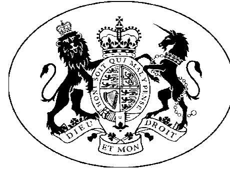

EMPLOYMENT TRIBUNALS

Claimant: **Mr T Butler**

Respondent: **Royal Mail Group Limited**

Heard at: **Ashford**

On: **27th & 28th February 2020**

Before: **Employment Judge Pritchard**

Representation
Claimant: In person
Respondent: Miss S Hobson, solicitor

RESERVED JUDGMENT

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

2 The Claimant claim for notice pay (breach of contract) is dismissed.

3 The Claimant's claim for holiday pay is dismissed upon withdrawal.

REASONS

1. The Claimant claimed unfair dismissal and breach of contract (notice pay). The Respondent resisted the claims. The Tribunal heard evidence from the Claimant's witnesses:

   1.1. Leonard Pratt (Delivery Office Manager)
   1.2. Gary Holmes (CWU representative at Tooting Delivery Office)
   1.3. The Claimant

2. The Tribunal heard evidence from the Respondent's witnesses:

   2.1. Henry Aitchison (Operations Manager for south west London at relevant times);
   2.2. Gary Watson (Performance Coach);
   2.3. Lisa Turley (Independent Casework Manager).

3. The Tribunal was provided with a bundle of documents to which the parties variously referred. At the conclusion of the hearing the Claimant made oral

submissions, Miss Hobson amplifying her written submissions.

Issues

4. The issues falling for determination were discussed with the parties at the commencement of the hearing and can be described as follows:

Unfair dismissal

5. Whether the Respondent can show the reason, or if more than one the principal reason, for the Claimant's dismissal and that it was for a reason relating to the Claimant's conduct. This will require the Respondent to show that they believed the employee was guilty of misconduct;

6. Whether the Respondent had reasonable grounds upon which to sustain that belief; and

7. Whether at the stage at which that belief was formed on those grounds, the Respondent had carried out as much investigation into the matter as was reasonable in the circumstances.

8. By dismissing him, did the Respondent treat the Claimant inconsistently with others such that it affected the fairness of his dismissal?

9. Whether the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted

10. The Tribunal would have regard to any provision of the ACAS Code of Practice 1 of 2015 which appeared to be relevant to any question arising in the proceedings and take it into account in determining that question.

11. If the Tribunal were to find the dismissal unfair:

    11.1. Whether, if the unfairness arose by reason of any procedural defect, the Respondent might or would have dismissed the Claimant in any event and whether any compensation should be reduced accordingly (Polkey);

    11.2. Whether the Claimant caused or contributed to his dismissal such that any compensation should be reduced

Notice pay

12. Can the Respondent show that the Claimant actually committed a repudiatory breach of contract, namely a breach which so undermined the trust and confidence which is inherent in the particular contract of employment that the Respondent should no longer be required to retain the employee in his employment?

13. Apart from consideration of any evidence relating to Polkey and contribution, the hearing proceeded on the basis that the Tribunal would consider liability only at this stage. If the Claimant was successful in either or both of his claims a further hearing would be held to consider remedy.

Findings of fact

14. The Claimant commenced employment with the Respondent in October 2002. For about the last three or four years of his employment he was the Delivery Office Manager at the Respondent's Tooting Delivery Office. He held a responsible managerial position with a salary and benefits package commensurate with his position and which reflected the responsibilities he held. The Claimant worked Monday to Saturday each week with a rotational day off.

15. The Respondent has in place a Group Conduct Policy. Its provisions are expanded within the provisions of a National Conduct Procedure Agreement ("the Agreement") reached with the CWU and Unite-CMA. The Group Conduct Policy makes it clear that in the event of inconsistency, the terms of the Agreement take precedence.

16. Both documents include the following:

    Employee obligations

    Royal Mail Group requires all employees to:

    - *Take a responsible approach to their work, customers and fellow employees*

    - *To maintain standards of conduct appropriate to their role*

17. The definition of "mail" in the Agreement expressly includes unaddressed items.

18. The Agreement states that no employee will be dismissed for a first breach of conduct except in the case of gross misconduct.

19. The Agreement includes the following extracts emphasising the importance of avoiding the delay of mail:

    <u>Delay to customers' mail</u>

    Our customers trust us to collect process and deliver the mail securely.

    The responsibility for avoiding delay to the mail and giving it prompt and correct treatment is one of the most important duties of all Royal Mail Group employees.

    <u>Royal Mail Delivery – Avoiding Delay</u>

    Local Work Plan

    Delay to mail is a serious matter and could potentially be unlawful. All employees have a responsibility to ensure all items are processed in accordance with the local workplan. All employees will be made aware of the local workplan and the specific requirements of the particular job roles they will perform. Any time mail is delayed, for whatever reason, Royal Mail employees should attempt to correct the problem efficiently and effectively

as soon as possible.

20. The Agreement states that the intentional delay of mail is an example of gross misconduct. It makes further references to delayed mail as follows.

    Unintentional Delay

    Royal Mail Group recognises that genuine mistakes and misunderstandings do occur and it is not our intention that such cases should be dealt with under the Conduct Policy beyond informal discussions for the isolated instance.

    Unexcused Delay

    Various actions can cause mail to be delayed, for example carelessness or negligence leading to loss or delay of customer's mail, breach or disregard of a standard or guideline. Such instances are to be distinguished from intentional delay, although they may also be treated as misconduct and dealt with under the Conduct Policy, outcomes may range from an informal discussion to dismissal.

    Intentional Delay

    Intentional delay of mail is classed as gross misconduct which, if proven, could lead to dismissal. The test to determine whether actions may be considered as intentional delay is whether the action taken by the employee knowingly was deliberate with an intention to delay mail.

21. Under the heading precautionary suspension, the Agreement provides:

    Precautionary suspension for delay to the mail should not be automatic. The decision to suspend should only be taken after careful consideration and an investigation of the delay has been carried out.

22. The Respondent's business standards are set out in an employee's guide. It includes the following:

    Service to our customers

    Our customers are important. We serve their needs by giving them:

    - *Consistent delivery of what we promise;*
    - *Value-for-money services and products;*
    - *Timely, reliable and secure services nationwide;*
    - *Accurate and accessible information about our services and products;*
    - *A helpful and polite service at all times; and*
    - *A prompt and appropriate solution if things go wrong.*

    Everyone in the business has an important part to play in living up to these commitments. If we fail our customers, they're likely to take their business elsewhere. That damages our business and our job security and it won't go unnoticed.

Our external regulator, Ofcom, can impose penalties if we fail to meet our obligations. There is also a consumer watchdog which takes an interest in the service we give to customers.

23. A valuable part of the Respondent's business involves the delivery of unaddressed mail, described as door to door mail ("D2D"), business customers having contracted with the Respondent for its delivery within a specified period. D2D mail is typically of a promotional nature and might include business customers' time-limited promotional offers.

24. D2D mail, contained in cages known as yorks, is delivered in bulk to the delivery offices where it is then then placed in the delivery frames, usually on the Saturday of each week to be delivered to the addresses in the applicable postcodes over the following week.

25. The Respondent's Standard Operating Procedure 30 states that, among other things, regular management checks of walks must be made to ensure that progressive delivery of D2D items over the contract period is achieved.

26. Instructions as to the return of D2D mail is included in the Standard Operating Procedure. It might be the case that a customer has provided more D2D mail items than required to be delivered within the applicable postcodes. The Delivery Office Manager is required to complete a weekly return on the Respondent's electronic Sharepoint system seeking authorisation for return of the excess (undelivered items) to the mail centre. For returns under 1% of volume of D2D mail, approval to return is a simple administrative decision. If the return represents more than 1% then the Delivery Manager must seek special authorisation from the Operations Manager. Authorisation must also be obtained for the return of D2D mail caused by a failure to deliver because of cancellations or exceptional operational circumstances (undeliverable items).

27. The Claimant was absent from work during part of week commencing 1 January 2018. During this week, D2D items due for delivery on walk 9 were not delivered.

28. The Claimant was on annual leave during the weeks commencing 15 January 2018 and 5 February 2018.

29. The Claimant failed to make weekly return submissions in the period 9 December 2017 to 3 February 2018.

30. By email dated 8 February 2018, Gary Reid (Operations Support Manager) reminded Delivery Office Managers that:

    30.1. they must ensure that D2D mail due for delivery is delivered within specification;

    30.2. daily checks are carried out;

    30.3. weekly submissions are made for returns; and

    30.4. the root cause must be investigated for returns exceeding 1%.

Gary Reid emphasised the importance of accurate reporting and delivery compliance.

31. On 10 February 2018 the Claimant made a submission on Sharepoint for return of undelivered D2D mail to be made. The Claimant appears to have made a duplicate submission for return authorisation on 13 February 2018. No mention was made in the submission of the failure to deliver on walk 9. Thereafter, save for a return submission made on 17 March 2018, the Claimant made no further submissions for return authorisation.

32. By email dated 29 March 2018, authorisation for return of D2D items contained in the Claimant's submission of 10 February 2018 was formally granted.

33. On 5 April 2018 Gary Reid and Mark Shekle (Quality and Customer Business Partner) visited the Tooting Delivery Office. They found a significant number of undelivered D2D items stacked outside the Claimant's office, including 23 unopened boxes of D2D mail, some going back to December 2017. Five full boxes undelivered D2D items related to Walk 9 which had been due for delivery in the week commencing 1 January 2018; further bundles of undelivered D2D mail were found on the frame for walk 9.

34. The following day, Gary Reid held a discussion with the Claimant following which Gary Reid suspended the Claimant on full pay pending an investigation. Gary Reid thereafter carried out an investigation. Having done so, Gary Reid then passed the matter up to Gary Watson for consideration of further action.

35. Gary Watson considered the evidence gathered by Gary Reid and decided that there was a case for the Claimant to answer. Gary Watson invited the Claimant to attend a formal conduct meeting on 25 June 2018 but the Claimant did not attend. By letter dated 25 June 2018, Gary Watson again invited the Claimant to attend a formal conduct meeting. The formal notifications (allegations) were set out in the letter as follows:

    35.1. Intentional delay to mail in that there is a notice in the customer service point delaying when customers can collect their parcels;

    35.2. Unexcused delay to mail in that 1,400 D2D items were not delivered to the customer on walk 9, week commencing 01/01/18, despite being advised of this you failed to take action, you also failed to deal with these items despite being reminded on several occasions by an OPG [Operational Postal Grade] post-person;

    35.3. Failure to manage the operational compliance with D2D items and checking the delivery office is clear of all mails; and

    35.4. Failure to accurately report undelivered volumes of D2Ds and follow the correct process for returning them.

36. The letter informed the Claimant that the formal notifications were being considered as gross misconduct and that, if upheld, one outcome could be dismissal without notice. The Claimant was provided with the documents and evidence gathered in the course of the investigation. He was advised of his right to be accompanied.

37. In advance of the meeting, the Claimant provided Gary Watson with a document, containing what he described as mitigation, together with photographs of what was said to be large volumes of D2D mail held at other delivery offices.

38. Gary Watson held the formal conduct meeting on 5 July 2018. The Claimant was accompanied his trade union representative.

39. Following the formal conduct meeting, Gary Watson carried out further investigations.

40. After a delay due to annual leave, Gary Watson invited the Claimant to attend a further formal conduct meeting on 4 September 2018. However, having been signed off sick by his GP, the Claimant did not attend the further meeting.

41. Accordingly, by letter dated 17 September 2018, Gary Watson invited the Claimant to attend a further formal conduct meeting to take place on 25 September 2018 following the expiry of the Claimant's medical certificate. However, by letter dated 19 September 2018, the Claimant submitted a further medical certificate and informed Gary Watson that because he remained unwell was not fit enough to attend the meeting.

42. By letter dated 24 September 2018, Gary Watson informed the Claimant that it was not appropriate to delay matters any further and informed the Claimant that he was summarily dismissed with effect from 25 September 2018. With the exception of the first formal notification, Gary Watson found the allegations proved. With his letter, Gary Watson enclosed his report setting out how and why he had reached his decision.

43. By letter dated 25 September 2018, the Claimant informed the Respondent that since the decision had been made in his absence, he felt he did not have a full and fair hearing. The Claimant also questioned the Respondent's adherence to its organisational policies and felt he had been treated differently to others.

44. The Respondent accepted the Claimant's letter as an appeal and invited the Claimant to an appeal hearing. In advance of the appeal hearing the Claimant provided the Respondent with his written grounds of appeal and further documentation.

45. Lisa Turley held an appeal hearing with the Claimant on 25 October 2018. The Claimant was accompanied by his trade union representative. Lisa Turley informed the Claimant that the appeal would be a re-hearing of the case.

46. By letter dated 22 November 2018, Lisa Turley informed the Claimant of her conclusion that summary dismissal was appropriate in his case. She enclosed a document containing her findings and reasons for her decision.

Applicable law

<u>Unfair dismissal</u>

47. Under section 98(1) of the Employment Rights Act 1996, it is for the employer to show the reason for the dismissal (or if more than one the principal reason) and that it is either a reason falling within section 98(2) or for some other

substantial reason of a kind such as to justify the dismissal of the employee holding the position he held. A reason relating to conduct is a potentially fair reason falling within section 98(2).

48. The reason for the dismissal is the set of facts or the beliefs held by the employer which caused the employer to dismiss the employee. In determining the reason for the dismissal, the Tribunal may only take account of those facts or beliefs that were known to the employer at the time of the dismissal; see W Devis and Sons Ltd v Atkins 1977 ICR 662.

49. Under section 98(4) of the Employment Rights Act 1996, where the employer has shown the reason for the dismissal and that it is a potentially fair reason, the determination of the question whether the dismissal was fair or unfair 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 must be determined in accordance with equity and substantial merits of the case.

50. When determining the fairness of conduct dismissals, according to the Employment Appeal Tribunal in British Home Stores v Burchell 1980 ICR 303, as explained in Sheffield Health & Social Care NHS Foundation Trust v Crabtree [2009] UKEAT 0331, the Tribunal must consider a threefold test:

    50.1. The employer must show that he believed the employee was guilty of misconduct;
    50.2. The Tribunal must be satisfied that he had in his mind reasonable grounds upon which to sustain that belief; and
    50.3. The Tribunal must be satisfied that at the stage at which the employer formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.

51. The requirement for procedural fairness is an integral part of the fairness test under section 98(4) of the Employment Rights Act 1996. When determining the question of reasonableness, the Tribunal will have regard to the ACAS Code of Practice of 2015 on Disciplinary and Grievance Procedures. That Code sets out the basic requirements of fairness that will be applicable in most cases; it is intended to provide the standard of reasonable behaviour in most cases. Under section 207 of the Trade Union & Labour Relations (Consolidation) Act 1992, in any proceedings before an Employment Tribunal any Code of Practice issued by ACAS shall be admissible in evidence and any provision of the Code which appears to the Tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

52. It is not for the Tribunal to substitute its own decision as to the reasonableness of the investigation. In Sainsburys Supermarkets v Hitt [2003] IRLR 23 the Court of Appeal ruled that the relevant question is whether the investigation fell within the range of reasonable responses that a reasonable employer might have adopted.

53. Nor is it for the Tribunal to substitute its own decision as to the reasonableness of the action taken by the employer. The Tribunal’s function is to determine whether, in the particular circumstances of the case, the decision to dismiss fell within the band of reasonable responses which a reasonable employer might

have adopted. See: Iceland Frozen Foods v Jones [1982] IRLR 430; Post Office v Foley [2000] IRLR 827.

54. In British Leyland UK Ltd v Swift [1981] IRLR 91 in which 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 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*

55. It was said in London Ambulance Service NHS Trust v Small [2009] IRLR 563:

> *It is all too easy, even for an experienced Employment Tribunal, to slip into the substitution mindset. In conduct cases the claimant often comes to the Employment Tribunal with more evidence and with an understandable determination to clear his name and to prove to the Employment Tribunal that he is innocent of the charges made against him by his employer. He has lost his job in circumstances that may make it difficult for him to get another job. He may well gain the sympathy of the Employment Tribunal so that it is carried along the acquittal route and away from the real question – whether the employer acted fairly and reasonably in all the circumstances at the time of the dismissal.*

56. Inconsistency of treatment between employees accused of the same offence is a factor Tribunals will take into account, although the respective roles each employee played in the incident, their past records, and their level of contrition may justify different treatment. The guiding principle is whether the distinction made by the employer was within the band of reasonable responses open to it; see Walpole v Vauxhall Motors Ltd 1998 EWCA Civ 706 CA. Consistency must mean consistency as between all employees of the employer; see Cain v Western Health Authority [1990] IRLR 168. However, the emphasis in section 98(4) is on the particular circumstances of the individual employee's case and the crucial question is whether the decision to dismiss fell within the range of reasonable responses. In Hadjioannou v Coral Casinos Ltd [1981] IRLR 352 it was stated that it is of the highest importance that flexibility should be retained and employers and Tribunals should not be encouraged to think that a tariff approach to industrial misconduct is appropriate. An argument by a dismissed employee that the treatment he received was not on par with that meted out in other cases is relevant in determining the fairness of the dismissal in only three sets of circumstances:

    56.1. if there is evidence that employees have been led to believe by their employer that certain categories of conduct will be overlooked or not dealt with by the sanction of dismissal;

    56.2. where evidence in relation to other cases supports an inference that the purported reason stated by the employer is not the real or genuine reason for the dismissal;

    56.3. evidence as to decisions made by an employer in truly parallel circumstances may be sufficient to support an argument, in a

particular case, that it was not reasonable on the part of the employer to visit the particular employee's conduct with the penalty of dismissal and that some other lesser penalty would have been appropriate in the circumstances.

57. See also Paul v East Surrey District Health Authority [1995] IRLR 305 in which Beldam LJ stated that "ultimately the question for the employer is whether, in a particular case, dismissal is a reasonable response to the misconduct proved. If the employer has an established policy applied for similar misconduct it would not be fair to change that policy without warning. If the employer has no established policy but has on other occasions dealt differently with misconduct properly regarded as similar, fairness demands that he should consider whether in all the circumstances, including the degree of misconduct proved, more serious disciplinary action is justified".

58. Miss Hobson referred the Tribunal to Epstein v Borough of Windsor and Maidenhead UKEAT/0250/07 as authority for the proposition that disparity of treatment between employees is not relevant as long as the employer reached a decision which fell within the band of reasonable responses.

59. In Taylor v OCS Group Ltd [2006] IRLR 613, the Court of Appeal stressed that the Tribunal's task under section 98(4) of the Employment Rights Act 1996 is not only to assess the fairness of the disciplinary process as a whole but also to consider the employer's reason for the dismissal as the two impact on each other. It stated that where an employee is dismissed for serious misconduct, a Tribunal might well decide that, notwithstanding some procedural imperfections, the employer acted reasonably in treating the reason as sufficient to dismiss the employee. Conversely, the Court considered that where the misconduct is of a less serious nature, so the decision to dismiss is near the borderline, the Tribunal might well conclude that a procedural deficiency had such impact that the employer did not act reasonably in dismissing the employee.

60. Defects in the original disciplinary hearing and pre-dismissal procedures can be remedied on appeal. It is not necessary for the appeal to be by way of a re-hearing rather than a review but the Tribunal must assess the disciplinary process as a whole and where procedural deficiencies occur at an early stage, the Tribunal should examine the subsequent appeal hearing, particularly its procedural fairness and thoroughness, and the open-mindedness of the decision maker; see Taylor v OCS Group Ltd [2006] IRLR 613 CA.

Breach of contract - wrongful dismissal (notice pay)

61. The Employment Tribunals Extension of Jurisdiction Order 1994 provides that proceedings for breach of contract may be brought before a Tribunal in respect of a claim for damages or any other sum (other than a claim for personal injuries and other excluded claims) where the claim arises or is outstanding on the termination of the employee's employment.

62. A claim for notice pay is a claim for breach of contract: Delaney v Staples 1992 ICR 483 HL.

63. In Neary v Dean of Westminster [1999] IRLR 288, it was held that conduct amounting to gross misconduct justifying summary dismissal must so

undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment.

64. In cases of wrongful dismissal, it is necessary for the Respondent to prove that the Claimant had actually committed a repudiatory breach of contract. See: Shaw v B & W Group Ltd UKEAT/0583/11.

Conclusion and further findings of fact

65. The Claimant, who was a highly paid manager, suggested he might have been dismissed as a cost saving measure on the Respondent's part. However, no credible evidence was adduced to support that proposition. Furthermore, Lisa Turley's evidence to the contrary and as to her independence was highly persuasive.

66. The Tribunal reminds itself that the burden of showing the reason for the dismissal rests with the Respondent. Having considered the evidence, and in particular having heard the evidence of the decision makers, the Tribunal is satisfied that they held a genuine belief that the Claimant was responsible for the failures described in the second, third and fourth formal notifications. These related to the Claimant's conduct.

67. The Tribunal next considers whether the Respondent had reasonable grounds upon which to sustain that genuine belief following as much investigation as was reasonable in the circumstances.

68. Gary Reid's investigation included:

68.1. A fact finding meeting with Noel Reid, Delivery Line Manager at Tooting, who said, among other things:

68.1.1. delivery frames at Tooting were last checked by management in about December 2017 and that he usually undertook the checks;

68.1.2. the undelivered D2D mail had built up since Christmas;

68.1.3. he had told the Claimant weekly that something needed to be done about the undelivered D2D returns and that every time he mentioned it the Claimant would say he would get authorisation for its return and that he was dealing with it.

68.2. Discussion with George Monteanu, the OPG for walk 9 who said that he had discovered the undelivered items for walk 9 upon his return from sick leave the following week and that when he told the Claimant about the failed delivery, the Claimant told him to leave boxes where they were and he would deal with them.

68.3. A fact find meeting with the Claimant who confirmed that he understood the process for the return of undelivered D2D mail. The Claimant admitted that he had not completed return requests weekly but had since done so in February 2018 and had been awaiting authorisation for return for the undelivered items.

68.4. Email enquiries of Henry Aitchison, the Claimant's immediate manager, who said that although during a telephone conversation in February 2018 the Claimant had spoken of D2D items that needed to be returned, he had not spoken of the failed delivery on Walk 9. Henry Aitchison also said that the Claimant had not made him aware of any issues at Tooting which had prevented D2D deliveries in the period November 2017 to 5 April 2018.

69. Gary Watson's investigation included:

69.1. An interview with George Monteanu about the failure to deliver D2D items on walk 9 in January 2018. Mr Monteanu clarified that he had informed the Claimant, on one occasion, of the D2D items which remained in his frame from the previous week following his return from sick leave and that the Claimant said he would deal with the matter and to leave undelivered items in the frame.

69.2. Telephone discussion with Lorraine Stiles, Delivery Change Lead, who said that control sheets should be used to check that delivery of D2D items has taken place and that managerial checks should be made.

69.3. A visit to Tooting Delivery Office where he found four D2D control sheets still on display on four frames dated October / November 2017.

69.4. Discussion with Noel Reid, who, in terms, confirmed what he had previously told Gary Reid and that control sheets had fallen into disuse in November 2017 and that the Claimant was aware that control sheets were no longer being used.

70. The Tribunal concludes that both Gary Reids' and Lisa Turley's genuine belief in the Claimant's misconduct was held on reasonable grounds following as much investigation as was reasonable in the circumstances.

70.1. As to the second formal notification, the Claimant knew that the D2D mail had not been delivered on walk 9 and yet, despite reminders, he failed to take action or promptly report the failure. Notwithstanding his absence during part of the week, and particular difficulties of delivery on walk 9, the Claimant failed to take action when he returned to work.

70.2. As to the third formal notification, it was reasonable for the decision-makers to conclude that the Claimant failed to manage the operational compliance with D2D items and check the delivery office was clear of all mails. The Claimant conceded that he was responsible for making checks but failed to do. This was also partly evidenced by the failure to use control sheets.

70.3. As to the fourth formal notification, it was reasonable for the decision-makers to conclude that the Claimant failed accurately to report undelivered volumes of D2Ds and follow the correct process for returning them. It was a matter of record, and admission by the

Claimant, that he had failed to make weekly submissions for return authorisation. The decision-makers were entitled to conclude, for the reasons set out in evidence, that the Claimant had not discussed the failure on walk 9 with Henry Aitchison.

71. The evidence before the Tribunal showed that the Claimant's mitigation was considered but rejected by the decision-makers for the reasons they give.

72. The Claimant complains that he was treated inconsistently in that others responsible for similar failings had not been dismissed.

73. The Claimant put forward in evidence to the Tribunal a number of photographs which he said showed significant quantities of undelivered D2D mail in other delivery offices - although he admits that he did not mention at his conduct hearing the names of other delivery office managers he felt were not being disciplined for similar failings. This evidence was insufficient to show the cause of the undelivered mail and thus make a comparison between the Claimant's blameworthiness and others.

74. The Claimant's specific complaint to Gary Watson that there was undelivered D2D mail at Wimbledon Delivery Office was investigated and the cause was found to have been due to industrial action, not manager's negligence which was the essence of the allegations against the Claimant.

75. Lisa Turley gave evidence that two managers in the south west London area had been dismissed for unexcused delay of D2D mail and D2D reporting irregularities.

76. Although there were "significant differences" in Noel Reid's case (including his acknowledgment of failings, his considerable remorse, and his more junior position), he too was disciplined.

77. In the Tribunal's view, the evidence did not show on the balance of probabilities that the Claimant was treated inconsistently or that his case fell within any of the categories described in Hadjioannou.

78. As to the Claimant's suspension, the Tribunal accepts Henry Aitchison's evidence that Gary Reid had spoken to the Claimant before suspending him and that the Claimant gave an unsatisfactory explanation as to the presence of the undelivered D2D mail. The Tribunal is satisfied that the Claimant's suspension was not an automatic response by Gary Reid and was taken for precautionary reasons, namely to remove the Claimant from the workplace in circumstances in which significant failures at Tooting Delivery Office, an office for which the Claimant was both responsible and accountable, had become apparent. The amount of investigation required under the Agreement before suspending cannot be taken to mean the amount of investigation reasonably required under a full disciplinary procedure. It was within the band of reasonableness to suspend the Claimant in the circumstances. The letters in the bundle suggest that the Claimant's suspension was regularly reviewed.

79. The Claimant's appeal was heard exactly one calendar month after he first intimated that he wished to appeal. Although this was slightly more than the four weeks provided for in the Respondent's Conduct Policy, it was not such an unreasonable delay such as to affect the fairness of the dismissal.

80. The Tribunal is unable to identify any other procedural failure on the Respondent's part which would render the dismissal unfair.

81. The Tribunal concludes that the Respondent has shown that the Claimant committed a breach of contract which so undermined the trust and confidence which was inherent in his particular contract of employment that the Respondent should no longer be required to retain him in his employment. The Claimant had overall responsibility for the delivery of the mail at Tooting Delivery Office. His failure to make appropriate checks to ensure the delivery of mail was a serious failure. In particular, his failure to report the non-delivery of D2D items on walk 9 meant that the situation could not be salvaged. His sustained failure to report was also serious because the Respondent was unable to notify the customer that delivery of their D2D mail had not been made on walk 9. The Tribunal accepts Gary Watson's evidence that delaying mail (and the theft of mail) "are the worse things we can do". The importance the Respondent places on the delivery of mail is set out above. The Claimant's failure to complete submissions for return authorisation and his failure to report the non-delivery on walk 9 were sustained failures distinguishing them from a single act of carelessness.

82. The Respondent's decision to dismiss the Claimant fell into the band of reasonable responses. The Respondent was entitled to find the Claimant's misconduct amounted to gross misconduct such as to justify summary dismissal for a first offence. The Claimant was not unfairly dismissed and his claim of unfair dismissal fails.

83. The Claimant was not wrongly dismissed and his claim for notice pay fails.

Employment Judge Pritchard

Date: 11 March 2020

Note

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.