

Chamberlain Vinyl Products Ltd. v. Patel

Employment Appeal Tribunal (EAT)

Smith J., Ms M. Exley and Lord Gladwin of Clee

SMITH J.

delivered the following judgment of the appeal tribunal. This is an appeal from a decision of an industrial tribunal sitting at Leicester on 27 May 1994. The unanimous decision of the tribunal was that the respondent to this appeal, Mr. N. Patel ("the employee"), had been unfairly dismissed by his former employers, the appellants, Chamberlain Vinyl Products Ltd.

The tribunal made the following findings of fact. The employee was employed as an operative by the employers from 1977 until his dismissal on 26 November 1993. On 27 October 1993, a Mr. Guntant Patel, the departmental manager, went to the employee's place of work. He found the employee unsteady on his feet and formed the view that he was drunk. He said that he could smell drink upon him. The employee became argumentative and angry with his manager. He protested that he was fit for work. He lunged forward and grabbed the manager's throat. He was sent home.

*115 That incident was reported to the works manager, Mr. Caldwell, who interviewed the employee on Monday, 1 November 1993. He asked him for his version of events. The employee explained that he was under the care of a psychiatrist. Mr. Caldwell told the tribunal that in the circumstances he felt that he should investigate further. He suspended the employee.

From that day until about 25 November 1993, Mr. Caldwell made about 12 attempts to contact either or both the employee's general practitioner and his consultant psychiatrist. Those attempts met with no success. Mr. Caldwell spoke to the employee, who agreed to contact his doctor. The tribunal accepted that he had done so. Eventually, a letter came from the employee's general practitioner. It was dated 22 November 1993 and it confirmed that the employee was a patient and that he suffered from "recurrent depression." It stated that he was undertaking treatment by medication.

The tribunal found that, at that point, Mr. Caldwell became frustrated and decided that the matter should be brought to a conclusion. He called the employee in on 26 November 1993 and asked him again if there were any circumstances which could explain or mitigate his conduct. The employee was unable to add anything further. Mr. Caldwell then dismissed him for gross misconduct.

The tribunal examined the employers' disciplinary code which, amongst other examples, provided that physical violence towards other employees and/or incapability for work through drink or drugs would be regarded as gross misconduct. Plainly, the employers had taken the view that the employee was in breach of those provisions.

In considering the question under [section 57\(3\) of the Employment Protection \(Consolidation\) Act 1978](#), the tribunal asked themselves whether, after a reasonable investigation, the employers had formed an honest belief that the employee had committed acts of gross misconduct. Pausing there, it appears to us that the industrial tribunal were applying their minds to the test set out in [British Home Stores Ltd. v. Burchell \[1980\] I.C.R. 303](#). They went on: