchell in the tipping hall at the same time.

- 5.4. For some reason following an exchange between the claimant and Mr Mitchell the vehicle driven by Mr Mitchell blocked the vehicle driven by the claimant from leaving the tipping hall.
- 5.5. The Tribunal finds that the claimant should have waited for Mr Mitchell's vehicle to leave the tipping hall.
- 5.6. Instead the claimant decided to leave his vehicle to speak to Mr Mitchell. When the claimant alighted the vehicle he failed to set the handbrake.
- 5.7. The Tribunal saw the CCTV which showed the vehicle previously driven by the claimant move forward and collided with the vehicle driven by Mr Mitchell, causing damage.
- 5.8. The CCTV also showed the claimant out of the vehicle which had been driven by him and in what is known as the crush zone, which the Tribunal finds is potentially dangerous to life and limb.
- 5.9. An investigation was carried out and reported on 22 March 2024. The claimant was suspended from driving but permitted to load pending the outcome of matters.
- 5.10. The brake system of the vehicle driven by the claimant was tested and was found to be working correctly.
- 5.11. The investigation report concluded that there was no reason for the claimant to leave the cab of the vehicle on the day in question.
- 5.12. A disciplinary hearing took place on 5 April 2024 conducted by Ms Johnson. The claimant was accompanied by his trade union.
- 5.13. The claimant accepted the contents of the investigation "pack" but blamed Mr Mitchell for the fact that the claimant left the vehicle. The claimant agreed that he was close to the crush zone and accepted the severity of the incident. He admitted that he did not look to see if the handbrake had been engaged.
- 5.14. After an adjournment of the disciplinary hearing Ms Johnson decided to dismiss the claimant for gross misconduct for exiting the vehicle which subsequently rolled into the vehicle driven by Mr Mitchell.
- 5.15. Ms Johnson did not take into account the claimant's disciplinary record in coming to the decision to dismiss the claimant and the Tribunal finds that she did not need to do so.
- 5.16. The claimant had a right of appeal which he exercised and was heard by Mr O'Neill on 18 April 2024. The claimant was well known to Mr O'Neill but Mr O'Neill felt he was sufficiently independent to hear the appeal and we find that this is so. The claimant was represented by his trade union.
- 5.17. The claimant's approach on the appeal was different than what had gone before. At the disciplinary interview the claimant laid blame on Mr Mitchell and the defective nature of the handbrake, which was found not to be defective. At the appeal the claimant said he took full responsibility for what had happened. He said he used the handbrake as a "scapegoat". In the Tribunal the claimant admitted that the full responsibility approach was to

try to keep his job and it was clear that the claimant had not been straight with either at Mr O'Neill or the Tribunal or both.

- 5.18. The claimant also raised the manner in which others had been dealt with in terms of consistency and the respondent took the opportunity to consider, although not decisive as to the claimant's appeal, the claimant's record. It is not necessary to go into the detail on these matters as they were not the determining factor.
- 5.19. However, for completeness the claimant's record included the following:
  - 5.19.1. 29 November 2019 - failing to report an accident to the respondent.
  - 5.19.2. 23 May 2022 - unacceptable driving behaviour.
  - 5.19.3. 14 March 2023 – serious negligence causing damage or injury.
  - 5.19.4. 4 November 2023 – fail to stop at a red light.
- 5.20. Mr O'Neill considered whether a finding of gross misconduct was reasonable and came to that conclusion refusing the claimant's appeal.

## 6. **Determination of the Issues**

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 6.1. The reason for dismissal is conduct.
- 6.2. We find that the respondent believed that the claimant was guilty of misconduct.
- 6.3. There were reasonable grounds to sustain that belief including the claimant leaving the vehicle in the tipping hall, not properly applying the working handbrake and checking it and entering the crush area.
- 6.4. There was a proper investigation namely the investigation itself, the disciplinary hearing and the appeal hearing.
- 6.5. The respondent's decision falls well within the band of reasonable responses within which an employer might reasonably take one view and another quite reasonable another.
- 6.6. In all the circumstances the claimant's claim for unfair dismissal is hereby dismissed.
- 6.7. So far as the wages claim is concerned there was no primary evidence that this or any money was owing. If there had been then there was an issue of time. That claim was dismissed during the hearing.

**Approved by Employment Judge Shulman**

Date: 30 January 2025

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