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THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE MORTON**
(sitting alone)

BETWEEN:

Mr P Hood **Claimant**

AND

Hailsham Community College **Respondent**

ON: **24 January 2017**

Appearances:

For the Claimant: **No appearance**

For the Respondent: **Mr D Maxwell, Counsel**

WRITTEN REASONS PRODUCED FOLLOWING A WRITTEN REQUEST BY THE CLAIMANT

Introduction

1. My judgment in this case was that the Claimant was fairly dismissed by the Respondent. I delivered the judgment and oral reasons on the day of the hearing and the Claimant, who did not attend the hearing, subsequently wrote to the Tribunal seeking written reasons.

The claims and evidence

2. By a claim form presented to the Tribunal on 8 June 2016 the Claimant, Mr Hood brought to the tribunal a claim of unfair dismissal. The claim was resisted by the Respondent.

3. Mr Hood did not attend the hearing on 24 January. On 16 January he wrote to the Tribunal to communicate his reasons for not attending which appeared to be connected to difficulties in asking for time off from his new job. I considered whether it was in the interests of justice to proceed in his absence, but as he had already made an application for postponement that had been refused, his decision not to attend was entirely voluntary, his email envisaged that the hearing would proceed in his absence and the Respondent would plainly have been prejudiced by an adjournment I decided to continue with the hearing.

4. Mr Hood had prepared a witness statement in the case, although I was unable to give it significant weight as his non-attendance meant that his evidence was not tested in cross examination. The Respondent's evidence was given by Claire Findlay, the Respondent's Vice Principal, Philip Matthews, the College Principal and Brian Hughes, Chair of the Respondent's Board of Governors, all of whom had prepared written statements. I read the statements and a number of the documents in a bundle containing 433 pages. Any reference to page numbers in this judgment is to page numbers in that bundle.

5. Although the Claimant was not present to subject the Respondent's evidence to cross examination, I was mindful of the fact that in an unfair dismissal case the Respondent bears the burden of showing that it has a potentially fair reason to dismiss. I therefore put a number of questions to the witnesses with a view to satisfying myself that the Respondent could discharge that burden.

The law and the issues

6. It is for the Respondent in an unfair dismissal case to establish that it had a potentially fair reason to dismiss. In this case the Respondent relied on the Claimant's misconduct. Misconduct is a potentially fair reason to dismiss under section 98(2)(b) Employment Rights Act 1996 ("ERA"). The question of whether the Respondent is entitled to rely on the alleged misconduct to dismiss the Claimant fairly involves consideration of the test in *British Home Stores v Burchell [1980] ICR 303,* that is whether the Respondent at the time of the dismissal had a reasonable belief in the employee's guilt based on reasonable grounds after conducting such investigation as was reasonable in the circumstances. The standard to be applied to the investigation carried out by the Respondent in a misconduct case is also a standard based on what a reasonable employer might have done (*Sainsbury's Supermarkets v Hitt [2003] IRLR 23*).

7. In accordance with the case of *Iceland Frozen Foods v Jones [1982] IRLR 439* the Tribunal must not in reaching a decision on the reasonableness of the Respondent's decision to dismiss substitute its own view as to what it would have done in the circumstances but must instead consider whether the Respondent's response fell within a band of responses which a reasonable employer could adopt in such a case.

8. Further issues then arise under section 98(4) ERA which provides that the

question of whether the dismissal was fair or unfair involves considering of whether, having regard to the reasons shown by the Respondent, in all the circumstances of the case, including the size and administrative resources of the Respondent's undertaking, the Respondent acted reasonably or unreasonably in treating the reason relied on as a sufficient reason for dismissing the Claimant. The question must be determined in accordance with equity and the substantial merits of the case.

9. In order to meet the test in section 98(4) the Respondent must also follow a procedure that is fair in all the circumstances. That will ordinarily involve compliance with the provisions of the ACAS code of practice on grievances and discipline and with the Respondent's own written procedures.

10. In a case in which a dismissal is found to be procedurally unfair consideration must also be given to the principles in the case of *Polkey v A E Dayton Services [1988] ICR 142* and if it appears that the Claimant would have been fairly dismissed in any event had a fair procedure been followed then any compensation awarded must be reduced to reflect the percentage chance of that being the case.

11. In a case in which the Claimant is found by the Tribunal to have been unfairly dismissed for misconduct the Tribunal must if it has found that the Claimant has to any extent caused or contributed to her own dismissal reduce any compensation by such amount as the Tribunal considers just and equitable having regard to that finding (section 123(6) ERA). A finding of contributory fault can only be made if the Tribunal forms the conclusion that the Claimant has on the balance of probabilities been guilty of misconduct alleged.

Findings of fact

12. Based on the written and oral evidence of the Respondent's witnesses, the bundle of documents and to the limited extent permissible where a party has not been cross examined, the written statement of Mr Hood, I make the following findings of fact.

13. Mr Hood was employed by the Respondent from 4 September 2012 to 10 February 2016 when he was summarily dismissed. At the start of and during the course of his employment Mr Hood received safeguarding and child protection training (including annual safeguarding training) during the course of which the importance of separating a teacher's personal life from his or her professional life was emphasised. Mr Maxwell took me to an abundance of documents, policies and training materials in the bundle confirming the nature and content of the Respondent's policies and training materials on this subject:

    a. Mr Hood's contract of employment at pages 33-41 and in particular page 40;
    b. the disciplinary policy at pages 43 – 50 and in particular the examples of gross misconduct at page 50;

c. the safeguarding and child protection policy at pages 52-105;
d. the acceptable use policy at page 107 – 110 and in particular the statements at page 109 concerning use of personal IT equipment and systems for contacting students;
e. the social media policy at pages 122 – 133 and in particular the passages on personal use of social media at page 126;
f. the slides used during training on the school's safeguarding policy at pages 147-175 and in particular the slide at page 158 confirming that a home email account should not be used to contact students and the slides at pages 160-162 requiring staff not to use personal devices to contact or take pictures of students;
g. Mr Hood's certificate of training in safeguarding and child protection at page 176; and
h. the slides from online training on safeguarding and child protection at pages 177-302.

14. Together these provide clear evidence that Mr Hood knew or ought to have known that he should not enter in email correspondence with a pupil at the school through his personal email account. He should also have known that the particular email correspondence initiated by the pupil in question in this case itself raised a safeguarding concern and that he should have escalated that immediately to Ms Findlay, the school safeguarding officer, rather than engaging in that correspondence. Mr Hood elected not to attend the Tribunal hearing and therefore I regard the Respondent's evidence on these issues, and Mr Hood's knowledge of the requirements of his role, as unchallenged evidence.

15. Initially Mr Hood was a teaching assistant but from September 2014 he worked as an unqualified teacher of art. A year later, in September 2015, the Respondent agreed to assist him to obtain a teaching qualification. After two months, in November 2015, the Respondent learned that in order to complete his teaching qualification Mr Hood would need to complete his placement at a different school. It therefore gave him the option of continuing to work for it as an unqualified design and technology teacher, or transfer to a difference school in order to continue his teacher training. Mr Hood chose the latter option.

16. On 12 November 2015 he was offered a one week trial in the art department of Willingdon Community School commencing the following Monday, 16 November. He would remain an employee of the Respondent during the trial – a fact that Ms Findlay communicated to Mr Hood. The intention was that Mr Hood would return to the Respondent if the trial was unsuccessful. He therefore remained subject to all of the Respondent's policies and procedures during the trial period.

17. At page 314 there was an exchange of emails between Mr Hood and Ms Findlay. At 17.14 Mr Hood emailed Ms Findlay as follows:

> **"Just a quick thought!**

> **At the end of next week I would like to send my classes a statement of apology and wishing them well. Also a few students have asked to stay in contact wanting to send the art work they create etc. I'm very happy for this to happen but said I would ask your advice?"**

Ms Findlay replied at 20.05:

> **"Yes let's do something.**
>
> **If you are successful I'm sure Phil will want to see you at some point anyway.**
>
> **We'll touch base in the week".**

Mr Hood would later rely on that exchange of emails as constituting permission from Ms Findlay for him to have continued email contact with a Year 8 student at the school after his departure using a personal email account. I find that no-one could reasonably have construed that email as having such effect.

18. On 18 November another member of staff told Ms Findlay that he had received a telephone call from a parent of a student concerning an email sent by Mr Hood to a friend of her daughter. It appeared that Mr Hood had given his personal email address to a student the Respondent referred to as "IH" and was communicating with her about his move to Willingdon School. Ms Findlay contacted IH's mother ("JH") who said that she would investigate. At page 335 there was an email from JH to Ms Findlay confirming that IH had been emailing Mr Hood at his personal email address. She said that the emails seemed harmless, but that she was not happy about it. JH forwarded the relevant emails to Ms Findlay.

19. On page 329 there is an exchange dated 13 and 15 November 2015 in which IH asks for Mr Hood's email address and he responds:

> **"Yes I have cleared it with the powers that be at HCC so as long as the folks at home on your side are OK with it its fine?"**

He then inserted his personal email address at the bottom of the page. I find that this is a declaration by Mr Hood that he had sought and obtained permission to communicate with IH from his personal email address. The Respondent denies ever giving such permission. Ms Findlay said that she would never have given permission for a teacher to contact a student from a personal email address – this would be contrary to the school's safeguarding policies, which are designed as much for the protection of staff as that of students. I find as a fact that Mr Hood's assertion was based solely on the email exchange referred to in the preceding paragraph and could not therefore reasonably have been construed as amounting to permission of the kind suggested by Mr Hood. Ms Findlay subsequently ascertained that the email at page 329 had been sent from Mr Hood's school email account.

20. There are further emails at pages 333-335 sent to IH from Mr Hood's personal email address on .15 and 16 November 2015 I find that the email from the pupil to Mr Hood at page 335 suggests that the pupil might have formed an

attachment to Mr Hood and was seeking an ongoing dialogue of an informal and familiar nature. Mr Hood's response on page 334 has a distinctly familiar tone:

> **"Hi**
>
> **Turns out Willingdon's alright actually! Havent got a Lunchtime squad yet , but let's face it whose gonna come close to filling the c10 hooligans boots??? Hope you said hello to the gang for e and found somewhere out of the rain to shelter at lunch!!! Have a great rest of the week and let me know how the cover lesson goes on Friday?**
>
> **Toodles.**
>
> **P.**
>
> **P.S. Hows Snoop-dog and Derek holding up?**
> **P.P.S Stood on tiptoe the whole day so no ones worked out I'm a teeny peeps yet!**
> **P.P.P.S Laziness made me keep the tape…does that make me a badden? If so totally your fault!!!"**

21. Ms Findlay reviewed the emails. The Safeguarding Officer at the School also contacted the Local Authority Designated Officer ("LADO") in accordance with safeguarding protocols. The LADO advised that the Respondent should refer Mr Hood to the Duty Assessment Team and commence an investigation. Ms Findlay considered the tone of Mr Hood's emails to be over-familiar and bordering on flirtatious. At page 326 IH had written "Reply soon plz I'm lonely". The vulnerable nature of that comment caused her particular concern as it suggested or gave the impression that Mr Hood might have been grooming IH.

22. Ms Findlay was also concerned about a photograph of Mr Hood with several students, which appeared to have been taken from another student's mobile phone (page 322). She was concerned that the photograph may have been taken without permission from a student's mobile phone, that it was vulnerable to dissemination on social media and that Mr Hood's unprofessional appearance in it was capable of bringing the school into disrepute.

23. As a consequence of her concerns Ms Findlay contacted Mr Hood at Willingdon School and arranged for him to attend the Respondent on 23 November. Mr Matthews informed Mr Hood that he was suspended and a letter confirming that followed on 24 November (page 343). The reason for suspension was

> **"..using your personal email to enter into an exchange with a Year 8 student which was over familiar and beyond the boundaries of acceptable and appropriate professional conduct. You also stated that you had the relevant approval from senior management to correspond with this student. However, this is incorrect".**

The letter went on to state that this amounted to serious breaches of the

Respondent's Safeguarding Policy and Procedures, including the ICT Acceptable Use Policy; conduct which brought or had the potential to bring the Respondent into disrepute and breaches of the Teacher Standards. Mr Hood was warned that if proven the allegations could constitute gross misconduct and lead to his summary dismissal.

24. Mr Matthews appointed Ms Findlay to conduct the investigation on the basis that Ms Findlay was the only Level 3 trained Safeguarding Officer available. Mr Hood attended an investigatory meeting on 7 December 2015. The invitation letter was at page 348a and repeated the matters set out in the suspension letter. The Teacher Standards which the Respondent maintained that Mr Hood had breached were set out as follows:

> "**The Teacher Standards, most notably Part Two: Personal and Professional Conduct:**
>
> - **Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by**
>   - **Treating pupils with dignity, building relationships rooted in mutual respect and at all times maintaining proper boundaries appropriate to a teacher's professional position.**
>   - **Having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions.**
> - **Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities**."

25. Ms Findlay explained that the purpose of the meeting was fact finding. The notes of the meeting (pages 349 -352) show that Mr Hood suggested that he was not entirely clear about the rules and standards required, despite the training he had received:

> **"PHO said he was not entirely certain of the rules. It didn't seem to be a problem to him. He wasn't seeking permission as such, just touching base to see if it was ok. He was happy with the response. He used his best judgement but now acknowledges that his judgement was wrong. He said that he never protected himself safeguarding-wise. When he separated and had personal issues he did not wish to get into the students were good to him. He treated the Year 7s like he does his own children….**
>
> **…He thought that as he had left the rules ceased to apply….**
>
> **….in his personal opinion he does not see any problem with ex-students and ex-teachers communicating. He had nurtured and invested in those students and did not feel it right to cast them aside. He did not agree with the rule."**

Ms Findlay was greatly concerned by these responses which to her mind indicated a lack of insight into his actions on Mr Hood's part into his duties and responsibilities and the dangers of disregarding professional boundaries. She also noted that he expressed no remorse and thought that what he had done "was fine". However he also said that he had not sent the emails from his school account because "he knew it would be traceable", which suggested that he did know that what he was doing was unacceptable.

26. Minutes of the meeting were sent to Mr Hood and he signed them on 10 December (page 352). Ms Findlay then prepared an investigation report (pages 353-355). She concluded that Mr Hood failed to recognise the importance of safeguarding, even though he appeared to have acknowledged at the investigation meeting that his actions posed a potential risk to a vulnerable young girl. She was concerned that he seemed not to understand the importance of safeguarding policies and procedures and had breached those policies as well as bringing the Respondent into disrepute by implying that the school had given him permission to correspond with IH. She recommended that disciplinary action should be taken. Mr Matthews agreed with her conclusion and considered that Mr Hood has a case to answer. He invited Mr Hood to a disciplinary hearing on 27 January by letter of 6 January (page 356a). The letter repeated the allegations as set out in the letters suspending Mr Hood and inviting him to the investigation hearing.

27. The disciplinary hearing was postponed at Mr Hood's request and eventually took place on 10 February. Ms Findlay presented the investigation report and Mr Matthews, the School's Principal, chaired the hearing. Mr Hood was accompanied by his trade union representative. The minutes were at pages 360-368. Mr Hood's statement was at pages 369-370. That statement contained an apology for his actions and requested a proportionate sanction. However Mr Matthews considered that Mr Hood's evidence at the hearing, particularly statements such as "always thought he was within professional boundaries" and that the emails were "completely innocent and part of an open relationship with the students" called into question the genuineness of the apology. Mr Matthews also considered that Mr Hood's actions and choice of language in the emails to IH disclosed a marked lack of insight.

28. He concluded that despite his safeguarding training, Mr Hood had engaged in email correspondence with IH in breach of a number of the Respondent's policies. He had wrongly represented to IH that he had the Respondent's permission to correspond with her. He had used inappropriate and unprofessional language and in the sentence "Laziness made me keep the tape … does that make me a badden? If so totally your fault!" his tone was flirtatious and capable of encouraging emotional engagement in a vulnerable young pupil who was showing signs of dependency. In Mr Matthews' view, Mr Hood's communications demonstrated a number of the characteristics of grooming.

29. Mr Matthews was particularly concerned about Mr Hood's seeming lack of regard for the safeguarding rules and his statement that "he never protected himself safeguarding wise", which he regarded as indicative of a serious lack of judgement. He considered that the statement of case Mr Hood produced at the hearing could not be reconciled with the verbal statements he made and his attempts at self-justification. In the light of these factors Mr Matthews did not have confidence that Mr Hood would not refrain from inappropriate contact with students in the future or that he would not exhibit further serious lapses of judgment. In his evidence to the Tribunal Mr Matthews said that there had been an element of arrogance and insouciance in Mr Hood's approach to his relationship with students that contributed to his decision. He concluded that

the appropriate sanction was dismissal for gross misconduct and the dismissal letter, upholding all the allegations, was at pages 386 – 388.

30. Mr Hood appealed by a short letter at page 389. The grounds followed by an email from Mr Hood's union representative at page 390. The grounds of appeal were that the decision to dismiss was disproportionate, the investigation and disciplinary processes were unfair, there was inconsistency with regard to misconduct issues and the allegations had been exaggerated and embellished. The appeal was heard by Mr Hughes, the Respondent's Chair of Governors, and two other Governors, Rosie Ross, Safeguarding Lead at the Respondent and Sue Weiner, a former Chair of Governors. Mr Hughes is also a Head of Service with East Sussex County Council Children's Services and has many years' experience of working with children and young people. Mr Hood was represented by a union representative. The appeal meeting minutes were at pages 406-414. The meeting was conducted by way of rehearing – a decision taken by Mr Hughes in light of the seriousness of the allegations.

31. In his evidence to the Tribunal Mr Hughes summarised the matters put forward at the hearing for consideration by the appeal panel: Mr Hood did not consider the process fair and considered that consistency was an issue; the key facts had been exaggerated; the sanction was disproportionate; Mr Hood accepted that he had made an error of judgement by corresponding with IH; he did not consider the content of exchanges to be harmful; the email from Ms Findlay had been ambiguous; he had asked IH to first check with her mother that he could correspond with her; he had not put IH at risk; describing IH as "vulnerable" was deliberate embellishment by the Respondent; he was sorry for his actions; he considered that Ms Findlay was potentially conflicted as the investigatory officer given her role in delivering safeguarding training the school; he considered summary dismissal to be a strong response when he had had a clean record over a four year period of service at the school; he would not do it again.

32. I find that the approach taken by Mr Hughes and his fellow panel members was extremely thorough. Both Ms Findlay and Mr Matthews attended to hearing to explain their actions and answer questions. As regards the accusation of inconsistency, the Respondent took the view that there were no comparable cases in which an employee had received a lesser sanction – an incident which Mr Hood appeared to be relying on as indicative of inconsistency involved very different facts. Mr Hughes independently reached the conclusion that Mr Hood could not reasonably have construed the email at page 314 as constituting permission to remain in contact with IH through a private email address. Put at its highest the email was unclear, in which case Mr Hood should have sought clarification. During the hearing Mr Hughes identified a number of other issues which he considered to be of grave concern: that Mr Hood said that he had not had time to consider the safeguarding aspects of entering into email contact with a student; he was unable to recognise that the comment "Reply soon plz I'm lonely" indicated vulnerability and inappropriate attachment by a 12 year old girl; he was unable to see that he was putting himself in a vulnerable position with a 12 year old

girl; he became defensive when Sue Weiner pointed out to him that the email exchanges had nothing to do with IH's art work; he conveyed the clear impression that he did not have a sense of the boundaries that were important in his communications with IH and whilst he said he would not do it again he did not appear to recognise that his action had been wrong in the first place; he lacked insight into the severity of his actions and there was nothing in his conduct at the hearing that suggested that the Respondent could be confident that he would not act in the same way again; he had not recognised that he was in a position of power in relation to IH and instead wanted to befriend her. Mr Hughes' experience in the child protection sector led him to be particularly concerned that Mr Hood was encouraging an informal tone and that the use of informal and over friendly names in the email correspondence indicated a shift in the relationship after Mr Hood had left the school which could indicate the first stages of grooming. It is, he said, the responsibility of a school and its employees to prevent grooming and safeguard its students.

33. The panel was aware of the potentially career limiting nature of the decision to dismiss Mr Hood in the circumstances of the case and this led to its decision to conduct the appeal by way of rehearing. Nevertheless it upheld Mr Matthews' decision on the basis of Mr Hood's mischaracterisation of the email at page 314 as permission to contact IH and the serious error of judgment this exhibited; the fact that the emails had nothing to do with IH's art work despite his original statement of intention and Mr Hood's consistent lack of insight into the seriousness of his actions despite all of the safeguarding training he had received. As regards Mr Hood's allegation that Ms Findlay had had a conflict of interest, the panel concluded that Ms Findlay's role as the school safeguarding officer had not prejudiced the investigation in any way and that Ms Findlay had been the most appropriate choice based on the serious safeguarding nature of the investigation. A letter dismissing the appeal was at pages 415-416.

Conclusions

34. On the basis of my findings of fact I am satisfied that the Respondent was fully justified in disciplining Mr Hood for a serious breach of its safeguarding policy and procedures including the ICT acceptable use policy; for bringing the Respondent or potentially bringing the Respondent into disrepute and for failing to observe the requirements of the Teacher Standards, which were the three matters for which he was subjected to disciplinary proceedings. I also conclude that the Respondent established that it had a reasonable belief in Mr Hood's misconduct having carried out an investigation that met the standards of reasonableness required by s 98(4) ERA. The Respondent has therefore established one of the potentially fair grounds for dismissal under s.98(2)(b)ERA.

35. I consider that on the facts the Respondent acted within the band of reasonable responses open to an employer in such a case in deciding on the sanction of dismissal as opposed to a lesser sanction. Despite Mr Hood's ostensibly clean disciplinary record I find that when subjected to disciplinary proceedings Mr Hood incriminated himself further by suggesting that he did

not need to follow the Respondent's safeguarding procedures and by his open admission that he never protected himself for safeguarding purposes. This statement gave the school real cause for concern about his judgement and behaviour on a matter of critical importance to any school in the UK in the present day. I fully accepted the evidence of Mr Matthews as to his reasons for reaching the decision to dismiss and considering that he had no alternative. He gave a clear and wholly credible account, as did Ms Findlay, of the importance of appropriate professional and personal boundaries in the teacher pupil relationship and of the dangers posed by members of staff who do not observe those boundaries or understand their importance.

36. I also accepted Mr Matthew's evidence that he considered carefully whether Mr Hood's conduct was due merely to a gross lapse of judgment or whether it contained a wilful element. Both Mr Matthews and Mr Hughes, who were compelling witnesses, formed the view that there was an element of arrogance in the Claimant's approach to the disciplinary proceedings and that he considered that the safeguarding rules did not apply to him because of his special relationship with the children. Mr Matthews said that this went beyond mere lack of insight and that the Claimant exhibited a profound failure of judgement that contained a deliberate element. This meant that Mr Hood posed a risk to emotionally vulnerable students and to the school's reputation. In light of this disregard for appropriate boundaries and lack of good judgement I find that the sanction of dismissal was appropriate in this case. The school could have no confidence that Mr Hood would conduct himself differently if he had remained in its employment.

37. Having weighed the evidence carefully, I find that the Respondent's procedures were fair within the test of s.98(4) ERA and were compliant with the ACAS Code of Practice. I gave consideration in particular to Mr Hood's concern that Ms Findlay, as the person responsible for delivering safeguarding training, was not neutral when it came to the question of whether Mr Hood had been complying with safeguarding policies and procedures. Whilst I see that there was a potential for a conflict of interest to arise in some cases, I am satisfied that on the facts of this case there was no such conflict. It was never part of Mr Hood's defence of his conduct that he had not received safeguarding training – his defence was quite different, amounting to a suggestion that he disagreed with the safeguarding policies and the principles they espoused and that relating to students in a manner that was careless of boundaries was, in his view, the right way to behave. I can envisage circumstances in which the process described to me as occurring as a matter of course when safeguarding concerns are raised (that is that Ms Findlay, or whoever at the time is the Respondent's Level 3 trained Safeguarding Officer is appointed to investigate) might need to be operated more flexibly by the substitution of different personnel in some cases. But this was not such a case.

38. The second respect in which Ms Findlay might have been regarded as potentially conflicted by the facts of the case arise from her involvement in one of the disputed email exchanges, namely the email on which Mr Hood relied in asserting that he had had permission to contact IH from is personal

email address. I do not however consider that fairness was vitiated in this case by the involvement of Ms Findlay, notwithstanding her involvement in that email exchange. I find that it is so clear from her email that no permission was being given that there can be no criticism of the Respondent for appointing Ms Findlay to carry out the investigation. Even if I am wrong about that, any potential unfairness was in my view neutralised by the thoroughness of the disciplinary hearing and the appeal process and in particular the decision of the appeal panel to re-hear the case in its entirety.

39. On the facts I would go further than a finding of unfair dismissal and am satisfied not only that the Respondent had a reasonable belief in Mr Hood's misconduct but that he had in fact done the acts of which he was accused. The Respondent was therefore justified in dismissing without notice or payment in lieu of notice. It follows from this that if I am wrong about the fairness of the procedure in this case I would in any event have concluded that any unfair dismissal compensation should be reduced by 100 per cent to reflect a combination of the Claimant's contributory conduct in acting in the way that he did and the principles in ***Polkey***, as I conclude that any procedural defect would have made no difference to the outcome of the disciplinary proceedings in this case.

40. The Claimant's claim of unfair dismissal therefore fails.

Employment Judge Morton
Date: 7 April 2017