



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss M Pitt

v College of North West London

Heard at: Watford

On: 19-21 April 2017

Before: Employment Judge Bedeau

Appearances:

For the Claimant: Mr M McDonough, Employment Consultant

For the Respondent: Mr E Kemp, Counsel

JUDGMENT having been sent to the parties on 25 April 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By a claim form presented to the tribunal on 21 June 2016 the claimant claimed against the respondent that she had been unfairly dismissed and/or wrongfully dismissed from her employment after 24 years service.
2. In the response presented on 21 July 2016 the claims are denied. The respondent averred that the claimant was dismissed for gross misconduct and that she was not entitled to notice pay. The respondent had not wrongfully dismissed her. Alternatively in respect of the unfair dismissal claim, it argued Polkey and contribution.

The issues

3. The issues I have to determine in respect of the unfair dismissal claim are, firstly, what was the reason for the claimant's dismissal? Had the respondent shown a potentially fair reason? If so, had the respondent entertained at the date of the dismissal of the claimant a genuine belief, based on reasonable grounds, in the claimant's guilt? Prior to considering that matter, had the respondent engaged in a reasonable investigation? Was the dismissal within the range of reasonable responses?

The evidence

4. I heard evidence from the claimant and she called Mr Roy Harris, her partner. On behalf of the respondent I heard evidence from Ms Marcia

Carty, Head of Student Administration; from Ms Anna Openshaw-Lawrence, Vice Principal People and Planning, and from Mr Andy Cole, Principal.

5. In addition to the oral evidence the parties adduced a joint bundle of documents which were in excess of 386 pages.
6. Having considered the evidence I made the following material findings of fact.

Findings of fact

7. The respondent is a further education college with campuses at Wembley and Willesden.
8. The claimant commenced employment on 4 April 1991 and at the date of her dismissal worked as a Student Administration Assistant. She worked Monday to Friday as part of a team which carried out the college's Student Enrolment Service, namely collating and inputting student data in to the respondent's Management Information System. She was also engaged in correcting and validating data to ensure the accuracy of student records and enabling the respondent to submit timely returns to its funding bodies. This was by all account a position of some responsibility and trust.
9. Leave was requested and approved either by the claimant's line manager or by Ms Marcia Carty, Head of Student Administration, the claimant's second line manager at the time. The holiday year runs from 1 September to 31 August and there is no dispute that in relation to the issues we are concerned with, the claimant was entitled to her full leave days from 1 September 2015, I am told some 28 days.
10. Compassionate leave is granted at the request of the employee and not at the instigation of the respondent and from the evidence I am satisfied that in the case of bereavement, compassionate leave will be given to someone whose close relative had died, but it does not include a nephew.
11. The claimant had three sisters, all of whom lived in the United States in New York. She, she told me, is the only sibling living in this country. I am satisfied that because of that close relationship between the claimant and her sisters, and doubtless nieces and nephews in the United States, that she visited the United States on a regular basis. Certainly more than three times during the time she had been living in the United Kingdom. She was, in my view and I do find, familiar with the time difference between the United Kingdom and the time in New York, some five hours difference. Unfortunately for the claimant in 2000 one of her sisters died leaving a 17 year old son who thereafter was cared for by his aunts in New York. His father, I am told, had left him at birth.
12. From the documentary evidence it appeared that the son had his own personal problems and for a time had not been heard of. However, following the discovery of his body, which was in a park, steps were made for his burial. I am told that while he was alive he visited the United Kingdom spending some time with the claimant before returning to New York.

13. The claimant was based at the premises in Willesden but was required to work about a week at Wembley. I am satisfied that she had a good working relationship with Ms Carty, whom she considered as a friend. Ms Carty had been working for the respondent for 27 years. Some time ago the claimant's husband unfortunately passed away and her dog passed away. Both events were sad events and even more so when taken in to account that prior to that her sister had passed away.
14. There is no dispute between the parties that the claimant had a good disciplinary record and that she had been working for the respondent for some 24 years.
15. Some four days prior to Monday 28 September 2015 she was suffering from flu-like symptoms but was able to work to carry out her duties. I was therefore satisfied that although she was suffering from flu like symptoms, her condition was not so serious that it caused her to visit her doctor to prescribe medication, or for her to take sick leave.
16. On Monday 28 September 2015 she contacted Ms Carty to request three days annual leave, namely 1, 2, that's Thursday and Friday and Monday 5 October 2015; this was in order to attend her nephew's funeral.
17. The claimant said to me, and she called Mr Roy Harris, her partner, to confirm that he had been contacted by her sister who informed him that the nephew's body had been discovered and that arrangements would be made for his funeral.
18. Ms Carty said in evidence that she was aware of the death of the nephew at least a week prior to 28 September 2015, namely that he had died and that she became aware of this as the claimant had told her so. I bear in mind the relationship between the claimant and Ms Carty. I can see no reason why Ms Carty should lie or attempt to mislead me in respect of that information. I was however satisfied that the main purpose of the claimant's request for three days annual leave was to attend the funeral, initially arranged for Saturday 3 October 2015.
19. At 21:37 in the evening of Monday 28 September 2015 the claimant booked her flight. From the flight confirmation invoice it disclosed the following; that the departure date was Wednesday 30 September 2015 at 6pm, her return flight was Tuesday 6 October 2015 at 7:30pm, arriving at London Heathrow Airport on Wednesday morning at 7:40am. From that information it is quite clear that the period of time that the claimant was going to be away was in excess of the three days leave she had applied for and was granted.
20. On Tuesday 29 September 2015 she worked as normal but requested that she should leave early due to her flu like symptoms and Ms Carty granted her request and accordingly she left some 20 minutes prior to the end of her shift.
21. In relation to the respondent's sickness procedure for recording sickness absences, it is called First Care Absence Management; the employee would

enter the date of sick leave and the close, or the end of sick leave. The system would automatically update the employee's line manager by email of their absence. I am also told that First Care would contact the employee to enquire as to when they are fit in fact to return to work.

22. Having regard to the First Care documents on 29 September 2015 at 17:48, the claimant entered her sickness absence in respect of that date. The 30 September, which was a Wednesday, at 9:42 in the morning, the First Care entry on the previous day was updated. The claimant stated that she would be absent due to sick leave until 5 October 2015. She described her symptoms as flu like symptoms. That entry was surprising for two reasons; first, the claimant was able to anticipate that she would be ill for six days with flu-like symptoms. Secondly, it was a statement that she had made without reference to a doctor's certificate. The claimant said that she realised shortly after arriving in New York that the funeral was not going to be on the Saturday but on the Monday and that she had stated in the flight details that she would be returning on Wednesday 7 October. She was therefore unable to return having regard to the period requested of annual leave on 6 October 2015 for work. She travelled to New York on 30 September from Heathrow Airport; in order to get there she would have had to present herself at the check-in desk at least three hours before the departure time; the departure time being 6pm that evening. She told me in evidence that when she realised from the flight information that she was unable to return to work on 6 October 2015, she became aware that's she had made a mistake. She also told me that she was prepared, willing and able to fly back to the United Kingdom on Monday 5 October 2015.
23. In relation to the First Care entry for 6 October, she closed her sickness absence on that day at 10:45. She stated flu like symptoms and that she would be returning to work on Wednesday 7 October 2015. She tried to contact Ms Carty on Tuesday but was unable to speak to her. Ms Carty, when she saw two missed calls, contacted the number and realised that there was an international dialling tone and ended the call. She was expecting the claimant back at work on Tuesday 6 October.
24. When the claimant arrived at the airport on Wednesday 7 October she made her way home and from there went to work to start at 12 noon. She worked up to the early evening. On that day she had a meeting with Ms Carty. Ms Carty took contemporaneous notes of what she discussed with the claimant. She wrote in her notes that during the meeting on 7 October she asked the claimant what day she left the United Kingdom and the claimant told her that she left on Thursday. She asked the claimant whether she wanted to take Tuesday 6 October as annual leave instead of sick leave. The claimant said she wanted to take that day as sick leave. She asked the claimant again whether she wanted to take it as annual leave. She, that is the claimant, sought Ms Carty's advice but Ms Carty told her she could not decide what the claimant wanted to do. The claimant then confirmed that she wanted to take it as sick leave because she was not well.
25. Ms Carty then sought Human Resources advice and the advice given to her was that the claimant should be instructed to bring in her flight details and according to Ms Carty's note on that day, she asked the claimant to bring in

her flight details and passport. Those were provided the following day by the claimant. From the flight information Ms Carty observed that the claimant had travelled on Wednesday 30 September and was due to arrive in the UK on Tuesday 6 October. She met with the claimant and asked the claimant what day she had left the country, that is the United Kingdom. The claimant again repeated that she had left on the Thursday. At that point Ms Carty pointed out the flight information details that she actually left the United Kingdom on Wednesday 30 September. The claimant at that point said that she was stressed and confused and that everything rolled in to one. She was asked why she had not closed her absence on Monday 5 October. The claimant said it was because she was still sick on Tuesday 6 October. Ms Carty asked the claimant why she had not booked annual leave for 6 October knowing that that was the day she was expected to be back in the country. She said that she was confused and everything was rolled in to one. She was confused about the five hour time difference and said that although she had booked to come back on Tuesday, her flight actually came in on Wednesday morning at 7:30 and that there was a two hour delay on the flight. The claimant then ended by saying that she was emotionally distressed and was only thinking of getting to the UK quickly. She said that in the process she felt ill.

26. The matter was then referred to Human Resources and the following day, 9 October, the claimant was suspended on full pay by a Human Resources Officer who had handed her the letter of suspension, signed by Mr Andy Cole, the Principal of the College.

27. In the letter of suspension it stated that she was suspended pending an investigation in to;

“The allegation that you intentionally made travel arrangements, and subsequently travelled, outside the annual leave period requested and authorized on the same day that you made these travel arrangements. Furthermore, you commenced a sickness absence to coincide with the additional time required away from work to travel. As a result you deliberately planned to go on sick leave to enable you to gain additional leave for a longer period/journey than was authorized. This allegation amounts to potential fraud.”

28. The claimant was then warned that it may constitute gross misconduct resulting in her summary dismissal.

29. The investigation was conducted by Ms Priscilla Angelique-Page, Head of Learning Improvement and Standards. Ms Page interviewed the claimant as well as Ms Carty. She had, that is Ms Page, her travel documents, the First Care entries, records of toil and other information. From the evidence collated she was in a position to prepare her investigation report. The conclusion she came to in her report was that the flight booking was made following the leave request for a different period of time. There was an opportunity available to the claimant to amend her leave request. There was communication between her and Ms Carty following the booking.

30. In relation to the First Care entry on 30 September at 09:42, the claimant travelled to the airport several hours prior to the departure time. The sickness absence was amended to coincide with the return flight and she

then wrote in her report:

“Based on the evidence gathered in the course of the investigation and on the balance of probabilities, it is reasonable to conclude that when Martha Pitt made her travel arrangements, she had not intended to work on Wednesday 30 September and Tuesday 6 October 2015. I therefore believe that there is a case to answer and recommend that this incident proceeds to a disciplinary hearing.”

31. I was satisfied of the evidence that Ms Carty had amended her interview notes with Ms Angelique-Page. I was also satisfied that a copy of that document in its amended form was sent to the claimant prior to the disciplinary hearing. The amendments to the notes made by Ms Carty stated the following: That Ms Carty was aware that the claimant's nephew had passed away before the claimant went to work at Wembley and in relation to the conversation she had with the claimant on 7 October that the claimant had stated to her that she travelled to the United States on the Thursday and she was prepared to adhere to her account.
32. At the disciplinary hearing held on 8 February 2016 the allegation the claimant faced was the same as that stated in the suspension letter. The claimant was represented by Mr Roy Croasdale, Unison representative. On the disciplinary panel were Ms Anna Openshaw-Lawrence, Vice Principal, People and Planning, and Mr Ben Humpage. Notes were taken of the hearing by Mr Andrew Scott. In accordance with the respondent's procedure, Ms Angelique-Page presented the management's case. Ms Carty was called to give her account of events. Questions were put to her and answers. She was asked to clarify when she thought the claimant was due to leave the United Kingdom and she stated "On Thursday" and that at the meeting on 8 October she confirmed that she had travelled on Thursday. She was asked "Did she maintain it was the Thursday" Ms Carty replied:

“Ms Pitt said Thursday and I asked her if she was sure and she said yes. I got a calendar and showed her it was a Wednesday not a Thursday. I asked Ms Pitt why she hadn't booked leave for 6 October and she said that she was confused everything rolled in to one and Ms Pitt was confused about the time difference. Her flight came in on Wednesday and not the Tuesday.

33. She was asked to confirm whether Ms Pitt had travelled before to which Ms Carty replied yes, on more than one occasion and she believed it was to the same country. She said that she had written her notes of her meetings with the claimant but those notes were personal to her. She was asked whether the claimant had been sick before and had a return to work interview, to which she replied "yes". "Did you ask the claimant for the reason for her sickness absence and Ms Carty replied "Yes, she had a cold". Were you at any point concerned about whether First Care Notifications had been met properly; Ms Carty replied that the claimant closed her absence on Tuesday 6 October. She had asked the claimant if she wanted to take that day as annual leave or sick leave because the notification was closed on Tuesday. She was asked why was the claimant asked to reconsider. Ms Carty responded by saying that she was out of the country, she had to clarify whether she wanted to take another days annual leave or whether she was off sick. Mr Croasdale then presented the claimant's case. He made reference to the claimant's mental state and that she had been advised to

seek counselling. The claimant was questioned. She was asked why she said to Ms Carty she had left the United Kingdom on the Thursday and she said she didn't say that she had left the UK on the Thursday, that she had documents in front of her and that she did not say that at all. She was asked how many times she had visited the United States, she said a few times relating to death as her family were over there. She said that when the question was again put to her that she had visited the States more than three times. On the occasion in question she had travelled with her grandson. It was put to her that before she left there was an opportunity for her to ask Ms Carty about leave or toil and she said it had been a very stressful and traumatic time for her and that Wembley was busy. She had been on her own and was not feeling well. She was asked when she returned to the United Kingdom why she didn't take additional leave. She said when she returned Ms Carty said it was five days sick leave "I was jet lagged". The Tuesday was when she was sick. She had booked three days annual leave. She asked if Tuesday could be taken as annual leave. She said she thought everything was okay. She apologized for the mistakes with the dates.

34. In the notes taken by Ms Carty it was put to the claimant that she said that she had travelled on the Thursday and that she intended to come back on Tuesday. If that be the case she was returning to the United Kingdom for work late. The claimant responded "When I felt better this was the Tuesday". She could not remember the time. She was pressed on the point about her travel arrangements. She was asked at some point she must have realised that she was flying on Wednesday 30th and the claimant said it was in the evening. The Tuesday, she says, she was not feeling well; she was really bad. She asked Ms Carty for time. She was ill, busy and traumatised. She was asked "You booked leave and then booked a flight and then was sick for the days it covered. If you hadn't been sick then you would just not have been here". She said she had no control over it. She was asked whether she had trouble getting flights within the timeframe of her leave. She replied that it was quick and she had difficulty getting flights. She maintained that she was stressed and traumatised. At that point Ms Carty was recalled based principally on the dispute about the Thursday being the date she had recorded the claimant said she had travelled to the United States; and Ms Carty maintained that the claimant had said to her it was the Thursday. Mr Croasdale then following Ms Angelique-Page's submissions then made his submissions citing that there had been a genuine mistake; there had been an error and that the claimant was not behaving rationally. He again referred to the medical advice that she needed counselling. The panel decided to give the decision in writing to the claimant.
35. On 11 February 2016 in the panel's letter signed by Ms Openshaw-Lawrence, the claimant was informed that the decision had been taken to summarily dismiss her. This is an important document and I propose to read the salient part of it. Ms Openshaw-Lawrence write:

"The panel considered all of the evidence presented to it both on paper and during the hearing. The key points that were undisputed are as follows:

- You asked for leave, which was agreed, for the three days: Thursday 1st,

Friday 2nd and Monday 5th October 2015.

- On the evening that you requested the leave (Monday 28 September 2015) you booked your flight to leave on Wednesday 30th September and return on Wednesday 7 October 2015 which did not coincide with the time off you requested.
- You left work and reported sick from 4pm, Tuesday 29th September and on Wednesday 30th September reported that your estimated return to work date was 5 days later on Monday 5 October.
- On Tuesday 6 October, whilst still in the United States, you contacted First Care to close your absence with an expected return to work day on Wednesday 7 October.
- You flew back in to the country on 7th October and came to work having amended your expected return to work date the previous day.
- Your explanation for what happened was that you were confused and stressed. You were unable to give a credible explanation of how it had happened and how you knew you were going to be sick for 5 days on 30th September. You were equally unable to provide a credible reason as to why, when you had realised your mistake you didn't ask Marcia for more leave knowing you had booked the flight a day earlier than the leave you had booked.
- Throughout both the investigation and the disciplinary hearing you have provided an inconsistent account of what happened and when it happened; indeed at the hearing for the first time, after Marcia Carty had been excused as a witness without question from you, you stated you did not tell her you left the country on the Thursday when you met her on your return. We therefore called back Marcia as a witness and she confirmed again that you said Thursday and also that the notes she made after the meeting reflected this. Notwithstanding this, however, you had only booked your leave from the Thursday.

Therefore having considered all the evidence it is the panel's view that on the balance of probabilities you deliberately didn't book enough leave to cover your trip with the intention of taking sick leave so you didn't have to take as much leave. This is the only credible explanation of why both coincidentally and remarkably you were sick on the specific days not covered by leave and that despite not seeing a doctor you stated you would be sick for 5 days.

This constitutes fraud and gross misconduct and as a result it is the panel's decision that you should be dismissed from your post with no notice or pay in lieu of notice with immediate effect. Your termination date with the college will therefore be 12 February 2016.

You have the right of appeal against this decision and should you wish to do so you should place this in writing to Jo Taylor, Head of Human Resources, within 10 calendar days of receipt of this letter. Your letter should include the grounds on which you are making the appeal. Paragraph 4.6 of the College's Disciplinary Procedure details, the possible reasons for an appeal. I should point out that if the grounds of appeal are not stated in your letter, under the procedure, you'll lose your right of appeal."

36. I was concerned when Ms Openshaw-Lawrence was giving evidence in

relation to the decision reached by the panel whether the claimant's length of service and clean disciplinary record were taken in to account in arriving at the decision to terminate her employment summarily. Ms Openshaw-Lawrence told me that they were taken in to account but that the inconsistencies in the claimant's accounts of events led her to take the view that the issue of trust and confidence in the claimant was now an essential matter for her to consider and she could not be satisfied that the conduct would not be repeated. In other words, the finding of gross misconduct outweighed these two mitigating features. She also told me of a similar case of an employee travelling to India but in that persons case they provided an explanation for apparent inconsistencies which were accepted and genuine and that person received a final written warning.

37. I am satisfied based on the dismissal letter, that the effect date of termination of the claimant's employment was indeed 12 February 2016.
38. On 16 February the claimant indicated that she wished to appeal against the decision to terminate her employment and submitted her grounds of appeal on 21 February. She stated that the procedure was not followed; that on her return to work her line manager, Ms Carty did not request a Back to Work Interview. She said that despite the harrowing and mitigating circumstances namely, Day 1 right for an employee to have reasonable time off work to deal with an emergency such as a bereavement, she cited section 57(a) Employment Rights Act 1996. She also stated that the penalty was inappropriate; it was too harsh having regard to her apologies to her manager Ms Carty and having regard to her exemplary, unblemished work service and clean disciplinary record. She also stated that she had new evidence to illustrate the relationship of trust with Ms Carty in relation to toil, debit and credit.
39. She was unable to attend the appeal hearing due to anxiety and depression. I am satisfied that Mr Andy Cole who was due to hear the appeal, attempted to secure the claimants attendance or indeed someone to act on her behalf by rescheduling the hearing.
40. At the claimant's representatives request the appeal was conducted in the claimants and the representative's absence based on the papers and detailed submissions for the appeal were presented by the claimant's representatives. The first intimation that the flight was booked by the claimant's daughter was stated in the written submissions presented on the claimant's behalf. Ms Openshaw-Lawrence was called. She presented the management case in accordance with the respondent's procedure at the appeal hearing and was questioned. Having considered the evidence including the submissions on behalf of the claimant, Mr Cole sent to the claimant his outcome letter dated 17 May 2016. Summarising the claimant's grounds of appeal his consideration of the evidence and his decision. His role was not to re-hear the case but to review the decision taken by the disciplinary panel. In his conclusion he stated that he could not find evidence to contradict the findings of the panel and he agreed with the panel's findings. On balance of probabilities he took the view that the claimant deliberately did not book enough leave to cover her trip and intentionally used a sickness absence in order not to use up her annual leave. He concluded that such an act constituted fraud and breached

fundamentally trust and confidence which was necessary and implicit between the employer and employee. It constituted gross misconduct and the penalty of dismissal was both proportionate and appropriate.

41. Those are my material findings of fact. I have taken in to account the submissions by Mr McDonough representing the claimant and fairly briefly his main position is that there was no evidence to support misconduct on the part of the claimant, not even gross misconduct. The claimant was ill, genuinely, no evidence to contradict that; she was entitled to self certifying up to seven days without referring to a doctor. Mr Kemp, counsel on behalf of the respondent, submitted that really the issue in this case is whether or not there were reasonable grounds to form a genuine belief in the claimant's guilt and he went through the grounds relied on by the respondent.
42. In relation to wrongful dismissal, the claimant fundamentally breached her contract of employment with the respondent entitling the respondent to terminate her employment summarily without pay. In relation to that matter, Mr McDonough invited me to take a contrary view.
43. This is clearly a case that falls within the parameters of British Home Stores v Burchell. I have set out the issues I have to consider. What was the reason for the claimant's dismissal? I am satisfied that having regard to the dismissal letter and indeed the appeal outcome letter, the reason was the booking of sick leave either side of annual leave. It relates to conduct and in the respondent's view, gross misconduct. I am satisfied that that was a reason shown by the respondent. Had the respondent at the time of the decision to terminate her employment formed a genuine belief based on reasonable grounds in the claimant's guilt? In considering this matter I have to consider whether or not the respondent conducted a reasonable investigation. I am satisfied that the respondent did. The claimant was informed in the suspension letter of 9 October 2015 the nature of the allegation she faced and that there would be an investigation. She was interviewed by Ms Angelique-Page and what she said to Ms Page was documented. Not only was she interviewed but Ms Carty was also interviewed and the claimant had notice prior to the disciplinary hearing of what Ms Carty had said. There were also the disciplinary and appeal hearings affording the claimant the opportunity to put forward her case. She had all of the relevant documents prior to the disciplinary hearing for her to consider and to prepare her case. She was represented by Mr Croasdale.
44. Were there grounds for believing in the claimant's guilt and were those grounds reasonable? The respondent relied on the request for three days annual leave, 1st, 2nd and 5th October 2015. The respondent compared that request which was granted, with the dates booked by the claimant. And the dates booked by the claimant covered not only the three days annual leave but beyond the three days annual leave. The respondent was also entitled to take in to account what the claimant noted on 30 September and 6 October but she had claimed those two days as sick leave. That she knew that she was travelling to the United States on 30 September, not on 1 October and that she must have been aware of that on 28 September when she booked her flight. The respondent took in to account the

inconsistencies given by the claimant, first revealed in Ms Angelique-Page's report. She challenged Ms Carty's account that she had said that she had travelled on the Thursday. The respondent was entitled to take that statement in to account as significant because reference to the Thursday would accord with the first day of her annual leave. That she had, on 30 September at 9:42 in the morning, was able to predict that she would be on five or six days sick leave and those days coincided with the time she would be in the United States. Those matters were matters the respondent was entitled to rely on in arriving at its decision. It had not been challenged that Ms Openshaw-Lawrence and Mr Cole did not entertain a genuinely held belief on those grounds. I accept that their belief was genuinely held based on those grounds. The issue of trust and confidence came in to play. In relation whether or not dismissal fell within the range of reasonable responses. They had taken in to account the claimant's length of service and clean disciplinary record. It is not my function to determine whether or not dismissal fell within the range of reasonable responses. That would be for me to engage in what is described as the substitution mindset. A reasonable employer possessed of the evidence which was before the respondent might have taken a different view and issue a final written warning; another might have adopted the same position taken by the respondent. All I can say is that the decision to dismiss was not outside of the range of reasonable responses.

45. Accordingly, the claimant's unfair dismissal claim is not well founded and is dismissed.

46. In relation to the wrongful dismissal claim I have to consider all of the evidence. The decision is mine and mine alone based on the evidence given during the course of this hearing. What struck me about the claimant's account was what she said in relation to her position on Monday 5 October 2015. She clearly stated that she was fit and able to travel to the United Kingdom on that day but the following day after she realised that she had made a mistake, she asserted that she was ill. Bearing in mind the other evidence in this case and other findings, I have come to the conclusion that the claimant did deliberately put down in First Care detail that she was ill after she realised that she had made a mistake. That was intentional and it breached trust and confidence. It was a fundamental breach of trust entitling the respondent to terminate her employment. It does not give me any comfort to come to this decision because I acknowledge that the claimant has had a clean disciplinary record and it is most unusual for the tribunal to be faced with a claimant who had been in employment for 24 years and whose employment had been terminated in such circumstances.

Orders

47. After giving judgment Mr Kemp applied for costs to be awarded in favour of the respondent. As the application is not in writing and could not realistically be dealt with today I made the following orders:
 - 44.1 That the respondent shall serve on the claimant, its cost application supported by the cost schedule by not later than **4pm, 28 April 2017**.

- 44.2 The claimant shall serve a witness statement regarding her means and ability to pay costs should it be awarded, supported by documentary evidence, such as any assets she holds; bank statements from 1 May 2016 to 30 April 2017; any income received following her dismissal; and wage slips from 12 February 2016 to 30 April 2016, if any, by not later than **4pm, 12 May 2017**.
- 44.3 The respondent shall prepare a joint bundle of documents in respect of a costs hearing and shall serve a copy on the claimant by not later than **4pm, 25 August 2017**. The respondent shall bring 2 copies of the bundle at the hearing.
- 44.4 The costs hearing is listed on **Friday 8 September 2017** with a time estimate of **1day** before me.

Employment Judge Bedeau
Date: 8 July 2017.....
Judgment sent to the parties on
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For the Tribunal office