

JERSEY / JUDGMENT

Pereira v Sandpiper CI Limited t/a Cimandis

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Jersey Employment Tribunal This award, (subject to the right of appeal to the Royal Court, as set out in the Law) is legally binding and is the final decision of the Tribunal. Each party, if applicable, is responsible for establishing their liabilities with regard to Social Security and Income Tax payments. Case Number: 1405-091 /07 Applicant: Mr Victor Pereira Respondent: Sandpiper CI Limited t/a Cimandis Case Summary: Unfair dismissal by way of conduct Hearing on 11th February 2008 Before: Mrs Nicola Santos-Costa, Deputy Chairman Mr Mark Therin and Mr Samuel Le Breton, Panel Members Representation: For Applicant: Mr Pereira represented himself For Respondent: Mr Paul Luxon, Managing Director of Cimandis Mr Andrew Wright, Payroll Manager of Respondent formerly HR Officer of Cimandis. The Facts 1. Mr Pereira was employed by Cimandis as a delivery driver from 25th September 2005 to 24th April 2007. 2. The Tribunal were informed that Mr Pereira was a helpful and diligent employee and considered to be polite and friendly to those he came into contact with. Accordingly, the managers at Cimandis were surprised when a complaint was received from the HR Manager to the Safeway supermarket that Mr Pereira had been rude to one of their employees. This complaint was investigated by Mr Wright and 3 witnesses informed him that an altercation had taken place between Mr Pereira and a Safeway employee on 17th July 2006. Mr Wright convened a disciplinary hearing which concluded that, ‘...due to the nature of the offence (abusive language towards a customer) you [Mr Pereira] were in jeopardy of being dismissed due to gross misconduct. However, your line manager and I have taken into consideration your usual manner and believe this to be a one-off occurrence To this end, I have issued you with a final written warning due to the severity of the offence. This will stay on your file for a period of not exceeding 52 weeks; I would remind you that if you should commit another offence, of any nature, during this time your contract may be terminated’. This letter was dated 20th July 2006 (‘the Final Written Warning’). The letter also included the following words, ‘As a final reminder, all Cimandis’ drivers are the public face of the Company, and to that effect must behave in a manner that shows the Company in a good light’. The letter also included a reference to Mr Pereira’s right of appeal against this decision which Mr Pereira did not take up. 3. Mr Pereira was subsequently absent from work for a period of approximately 4 months owing to an injury to his foot, returning to work on the 4th January 2007. At this time his delivery round changed to businesses on the east of the Island. 4. The Tribunal heard evidence that on 30th March 2007, the Respondent received 3 complaints about Mr Pereira’s work from 3 different customers. Two of the complaints concerned his decision to leave bread in an inappropriate place for the customer to collect and the third stated that he had been

rude to a customer by 'slamming' his clipboard on to a counter, throwing the customer's bread order onto the floor in an 'aggressive' manner and 'aggressively opening' a large bag of prepared sandwiches causing a number of boxes to fall to the floor. Following these complaints, a decision was taken by the HR Manager to suspend Mr Pereira on full pay, 'pending further investigation'. A date for a disciplinary hearing was set for the 10th April 2007 and Mr Pereira was kept informed of the disciplinary process throughout this time. 5. Pending the disciplinary hearing, Mr Wright spoke to the Sales Manager who had received the original complaints and also to the driver who had given Mr Pereira his original training when he took over the delivery round on the east of the Island. 6. Mr Pereira attended the disciplinary hearing on the 10th April 2007 with his union representative, Paulo Alves, although he said Mr Alves made no contribution to the meeting. 7. The Tribunal were informed that at the Hearing Mr Pereira acknowledged that he had not left the produce in appropriate areas for the customers and the meeting did not dwell long on this issue. The Tribunal understood this to be because Mr Wright considered that the outcome of the meeting would be that either Mr Pereira would be sacked for this action or retrained so it did not happen again. It appears that more time was spent on Mr Pereira's actions in the shop. The Tribunal heard that Mr Wright put the complaint made against Mr Pereira twice to ensure that he understood it. Mr Pereira initially agreed that he had done the actions complained of but on the second time said that he had not understood the question and that in fact he had committed none of the actions complained about and that these particular customers had complained to him before that he arrived too early and were often in a bad mood. Mr Wright continued with the hearing. The Tribunal were informed that when the time came for Mr Wright to make his decision, he asked Mr Pereira to leave the room but not Mr Alves. The Tribunal were informed that Mr Wright had not conducted a disciplinary hearing in the presence of a trade union official before and decided that as Mr Alves made no move to leave the meeting that he could stay whilst he reached his decision. 8. Mr Wright informed the Tribunal that he considered that Mr Pereira had understood the questions put to him about his conduct at the shop during the disciplinary hearing but Mr Pereira had decided to change his mind when he was reminded of the Final Written Warning. Mr Pereira denied this conclusion. 9. The Tribunal were informed that Mr Wright considered that Mr Pereira's behaviour affected Cimandis' reputation with its customers as well as breaching its health and safety policies. Furthermore, Mr Wright was aware of the Final Written Warning which he said was issued in similar circumstances to the complaint from the shop. Mr Wright concluded that in the circumstances Mr Pereira's employment should be terminated with 2 week's notice.

10. Mr Wright informed Mr Pereira of his decision at the meeting and wrote to him on the same day stating, 'I was recently alerted to three complaints regarding your behaviour from Cimandis customers ... these three incidents have been regarded a unsuitable behaviour and unfitting of a Cimandis employee, especially a driver who has more contact with our customers than anyone else'.

11. Mr Pereira was informed of his right to appeal against Mr Wright's decision but chose not to do so. Mr Luxon informed the Tribunal that if there had been an appeal, Cimandis would have investigated the complaints in full pending such hearing.
12. Mr Pereira considered that he had been unfairly dismissed and lodged a complaint with the Employment Tribunal on the 14th May 2007. The Law
13. Article 64 of the Employment (Jersey) Law 2003, states as follows; Article 64 (1)
 - (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it shall be 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 paragraph (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.
14. In this case the reason for Mr Pereira's dismissal was his conduct as an employee. The Tribunal is also required to consider the following factors when deciding if the dismissal is fair or unfair: Article 64(4)
 - (4) Where the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) shall –
 - (a) depend 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) be determined in accordance with equity and the substantial merits of the case. Decision
15. At the disciplinary hearing which led to Mr Pereira's dismissal Mr Wright was concerned about 3 complaints that had been made against Mr Pereira on the same day – · The leaving of bread in inappropriate places for 2 customers, and · Alleged impolite conduct towards a customer during a delivery. Mr Wright was also conscious that Mr Pereira had a Final Written Warning on his file which was still in force. The Tribunal heard evidence that it had been made clear to Mr Pereira that another disciplinary matter could lead to his dismissal and that Mr Pereira understood the seriousness of his situation. Mr Pereira did not deny this statement of his situation.
16. The Tribunal heard evidence that at the disciplinary hearing held on 10th April 2007, Mr Pereira readily admitted leaving the bread in unsuitable locations and that consequently the meeting concentrated on the incident in the shop. The Tribunal is very concerned that Mr Wright did not attempt to verify this particular complaint independently especially as Mr Pereira was under a Final Written Warning and there was a strong likelihood that he could lose his job as a consequence of his actions. The Tribunal accepts the Respondent's

submission that it would not wish to inconvenience the complaining customer but it cannot understand why, for example Mr Wright did not pay the owner of the shop a visit, just to assess the situation for himself. The Respondent has a large workforce with a dedicated Human Resource department and the Tribunal expects a high standard in the conduct of disciplinary matters from such professionals. The admission that the Respondent would have investigated the complaint had Mr Pereira appealed the decision to sack him is simply not good enough. In this case, the Respondent was not interested in the other side of this particular complaint. However leaving this complaint aside, Mr Pereira still admitted to breaching the Respondent's rules and standards by not leaving the bread delivery in a place acceptable to the customer and his employer. The Tribunal agrees that Mr Pereira's conduct in these matters was unacceptable to the Respondent. Mr Pereira was aware that he was on a Final Written Warning and having heard evidence of the Respondent's induction and training processes, he must have known that customer satisfaction and the Respondent's reputation for health and safety is paramount to the continuation of its business. It is for this reason and the facts that Mr Pereira admitted the misconduct and was on a Final Written Warning that the Tribunal finds that the Respondent did not act unreasonably in treating Mr Pereira's conduct of leaving the Respondent's produce in unsuitable places as sufficient reason for his dismissal.

Conclusion

17. Mr Pereira's complaint of unfair dismissal is hereby dismissed.
18. The Tribunal would like to make the following points arising out of this hearing: (a) Evidence was heard by the Tribunal that the Staff Handbook which is referred to in Mr Pereira's contract of employment was kept in Mr Pereira's line manager's office in accordance with the Respondent's policy. The Tribunal would suggest that a copy of the Respondent's staff handbook, procedures and regulations (if different) be also kept in a neutral, accessible place such as a staff restroom so private access can be made to these documents. If, as was suggested, that such access would cause wear and tear to the document, then it must be changed regularly. (b) The presence of the Union Representative during Mr Wright's decision making process was inappropriate. Mr Wright should have asked him to leave the room so that Mr Wright's decision to sack Mr Pereira could be reasonably perceived as being made independently of outside influence. In this case the Tribunal is satisfied that Mr Wright was not influenced by Mr Alves in any way. Signed:
Dated: Mrs Nicola Santos-Costa, Deputy Chairman

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