

IN THE INDUSTRIAL TRIBUNAL

Case No. 13/99

BETWEEN

ALFRED BUSTO

Applicant

-and-

GIBRALTAR JOINERY AND BUILDING SERVICES LIMITED

Respondent

Mr P Nuza (TWGU) for the Applicant

Mr G Licudi (Hassans) for the Respondent

In his Originating Application, filed on his behalf by Mr Nuza on 13 August 1999, the Applicant claims that his dismissal by his employer, the Respondent, on 16 July 1999 was unfair on the following grounds:-

- (i) *that the disciplinary procedure in respect of events on 14 July 1999 was in contravention of natural justice and was thus fatally flawed,*
- (ii) *that the Appeal hearing on 19 August 1999 failed to take account of the above.*

The Application further confirms, inter alia, that the Applicant commenced his employment on 1 July 1996 and, at the time of his dismissal, was earning a gross weekly wage of £195.78.

Background and Evidence

The Applicant was employed by the Respondent as a driver/labourer. On 14 July 1999 he and a number of colleagues were working at a site in the Varyl Begg Estate, under the supervision of Mr Derek Galia, a chargehand employed by the Respondent. The Respondent was engaged in the refurbishment of nursery school premises. An altercation took place, on site, between the Applicant and Mr Galia. The altercation was of such a serious nature that a report was immediately made by Mr Galia to his immediate boss, Mr Victor Martinez, a foreman employed by the Respondent. That same afternoon, following the altercation at the nursery school site, the Respondent as well as Messrs Galia and Martinez gathered in the main workshop yard of the Respondent. A report was made to the Respondent's managing director, Michael Estella. The situation was heated and tempers were high. There were insults and insulting behaviour. Mr Galia maintained that the Applicant had refused to carry out a reasonable instruction from Mr Galia – to complete the unloading of plywood sheets from his lorry, at the site and to return to the main yard to collect a screw machine, and that the Applicant had used strong, insulting words and gestures.

That same afternoon Mr Joseph Bula, the Union's shop steward, was summoned to Mr Estella's office and a hearing was convened. Present at that hearing were Mr Estella, Mr Glen Pearce, the Respondent's general manager (who also took the minutes), Mr George Frederico, the Respondent's general foreman, Mr Martinez, Mr Galia and Mr Bula. The Applicant was not present as the Respondent's management had taken the decision that, in view of the nature of the incident and the high tempers, it would be better for him to be seen separately.

Thus, a two-stage disciplinary process ensued. The first stage, which was minuted by Mr Pearce, took place on 30 July. Another hearing took place two days later, on 16 July. At that hearing the Applicant was

present, together with his union representative, Mr Bula (who had of course been present at the hearing two days earlier). There was a minutes secretary (John Morillo) and on the Respondent's side Messrs Estella, Pearce and Martinez were present. Minutes of that hearing were also taken and were put forward in evidence by the Respondent. As a result of that hearing the Applicant was dismissed with immediate effect and was so informed on that day.

An appeal was lodged on the Applicant's behalf by Mr Nuza, by his letter of 19 July 1999 to the Respondent. Prior to the hearing of the Appeal (which took place on 9 August 1999) Mr Nuza was provided with copies of:-

- (i) the minutes of the hearings which were held on 14 and 16 July,
- (ii) the witness statements of Messrs Galia and Martinez,
- (iii) a summary of the Applicant's disciplinary record with the Respondent, which was prepared by the Respondent and is dated 21 July 1999.
- (iv) the Employment & Training Board Termination of Employment form dated 19 July which had been issued by the Respondent to the Applicant following his dismissal.

All the above items were presented by the Respondent to the Tribunal, together with a copy of the Respondent's Disciplinary Code. That code had in fact been negotiated between the Respondent and the TWGU in some detail.

The Appeal duly took place on 9 August 1999 under the chairmanship of a non-executive director of the Respondent, Mr Walter Crisp. The other member of the Appeal panel was Mr Michael Bosio. Also present at the hearing of the Appeal were the Applicant, this time represented by Messrs Nuza and Bula, and an employee of the Respondent, Stephen Valarino, who merely took the minutes. The Appeal concluded that the dismissal on 16 July was justified and a letter was issued to the Applicant informing him of this fact.

The Tribunal heard detailed evidence from those principally involved in the above events. Witnesses called by the Respondent were:-

Derek Galia
Victor Martinez
Michael Estella
Glen Pearce

Evidence was also heard from the following, called by the Applicant:-

Joseph Bula
the Applicant

Evidence was heard as to the events of 14 July 1999, both on site and at the Head Office of the Respondent. The Tribunal was taken through, in considerable detail, the events of that day as well as the content of the second part of the hearing heard on 16 July and the Appeal. The Tribunal was also taken through the summary of the Applicant's employment record prepared by the Respondent.

The thrust of the Respondent's evidence was that the events on site of and at Head Office on 14 July were of a sufficiently serious nature to warrant the immediate convening of a disciplinary hearing, on the basis of the Respondent's apparent misconduct and gross misconduct arising from his apparent refusal to obey a reasonable instruction and his apparent insulting behaviour, of a serious kind, on the company's premises. The Respondent's evidence sought to establish:

- that a disciplinary hearing was properly convened by the Respondent's management on 14 July, in accordance with the Respondent's Disciplinary Code.
- that there should have been no doubt in anyone's mind that the hearing on 14 July was indeed a disciplinary hearing and that, although the Applicant himself was not present at that hearing, he was represented by Mr Bula of his Union, Mr Bula being an experienced and able shop steward.
- that it was reasonable in all the circumstances for the disciplinary procedure to be, in effect, held in two parts and for the Applicant's evidence to be taken at the second part of the hearing, held on 16 July.
- that the Applicant was fully aware of the fact that he was involved in a disciplinary hearing and as to the nature of the charges against him.
- that the Applicant's union representative, Mr Bula, had ample opportunity to provide the Applicant with full details in between the 14 July and 16 July hearings and that the Applicant (and for that matter Mr Bula) had the opportunity of bringing in additional representation at the 16 July hearing if they had wished to do so.
- that, on the basis of the evidence presented to its management on 14 and 16 July, and having taken into account the Applicant's employment record the decision to dismiss the Applicant was reasonable in the circumstances at the time.
- that the subsequently convened appeal was procedurally fair and correct, that the Applicant and his representatives had been provided with all relevant paperwork well before the Appeal took place.
- that the Applicant and his representatives had the opportunity, pursuant to the Disciplinary Code, of presenting evidence at the Appeal and if they so wished, of challenging the substantive basis for the Respondent's decision to dismiss the Applicant.

The Applicant sought, on the other hand, to establish:

- that the disciplinary procedure which led to the Applicant's dismissal was, as is stated in the Originating Application, in contravention of natural justice and fatally flawed.
- that neither Mr Bula nor the Applicant were aware that the hearing on 14 July was a disciplinary.
- that the Applicant was not fully aware as to the nature of the hearing on 16 July, at which he gave his version of events and following which he was dismissed.

The Applicant, in his evidence, gave a different view of the events which took place on site and at the Respondent's main premises on 14 July. The Applicant also sought to establish that the record of his employment as prepared by the Respondent was not wholly accurate. It was accepted by Mr Nuza on the Applicant's behalf that the Appeal was lodged by him on behalf of the Applicant on purely procedural grounds and that Mr Nuza did not discuss with or take evidence from the Applicant as to the facts. It was claimed on behalf of the Applicant that he had not been confronted with the evidence against him. Mr Nuza sought to establish on the Applicant's behalf that there was doubt as to whether he had in fact failed or refused to obey a reasonable instruction, given the timing involved in the requirement to go from the

Varyl Begg site to the Head Office, return to the site and then take the lorry back to Head Office to be parked overnight.

Decision

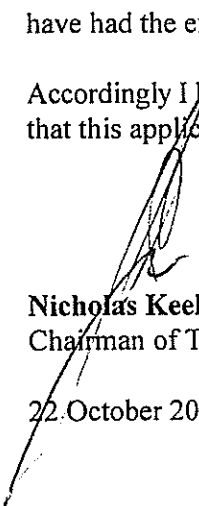
Although much evidence was heard as to the grounds on which the Respondent arrived at its decision to dismiss the Applicant, the Tribunal is constrained to deal only with the grounds (set out in the Originating Application), on which it is claimed that the dismissal is unfair. These are purely procedural grounds. This was indeed the main thrust of the Applicant's presentation to the Tribunal. Although the Tribunal has not been asked to give a decision on this particular aspect I would find that, in the particular circumstances of this case, the decision to dismiss the Applicant did fall within the band of reasonable responses which a reasonable employer might have adopted, having regard to the information possessed by the Respondent's management at the relevant time. I would consider that the Respondent's decision was reasonable and that its management acted in good faith.

I am satisfied that the procedures adopted by the Respondent in this case were fair and were appropriate to the circumstances. It was reasonable for the Respondent's management to make a determination that the seriousness of the matter would justify the disciplinary process being invoked with immediate effect. I also hold that it was reasonable for the Respondent's management to decide that a confrontation would best be avoided and that the hearing should thus take place in two parts. No evidence was presented which would suggest that a request by the Applicant, or on his behalf, that Mr Galia's evidence be presented again at the second part of the hearing on 16 July would have been refused. I am satisfied that, with the combination of his union representative being present at the first part of the hearing on 14 July, and having heard the charges against him at the hearing on 16 July, at which he was present, the Applicant had due notice of the charges against him.

I am satisfied that the Appeal procedure was fairly conducted. All of the relevant documents were provided by the Respondent to the Applicant's representative, Mr Nuza, before the hearing. There was opportunity at the Appeal hearing for the Applicant to put forward his side of the events of 14 and 16 July and to comment on his employment record as produced by the Respondent. Neither the Applicant nor his (experienced) representatives did take up that opportunity.

In conclusion, I hold that the Respondent acted reasonably in dismissing the Applicant and that its decision to do so was a reasonable response. I find that there was no procedural irregularity of such nature, as would have had the effect of rendering the Applicant's dismissal unfair.

Accordingly I hold that there are no grounds for an award of compensation in favour of the Applicant and that this application should be dismissed.


Nicholas Keeling
Chairman of Tribunal

22 October 2001