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Judgment: approved by the Court for handing down | *Delivered:* **14/05/2013**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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BETWEEN:

JASON FERRIS AND GRANT GOULD

Claimants/Appellants;

-and-

REGENCY CARPET MANUFACTURING LIMITED

Respondent.

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Before: Morgan LCJ, Higgins LJ and Girvan LJ

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MORGAN LCJ (giving the judgment of the Court)

[1] This is an appeal from a majority decision of an Industrial Tribunal that the appellants were not unfairly dismissed. The appellants submit that the tribunal correctly set out the law but that its decision did not provide clear and definitive explanations indicating that it applied the law properly in coming to its conclusion.

Background

[2] The respondent company manufactures tufted carpets on day and night shifts in its factory in Bangor. The appellants were employed as machine fixers. On 20 October 2011 it was noted that there was a moire effect on the surface of the carpet being manufactured on machine number six. In order to deal with this the stitch rate on this machine was increased on that date from 57.5 stitches to 59 stitches per 150 mm of material. On 26 October the production manager issued a written instruction increasing the stitch rate on other machines to avoid a similar problem on those machines.

[3] Each fixer carries out measuring exercises in relation to the carpet which are very important to the company as the quality of the product depends upon them. On 27 October the production manager checked machine number 6 to see how it was performing. He noted that the first named appellant had recorded a stitch rate of 57.5 on the machine on the night of 25/26 October. The second named appellant recorded that on the night of 26/27 October he had adjusted the stitch rate from 57.5 to 60 and then to 59. The tribunal recorded the investigation that was carried out in relation to this at paragraph 6 to 11 of its decision.

> "6. The management of the respondent company suspected, that due to the fact that Mr Alexander had adjusted machine number 6, the calculation of 57.5 stitches on the machine, by 2 of the fixers, indicated that the counting of the stitches had not been carried out properly by the fixers, who had made the subsequent checks referred to above. Management of the respondent decided to set up an investigation into this matter. The investigation was carried out by Mr Megson and Mr Bell, who interviewed both the claimants and others involved in the operating of the machine and the alteration of the stitch count.
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> 7. Mr Megson and Mr Bell came to the conclusion, that Mr Ferris, who said that he must have made a mistake in his count of the stitches, had not correctly counted the stitches. Indeed it was put to him, that he had not counted the stitches at all but had merely entered the number that he expected to find. This he denied. The enquiry recommended that he be referred to a disciplinary enquiry for falsifying records.
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> 8. Mr Gould stated that he had examined 2 samples of the carpet on 26 October, before he had made the final adjustment of the machine mentioned above. These samples with attached notes had been placed in the appropriate pigeon hole. He explained that he had first over adjusted the machine to 60 stitches before reducing the count to the required 59, as required. He also said that there was a written record of 3 stitch counts on that occasion, to record the 3 counts at 57.5, 60 and 59. He added that he had kept a record of this count and the adjustments that he had made but the record was never found and

there is no evidence to back up what Mr Gould said that he did.

9. Mr Robin Bell, the machinist on number 6, was interviewed, but could not remember anything about extra measurements and adjustments being made to his machine on the night in question.

10. Despite the argument advanced by Mr Gould, that he had made a mistake in the stitch count, thereby entering 57.5 stitches instead of the correct 59 stitches and his explanation about the changing of the stitch number on machine 6, there was no evidence to support these contentions. When Mr Gould was subsequently interviewed by Mr Bell and Mr Megson, it was known that he had received the circular regarding the change in the stitch rate. It was put to him that he had been anxious to cover up for his colleague Mr Ferris, who had carried out the count before the announcement was made of the change in the stitch count. He therefore entered the 57.5 stitches and made an entry in the record that he had adjusted that stitch rate to show the new required rate of 59. Indeed, when questioned he referred to having first adjusted the rate to 60 stitches with the consequence that he had to readjust to bring it back to 59. Mr Bell and Mr Megson having carried out this inquiry sent the case of Mr Gould to a disciplinary hearing again on the ground of falsification of company records.

11. Disciplinary hearings were set up, with Mr Parry, the Backing Manager of the respondent hearing both cases. Each of the respondents attended the separate hearings with their union representative. The 2 claimant's having attended the disciplinary hearings were informed, that due to the seriousness of claimant's failure to carry out their task of counting stitches, with the possible result being a poor quality of product, that the respondent could have no confidence in them and therefore they were both summarily dismissed. The reasons given were that Mr Parry was not satisfied with the explanation of Mr Ferris, as to his having made a mistake in the stitch count on the night in question. Mr Parry was of the opinion that Mr Ferris had failed to carry out the

> stitch count and merely entered the figure he expected to find. Subsequently Mr Parry, in hearing the Gould disciplinary came to the conclusion, that Mr Gould, in trying to protect Mr Ferris, entered a similar stitch count and concocted a story of adjusting the machine. Mr Parry was of the opinion that the machine was never adjusted by Mr Gould. He was supported in this view by the statement of the machinist Mr Bell, who could not remember Mr Gould making any adjustments to his machine. Furthermore, Mr Ferris in his evidence to Mr Parry stated that machine number 6 had shown no signs of irregular stitching, requiring adjustment. It is fair to say that the machinist, Mr Bell did, after the setting up of the disciplinary hearing, inform Mr Parry that he did, after all, remember that Mr Gould was correct and that there had been 2 checks and an adjustment of his machine on the night in question. Mr Parry told the tribunal that he discounted this evidence as it completely contradicted what he had said earlier and yet was some 3 months after the event."

The legal principles

[4] It is common case that by virtue of Article 130 (2) of the Employment Rights (Northern Ireland) Order 1996 it is for the respondent to demonstrate that the reason for dismissal was the conduct of the appellants. If the respondent discharges this requirement then the determination of whether the dismissal was fair or unfair depends on whether in the circumstances the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee. That is to be determined in accordance with equity and the substantial merits of the case.

[5] British Home Stores v Burchell [1978] IRLR 379 identifies three matters that must be established by the employer.

> "First of all there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus

> of demonstrating those three matters, we think, who must not be examined further."

Iceland Frozen Foods Ltd v Jones [1983] ICR 17 gives guidance on the approach to the reasonableness of the decision to dismiss.

> "In many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another; the function of the industrial tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair."

It is common case that these cases identify the four matters which the respondent must address in order to demonstrate that the dismissal was fair.

[6] By virtue of paragraph 30 of Schedule 1 of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 a tribunal must give reasons for any decision. Paragraph 30 (6) requires written reasons to include the following information:

> "(a) the issues which the tribunal or chairman has identified as being relevant to the claim;
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> (b) if some identified issues were not determined, what those issues were and why they were not determined;
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> (c) findings of fact relevant to the issues which have been determined;
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> (d) a concise statement of the applicable law;
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> (e) how the relevant findings of fact and applicable law have been applied in order to determine the issues; and
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> (f) where the decision includes an award of compensation or a determination that one party make a payment to the other, a table

> showing how the amount or sum has been calculated or a description of the manner in which it has been calculated."

[7] The leading authority on the adequacy of reasons for judicial decisions is English v Emery Reimbold & Strick Limited [2002] EWCA Civ 605. Lord Phillips MR stated that justice will not be done if it is not apparent to the parties why one has won and the other has lost and gave the following guidance:

> "[I]f the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon. …
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> When giving reasons a judge will often need to refer to a piece of evidence or to a submission which he has accepted or rejected. Provided that the reference is clear, it may be unnecessary to detail, or even summarise, the evidence or submission in question. The essential requirement is that the terms of the judgment should enable the parties and any appellate tribunal readily to analyse the reasoning that was essential to the judge's decision."

[8] The issue was addressed in this jurisdiction in Johansson v Fountain Street Community Development Association [2007] NICA 15 were Girvan LJ quoted with approval a passage in the judgment of Donaldson LJ in UCATT v Brain [1981] ICR 542:

> "Industrial tribunals' reasons are not intended to include a comprehensive and detailed analysis of the

> case, either in terms of fact or in law. … Their purpose remains what it has always been, which is to tell the parties in broad terms why they lose or as the case may be win. I think it would be a thousand pities if these reasons began to be subjected to a detailed analysis and appeals were to be brought based on any such analysis. This, to my mind is to misuse the purpose for which reasons are given."

[9] The issue was again more recently examined in Brent LBC v Fuller [2011] ICR 806. Mummery LJ dealt with the way in which the tribunal judgment should be approached at paragraph 30:

> "The tribunal judgment must be read carefully to see if it has in fact correctly applied the law which it said was applicable. The reading of an employment tribunal decision must not, however, be so fussy that it produces pernickety critiques. Over-analysis of the reasoning process; being hypercritical of the way in which the decision is written; focusing too much on particular passages or turns of phrase to the neglect of the decision read in the round: those are all appellate weaknesses to avoid."

He went on in paragraph 46 to give guidance as to the manner in which the tribunal should approach its answers to the questions arising from paragraph 5 above.

> "..when an employment tribunal asks a correct question, as this tribunal did about the reasonableness of the investigation into Mrs Fuller's conduct, it is better for the tribunal to give a specific answer to it in addition to its discussion of the facts, law and argument on the question. It should not be left to the parties, or the appeal tribunal or this court to have to work out the answer for themselves. Failing to answer the question could encourage an appeal and false optimism about the prospects of its success."

Discussion

[10] It was submitted on behalf of the appellant that although the tribunal made relevant findings of fact and identified the applicable laws it did not explain how those had been applied in order to determine the issues. In particular it was contended that a tribunal was required to give express answers to the four questions

arising from paragraph 5 above together with explanations for those answers. It is common case that the tribunal did not expressly answer the questions in its decision.

[11] We agree that there are many cases in which it is preferable for the tribunal to identify the issues upon which it has to make a decision, to give a specific answer to that issue and to explain the reasoning for it. We do not accept, however, that it is necessary to do so in every case. The thrust of the cases emphasises that the purpose of the decision is to tell the parties in broad terms why they have won or lost in sufficient detail to ensure that they understand the decision and that an appellate court can detect any error of law.

[12] The degree of analysis in relation to any specific question will depend upon the extent to which that matter was in dispute in the course of the hearing. One of the matters upon which the appellants relied in this appeal was the conclusion of the majority of the tribunal that the investigation carried out into the events on the days in question was a painstaking and proper investigation. We have set out at paragraph 3 the findings of the tribunal on the extent of that investigation. The adequacy of the investigation does not appear to have been in issue before the industrial tribunal. In those circumstances the conclusion by the majority that the investigation was painstaking and proper answers the question as to whether as much investigation as was reasonable in all the circumstances was undertaken and the findings in relation to the investigation enable the parties and the appellate court to understand why that conclusion was reached.

[13] The principal difference between the majority and minority of the tribunal was on the issue of whether the decision of the respondent to dismiss the claimants was too severe in the circumstances. The majority noted that the appellants were trusted employees working in an unsupervised environment doing vital checking work upon which the quality of the product depended. By their actions the appellants lost the trust and confidence of the respondent. That is a clear indication that the tribunal accepted misconduct as the reason for dismissal and that there were reasonable grounds for that belief.

[14] The majority of the tribunal concluded that dismissal was within the band of reasonable responses open to the respondent. The reasons for that decision are contained in the conclusions reached at paragraph 13 above. In our view this admirably concise decision entirely adequately explained why the appellants had lost. There was no error of law.

[15] For these reasons we consider that this appeal must be dismissed.