**CASE: 12345678/2017**

**IN THE BIRMINGHAM EMPLOYMENT TRIBUNAL**

**BETWEEN:**

**MR XXX XXXX**

**CLAIMANT**

**AND**

**XXXX XXXXX Ltd**

**RESPONDENT**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**WITNESS STATEMENT OF MR XX XXXX**

I, Mr XXXX XXXX of 40 XXXXXX Road, Walsall, WS9 XXX will say as follows:

1. I had been employed by the respondent as a labourer since 24 January 2011 until 24 March 2017. My job involved various general duties, including helping with tasks mostly outside, including cleaning and loadingS. My line manager was XXXX XXXX. I was employed to work 40 hours per week from Monday to Friday. My gross pay was £XXX which gave me net wages of approximately £XXX a week, depending on any bonus payments. I worked under Written Statements of Employment Particulars [**pages 36-42]** and the company had various policies and procedures which were outlined in the Employee Handbook including pages on timekeeping **[page 32]** and misconduct **[page 33].**
2. Apart from some minor undocumented general workplace issues over the years from time to time, resulting in informal conversations, I did not feel that the management were unhappy with me at work. I know that sometimes while at work I got quite passionate and often spoke my mind, but, as far as I was aware this was not a major issue for my managers.
3. As a result, I felt that my performance and conduct at work was acceptable for the respondent. I had a good sickness and disciplinary record, I got on well with my colleagues at work and I tried my best to complete my tasks to a very high standard. In fact, this was confirmed by my line manager XXXX XXXX and the company director Mr XXXX XXXX during my appraisal meeting with them in December 2016. Both managers scored me just short of the maximum in terms of my performance and conduct **[pages 64-68]**
4. The explanation, therefore, that the respondent gives on the ET3 that the dismissal was the result of a series of long running issues came as a bit of a surprise to me **[paragraph 2 page 26].** Also in the descriptions of issues highlighted by the respondent **[paragraphs 7-12 page 27]** in the ET3 with regards to managers and other employees having long-term concerns about my behaviour and conduct were all unknown to me prior to the start of my ET claim. I feel that if there were long-term concerns about me, then my employer should have made me aware of these concerns so that I have the opportunity to work with my managers to the expected standard.
5. During the appraisal meeting of December 2016 other issues such as my time-keeping, for example being 3 minutes late for work sometimes, or their view of me as someone who hides were discussed. These discussions I felt at the time were very unfair because it was as though they were putting these issues in front of me but were very dismissive of my responses. For example, their issue of me as someone who hides at work: when I tried to explain my side of the story; which was that different managers constantly pulling me off jobs and asking me midway through jobs, to start another job, this explanation was dismissed by them.
6. This meeting basically summed up the employment relationship I had with my managers at XXXX XXXX Ltd. I would have genuinely wanted to understand what issues they had with me, but, the reality of my job was that I would be called upon at any time, by any number of managers and other colleagues and this meant that I would often have to work in various areas of the premises. Mr XXXX and MR XXXX could not understand this reality and interpreted it as ‘I was hiding’ while at work. Whatever explanation i put to them, to try and explain what was happening, they dismissed.
7. The real issue I feel was that the managers at work did not discuss between themselves which employee was doing what and where. This was their lack of communication. When I tried to explain issues such as these, my explanations were dismissed by my superiors.
8. I admit I am someone who sometimes gets a little bit angry. However, I am not an angry person generally in life. At work, I sometimes get a little frustrated with my employment situation. One such example is my frustration when health and safety concerns which I highlighted were not, I felt, considered thoroughly by my managers at work **[page 53]**.I had a sense at the time that my concerns were not taken seriously by my managers. As a result, whenever I was given a task related to those concerns I sometimes let my emotions get the better of me.
9. The situation is a typical example of a frustrating event at XXX XXXX Ltd for me which resulted in me getting angry. I was treated very badly by my managers. The sad part for me is that the managers have never stopped to think about their conduct towards me and how they themselves negatively viewed me **[page 53].** The managers are very comfortable to lay all the blame solely and squarely on me. As far as they are concerned they never did anything wrong with me throughout my employment.
10. I understand that the flexible nature of my role meant that any of the managers could ask me to perform a task at any time. However, often a manger would ask me to perform a task, and then another manager would pull me off the task and ask me to start another. For example, the issue about not pulling weeds out of the ground and the disciplinary that followed [page 70]. I tried to explain during the meeting that I was asked by another manager to do something else [see minutes of meeting pages 76-77]. I had no issues with being pulled off jobs, but the problem was that the managers then failed to communicate with each other about changes.
11. I tried many times, during the appraisal meeting of December 2016 to explain to Mr XXXX and Mr XXXX of my predicament when they complained about my performance or my conduct. On every occasion during the meeting, my explanations were disregarded. At work, sometimes my frustration is viewed as anger, I do admit that I can sometimes get a little emotional when I think I am not being listened to.
12. My managers interpreted my frustration as anger and used this as one of the reasons to ridicule and humiliate me at work, after December 2016. I raised this with Mr XXXX during the end of December 2016, which he acknowledges **[pages 93-95]**. Nothing was really done to address the way I felt by my managers.
13. During the period from the start of my employment until December 2016 at no point did anyone at work have cause to speak to me about anything serious about my conduct or my performance at work.
14. This however changed at the beginning of 2017 when my employer issued me with a verbal warning on 31 January 2017 **[page 78]**, which was to remain on my employment record for three months. This sanction was imposed after my employer decided that I had not followed a direct instruction from a member of management and that this was an act of misconduct under the company’s disciplinary procedure.
15. This problem started on XX January 2017, when I received a letter **[page 70]** from MR XXXX, Director XXXX XXXX Ltd, in which he invited me to a disciplinary hearing.
16. It was alleged, that I had failed to follow *a direct management instruction to clear weeds, within a reasonable timescale, from outside the offices*. In a statement that MR XXXX, Managing Director, forwarded for the purposes of the hearing **[page 75]** he states that he was aware of many previous comments that I was not carrying out tasks asked of me and that my behaviour seems to be common. He also mentions that my managers were frustrated with my behaviour and this was leading to negative business outcomes. He also mentions that there have been periods where I have gone AWOL and that I could not account for my time whilst at work.
17. During the subsequent disciplinary meeting on XX January **2017 [minutes pages 76-77]** in my defence I explained that I did not clear the weeds because of snow on the ground and that I had been called away, by Mr XXXX, to perform another task in the paint shop. The point about being called away mid- task in the past was also mentioned to my line manager Mr XXXX in my appraisal meeting of December 2016, and this was noted on the appraisal document **[pages 59-66].**
18. At the end of the meeting Mr XXXX decided that an appropriate sanction for my actions would be a verbal warning which would stay on my record for 3 months. This was later confirmed in writing on XX January 2017 [page 78].
19. I felt that the whole disciplinary was just short and sweet and that people in the company had made their minds up beforehand, thus I felt that the disciplinary process was just something they treated as a procedural formality and that my fate had been predetermined. For example, this feeling is backed up now that I have seen the respondent’s documents. Mr XXXX was receiving e-mails from managers, after he requested from them details of events or incidents that involved me.
20. Mr XXXX received a response from Mr XXX on XX January 2017 **[page 71]** where he writes that he does not have details of any specific tasks that I had failed to complete, and he goes on to state that I had failed to complete all tasks.
21. Mr XXXX received an e-mail response from Miss XXXX on XX January 2017 again outlining a few general minor concerns about me **[page 72]** also stating that he did not have anything specific that she could find.
22. Mr XXXX also received a response from Miss XXXX on XX January 2017 **[page 73]** outlining issues around not being able to locate me and not being able to confirm what task I had been doing, she apologies to Mr XXXX stating, *‘I am sorry I haven’t got more to offer’*.
23. It was although Mr XXXX was trying to find as much dirt on me as he could before the disciplinary meeting. It also seems from the responses he got, that the managers could not offer him much in the way of information or dirt on me, the examples of e-mail responses, for me, makes me feel that my managers were really trying hard to find reasons to sack me.
24. The disciplinary meeting itself I felt was also short and sweet; starting at 9 am, on the XX January 2017 and ending at 0930 **[see minutes of the meeting pages 76-77]**. We discussed the event and the allegation. I gave my reasons as to why I did not finish the task of clearing weeds; for example, snow on the ground, being called away by my manager to perform another task and my misunderstanding of the weed killer situation.
25. Mr XXXX dismissed my explanation of the events and my reasoning. He adjourned the meeting at 0915. He then called me back in at 0920 and told me that he had decided to give me a verbal warning. It took him 5 minutes to decide my fate **[page 76].** This I think is unfair because it suggests to me that he did not really consider my explanation, it just confirms my belief that Mr XXXX had made up his mind before the meeting that he was going to give me a verbal warning.
26. I was then sent out a letter dated XX January 2017 **[page 78]** outlining the decision and a list of improvements that they expected of me. These included carrying out management instructions in a timely manner, take criticism more positively, pay attention to my time keeping and remain contactable via my radio.
27. The situation at work then further deteriorated for me on XX March 2017 when my employer dismissed me under charges outlined as; *‘disturbing co-workers, poor levels of effective and efficient work which resulted in costs for the business’* **[pages 83-85]**. My employer decided that this represented misconduct under the company’s disciplinary procedure.
28. I felt that whilst I tried my best to improve on the points raised at the end of the first disciplinary, I was now faced with new complaints from my employer.
29. In the letter informing me of the disciplinary process date and charges **[page 79]** Mr XXXX attached 2 very brief witness statements which my colleagues had XXX XXXX and XXXX XXXX had written out **[pages 80-81].**
30. At the meeting Mr XXXX outlined incidents where I had been inside the paint shop talking to MR XXXX **[minutes pages 83-85].** He explained that this represented me disturbing people. There was also an allegation about me not being helpful when asked to do some work that involved the movement of timber.
31. I explained that as far as the timber was concerned I was waiting for the forklift truck to become available and because it did not become available I could not move the timber at that time. I admitted that the actual task of moving the timber did not require a forklift truck. However, I wanted to move some other items out of the way so that I could have easier access to the timber. When the forklift was not made available I moved on to another task.
32. The incident of disturbing MR XXXX, while he was working, that he was alleging lasted about 2 minutes, where I stopped to talk to someone and warm myself up a little. I explained to Mr XXXX that I had been washing containers outside in the cold using a power washer from 0730 until 0900 and I had come inside the paint shop to warm myself up a little.
33. At the end of the meeting Mr XXXX decided that my actions were serious enough to warrant my dismissal. My dismissal was confirmed in writing via a letter that I received on 28 March 2018 **[page 86].**
34. I feel that Mr XXXX just wanted to dismiss me. At no point leading up to my dismissal did I think that I would be dismissed. I have clearly not really understood the seriousness of my situation. My dismissal came as a complete shock to me.
35. I appealed this decision and wrote an appeal letter to Mr XXXX Jones outlining my appeal points **[pages 87-90]**. I appealed that the notes of the minutes that MR XXXX had given me were not reflective of the actual conversation that had taken place between us. I pointed out that I felt that I was being treated differently compared to other employees in the company. I had made previous complaints to Mr XXXX with regards to being intimidated and bullied by my manager Mr XXXX. This complaint was never investigated by Mr XXXX and I pointed this out in the appeal letter. I also pointed out that unknown to me Mr XXXX had made some damming remarks about me on the notes section of my appraisal document which he had not discussed with me. I also pointed out a confusion in the Employee Handbook where the handbook describes behaviour like that I was alleged to have done to constitute misconduct resulting in a warning not gross misconduct resulting in dismissal.
36. An appeal hearing date was set for XX April 2017 **[page 91]**
37. On the XX April 2017, I received a letter from Mr XXX where he enclosed a witness statement that he had written out in anticipation of using this in the appeal hearing **[page 92].** The statement **[pages 93-95]** outlines instances, with no dates, where managers at work have complained to her about me. In this statement, he describes me as a strong willed, awkward and determined person who takes criticism badly. He argues that I cannot control my temper and that any problems with my manager were because of my behaviour alone. However, previous to this statement from Mr XXXX I had never been given any evidence of this.
38. I felt that this new information at this point of the disciplinary process was highly unprofessional because it introduced an element of bias to the process. Again because of this I felt very uncomfortable about the way the appeal was being conducted by my employer.
39. During the appeal hearing Mr XXXX was the minute taker, again at the time I felt that this introduced a second element of bias into the appeal stage. This for me was a demonstration of an unprofessional management approach. The company has many other managers who could have acted as minute takers during the appeal hearing.
40. Mr XXXX, who is the managing director at where I used to work, asked me to set out my case, **[minutes of appeal hearing pages 96-99]** which I did. I started with how I felt that the company’s disciplinary procedure was not correctly followed and that I had been treated differently compared to other who worked there. I pointed out the disparity in the Employee handbook.
41. Mr XXXX did not agree with anything that I was putting forward. At the end of the appeal hearing he told me that the original dismissal still stood. This was confirmed to me via a letter which I received on X March 2017 **[page 100].**
42. If felt that after December 2016 people within the company just ignored everything that I was saying in an attempt to defend myself. I also feel that they had made their minds up and just wanted me out.
43. During all the formal meetings when I tried to defend, my explanations were dismissed. I simply could not get my counter arguments across. It was almost as though, all of the ills of XXXX XXXX Ltd, were my fault and the managers in the company were happy to lay blame at my feet with no consideration around how they could manage the issues more appropriately. Again, and for example, no consideration was given to managers pulling me off jobs midway, no consideration was given to the fact that when I pointed out to managers of my concerns, they perceived this as me being problematic, this was simply not the case, I was not being problematic, I was simply trying to explain my situation to people.
44. For me and to the best of my knowledge, prior to the beginning of December 2016 I had an excellent work record. In fact, just a few months before my dismissal, during my Job Appraisal Mr XXXX and Mr XXXX, agreed with my score which was the maximum possible score for my reliably, my participation/contribution, my flexibility and my teamwork. The other two parameters of my appraisal, communication, respect and support of others were scored just short of the maximum possible score **[available page 63].**
45. My dismissal is unfair because the sanction imposed was too harsh relative to breach. Further if the respondent had highlighted to me, at any point, exactly where they felt that I could improve, what improvements they required of me, how they themselves would help and support me and communicated these improvements and the subsequent changes throughout the workforce and set a timescale I would have done whatever was necessary.
46. In hindsight, I feel that the way that I was being managed at XXXX XXXX Ltd was chaotic. There was no performance management communication or support structure in place. Instead what I started to receive post December 2016 was a series of management complaints, which I felt had no basis, issued to me in an ad-hoc manner. No specific in-depth conversations were taking place and if they had maybe I would have been able to appreciate the seriousness of the situation I was in. I would have been prepared to do whatever management needed me to do to keep my job.
47. The management did not clearly explain the problem to me and what they needed me to do so that I fell in line with their expectations. This I consider to be a management failing and not a failing that is attributable solely to me, through my performance or my conduct.
48. I feel that because of this ad-hoc management approach, at the end of the first disciplinary process and subsequent decision, I was felt confused, but I did not feel as though I was about to lose my job. Even at the start of the second disciplinary process I did not feel as though I was about to lose my job.
49. If managers had indicated to me the seriousness of my situation I would have tried my best to do whatever they wanted me to do.
50. Since my dismissal I have been trying to find work.
51. An example of my frustration turning to anger is the phone call I made to the respondent’s offices on .5.2017 [page 103]. I got angry because of the respondent’s deliberate avoidance to supply me with a reference for a prospective employer. I felt that not only had the respondent unfairly dismissed me, they were now actively inhibiting me from starting alternative employment. [As a point of fact, the job offer was eventually withdrawn by Pertemps because they could not obtain a reference]

This statement is true to the best of my knowledge and belief.

Signed:

Date: