



# EMPLOYMENT TRIBUNALS

## Claimant

Miss C. Pike

## Respondent

- (1) Mr. B. Kanda
- (2) Kingsbury Investments (UK) Ltd
- (3) Mr. N. Pelmont

v

**Heard at:** Watford

**On:** 3 – 5 May 2017

**Before:** Employment Judge Heal

## Appearances

**For the Claimant:** in person.

**For the Respondent:** Mr J. Braier, counsel

## RESERVED JUDGMENT

1. The complaints against the first and third respondents are dismissed.
2. The complaints of breach of contract and unauthorised deductions from wages are dismissed.
3. The complaint of unfair dismissal against the second respondent is well founded.
4. There is no deduction for contributory fault and/or 'Polkey'.
5. There will be a remedies hearing on 24 July 2017, listed for one day. I have made the following orders in relation to that hearing.

## ORDERS

1. Documents relating to remedies will be disclosed by the claimant to the respondent on or before **12 May 2017**.
2. On or before **31 May 2017**, both parties shall have completed disclosure on a civil procedure rules basis with regard to remedies.

## REASONS

1. By a claim form presented on 5 May 2016, the claimant made complaints of unfair dismissal and unauthorised deductions from wages.
2. I have had the benefit of an agreed bundle divided into 3 sections of 69 pages, 154 pages and 288 pages. Some additional documents were added to the bundle during the course of the hearing: these were added to the third section at the back of the bundle and numbered 289 to 312.
3. I have heard evidence from these witnesses in this order:

Miss Christina Pike, the claimant,  
Mr Bal Kanda, businessman and company director,  
Mr Nicholas Pelmont, property solicitor and member of Cavendish Legal Group Limited,  
Mr Jordan Walcott, operations team member.

4. Each of those witnesses, apart from Mr Walcott, gave evidence in chief by means of a prepared typed witness statement and then the witness was cross examined and re-examined in the usual way. Mr Walcott appeared - as both sides knew - in response to a witness order. He gave evidence for the claimant but remains employed by the respondent. No witness statement had been prepared for him and so the claimant took him through his evidence in chief by means of non-leading question and answer and thereafter his evidence continued as usual with cross examination and re-examination.

### ***Issues***

5. The issues were identified initially by Employment Judge Manley at a preliminary hearing held on 15 August 2016. The issues on liability are as follows:

For all complaints:

- 5.1 What is the identity of the correct respondent?
- 5.2 Was the claimant's employer the second respondent as argued by the respondents the first and third respondent as argued by the claimant?  
(The respondent's case is that the claimant was an employee of the second respondent and also carried out some work for it as a self-employed person for which she received regular cash payments. The claimant denies receiving those cash payments and this may be relevant for remedy for unfair dismissal and/or what sums might be due to her for unlawful deduction of wages/breach of contract as set out below).

Unfair dismissal:

- 5.3 What was the reason for dismissal?

5.4 the respondent contends the dismissal was on grounds of conduct, which is a potentially fair reason.

6. If the reason for dismissal was conduct, then:

6.1 Did the respondent have a genuine belief that the claimant was guilty of misconduct?

6.2 Did the respondent carry out as much investigation into the matter as is reasonable in all the circumstances?

6.3 Did the respondent act reasonably in all the circumstances in treating the alleged misconduct as sufficient reason for dismissal?

6.4 Was the dismissal within the band of reasonable responses open to the respondent in all circumstances?

6.5 Did the procedure followed in the dismissal process impact on the fairness of the dismissal?

Unlawful deduction from wages/breach of contract:

7.1 Did the claimant receive the [as?] wages any other payments agreed between the parties?

7.2 The claimant's case is that she only received a sum of around £530 per month direct into her bank account whereas the respondent had agreed to pay a £25,000 per annum from the start of her employment. Further she says she was promised commission at the 'industry-standard rate' on offices sold which should be 10%.

7.3 The respondent's case is that the claimant was paid the sum into her bank account and, by a separate agreement, worked self-employed and was paid cash of £438 per month. It denies an agreement for £25,000 per annum or for the payment of commission.

7.4 If not, what sum is due to the claimant for unpaid wages and/or commission?

7.5 During discussion at the outset of this hearing, the respondent confirmed that it was not taking any jurisdictional point about illegality. We agreed to deal with liability and remedies separately so that there was an issue before me on liability of whether the claimant had actually received cash payments for the purposes of the complaint of unauthorised deductions from wages but not one of whether her status during the period of receiving cash payments was as an employee.

8. Mr Braier identified the misconduct which was the reason for the dismissal as, 'signing an investment agreement in respect of one of the first respondent's other companies without his authority and representing that he would give a shareholding and directors' interest to investors in that other company.' He said that that bore upon the claimant's employment with the second respondent (who he said was the proper employer) because the claimant had been requested by her director in her role for the second respondent to put together an agreement. She had access to the agreement in that role which she signed without her director's authority

(albeit this was in respect of another company) in her role as manager for the second respondent. Mr Braier said that this was also a question of trust between director and employee.

9. At the outset of the hearing, although Mr Braier tacitly accepted that the claimant had been dismissed without an investigation or process, at that stage he maintained an argument that the dismissal was fair because any further investigation or process was futile. He relied at that stage in the alternative on contributory fault and/or 'Polkey' However, on the morning of the third day of the hearing after the claimant had given evidence and before Mr Walcott was called, Mr Braier formally conceded unfair dismissal on the basis that the respondent accepted that the dismissal was procedurally unfair. He said that the concession was made because by lack of investigation and lack of following the ACAS code, the process was unfair. However, he still maintained the reason for the dismissal and he said that had a fair process been carried out, the claimant would have been, or there was a chance that she would have been, dismissed on grounds of conduct in respect of the two allegations that had been the focus of this hearing.

### ***Practical matters***

10. There was a short discussion at the outset of the hearing about the bundle. The respondent told me that there was a page in the bundle which was correspondence setting out what the respondent had told ACAS. I reminded the parties of section 18 (7) of the Employment Tribunals Act 1996. I explained what this meant to the parties and in particular to the claimant, that is that things said to the conciliation officer during conciliation could not be referred to at a tribunal hearing, unless the party who had said those things agreed that the tribunal could be told about them. The claimant confirmed that she understood this rule. Accordingly, I asked the respondent whether it gave that agreement. The respondent declined. Therefore, I gave my bundle back to the parties who jointly removed the document without my having seen it and the document was removed from the witness table bundle as well. The hearing continued without further reference to that document.

11. The claimant produced some new documents at the start of the hearing. The respondent did not object to the admission of most of those documents, however it did object to the admission of a lengthy email from Mr Walcott to the claimant.

12. Mr Braier objected to my admitting that document because disclosure was made late, because it was a document whose place in a chain of emails the respondent did not know and because the email was between personal email addresses and therefore the respondent could not make checks itself. Had the email been disclosed earlier the respondent could have made enquiries. Mr Braier accepted that the email was potentially relevant.

13. The claimant said that the delay occurred because initially she did not want to disclose the email because she did not wish to put Mr Walcott's job at risk. However, once she realised that she would be calling him to give evidence anyway and thereby exposing him to that risk, there was no reason not to disclose the email.

14. The claimant said further that the email came from Mr Walcott following a conversation over the telephone and said that she did not reply to it. She said that there were no other emails between herself and Mr Walcott which touched upon this case. I asked the claimant to review her email communications with Mr Walcott overnight. She offered in fact to search through them straightaway on her mobile telephone and showed those emails to Mr Braier in open tribunal. Mr Braier, having looked at them, was satisfied that the email was not part of a sequence. Nonetheless he asked and the claimant undertook to doublecheck her emails at home overnight and make sure that there was in fact nothing else disclosable.

15. On the morning of the second day of the hearing the claimant confirmed that she had made that check and there was nothing further of relevance to disclose. On that basis, I have admitted the document in evidence and it is the email dated 3 September 2016 now at pages 294 to 295 of the bundle. I did so, because Mr Braier had accepted the relevance of the document and because although the claimant's reasons for not disclosing the email were not legally sound, they were understandable given that she is a litigant in person. By giving Mr Braier the opportunity to look at the claimant's emails on her mobile telephone and requiring her to check her emails overnight, I considered that the respondent was protected from the prejudice Mr Braier feared.

### ***Facts***

16. There have been some very substantial disputes of fact in this case. I have made the following findings of fact on the balance of probability. I do so because I do not have a perfect method of discovering absolute truth. Instead, I listen to and read the evidence placed before me by the parties and, where there are disputes about that evidence, I decide what is more likely to have happened than not. That is what the balance of probability means.

### ***Credit***

17. This is not a case in which I feel confident in accepting the evidence of one party or the other in its entirety.

18. In general, I have found the claimant a reliable witness, however there are areas in her claim for unauthorised deductions from wages where her evidence is not consistent with her own contemporaneous statements. Although I have overall found her more reliable than Mr Kanda I have not been able to accept, on the balance of probabilities, her evidence about her pay claims.

19. I have not found Mr Kanda a reliable witness. I find that he makes practices of holding out or hinting at inducements out to others with whom he is dealing or proposing to deal, without any real intention of providing those others with the benefits he suggests to them that he might provide. I find that he tends to avoid obligations and to avoid commitment in writing about his agreements. I think it likely that he does this so that he can later avoid fulfilling commitment if that suits his business interests.

20. I find that Mr Pelmont is loyal to Mr Kanda and is led by him.
21. I have found Mr Walcott to be a reliable witness. He was in a difficult situation because he is employed by Mr Kanda and feared for the security of his employment if he gave evidence against him. Nonetheless, he gave evidence against Mr Kanda although he plainly did not believe it was in his best interests to do so. He gave evidence carefully and thoughtfully.

*The parties*

22. The second respondent is a property investment company which was set up with the purpose of buying Albion House in London NW9. Albion House contains around 30 small office units and there is a car wash business which operates from part of its car park. The first and third respondents are directors and shareholders of the second respondent.
23. The first respondent, Mr Kanda set up the second respondent. He owns a number of different companies or businesses. These include Albion Homes, Above Beyond Care Limited, Iaspire, the second respondent (Kingsbury Investments (UK) Ltd), Hemel Hempstead investments, Catford Investments, Farnborough Investments, A and A Investments, Aspire Care Services and Albion Group. He did own a carpet warehouse but that has been closed. He says that he did not own the car wash business which operated from the Albion House car park. I do not have to make a finding whether he did or did not own that business but I will return to that subject below.
24. Mr Kanda projects the appearance of being a man of wealth. On his own account, he has access to millions of pounds. He owns watches and jewellery to the value of about a quarter of £1 million and property to the value of £15-20 million, perhaps more.
25. The third respondent, Mr Pelmont is a solicitor specialising in property law. He is a senior partner of Cavendish Legal Group Limited and a director and shareholder in the second respondent. He does not have financial interests in Mr Kanda's other businesses. Cavendish Legal Group Limited are Mr Kanda's legal advisers.
26. Next door to Albion House is a similar property of office units called Oasis Serviced Offices. Before the claimant's association with the respondents started, she worked for Oasis Serviced Offices as an assistant manager. She then earned between £12,000 to £13,000 per year.
27. The claimant and Mr Walcott are members of the same church called the Gospel. This church has some 70 to 80 members and meets weekly on a Sunday. There are smaller additional meetings during the week and also choir practice. The claimant and Mr Walcott were not members of the same small group and she was not involved in the choir. Mr Walcott plays the keyboard for choir rehearsals and the Sunday services. The claimant and Mr Walcott were not close friends at church and they would come across each other

perhaps once or twice a week. They call each other 'brother' and 'sister' because they regard each other as fellow Christians, not because they are particularly close.

28. Some members of the Gospel Church also run a small charity called the Gig. This is not a charity which belongs to the church itself but the charity operates separately. The Gig aims to feed children in areas of Africa.
29. Mr Walcott is employed by Above Beyond Care Ltd (commonly referred to in this hearing as 'ABC'). He does not have a formal job title but says that he works in the operations team. He started work for ABC in February or March 2011.
30. ABC is a limited company in the business of providing furnished residential units as homes for vulnerable young people.

### *Chronology*

31. In late 2011 Mr Kanda mentioned to Mr Walcott that he would like the claimant, who he knew because she worked next door, to 'come and work for us'. Mr Kanda already knew that the claimant was ambitious about the terms under which she would come to work for him. Mr Kanda - who tends to ask other people to do things on his behalf even if he could do them himself - asked Mr Walcott get in contact with the claimant. Mr Kanda said to Mr Walcott words to the effect that he could meet the claimant's terms now.
32. Mr Walcott knew, as did Mr Kanda, that the claimant was unlikely to move to work for Mr Kanda unless she could work between 9:30 am to 3 pm (because she had a child) and she wanted £25,000 a year together with commission and bonuses. He spoke to the claimant and invited her in on Mr Kanda's behalf to speak to Mr Kanda.
33. Mr Walcott was not present however at the meeting between the claimant and Mr Kanda. There is a stark contrast between the claimant's evidence about what was agreed and Mr Kanda's evidence. No documents were produced as a result of this meeting. There was no offer letter, no email exchange and there is no contemporaneous written statement of terms and conditions. Despite her desire to secure £25,000 a year together with commission and bonuses, the claimant thereafter came to work in January 2012 for her new employer as a general manager and actually received into her bank account, £536 per month. Very roughly this represents one quarter of the sum she sought. She did not thereafter start to complain about the level of her salary for nearly 4 years. When she did so, she asked for a pay *rise*, not for a previously agreed sum of £25,000 per year together with unpaid bonuses and commission.
34. On the balance of probability, therefore, I do not find that the claimant and Mr Kanda agreed a salary of £25,000 a year. Given the pattern of Mr Kanda's business practices as shown by the evidence in this case and given the claimant's own conduct and correspondence, I think it more likely than not

that he led her to hope for a salary of 25,000 a year, perhaps in the future, and also for future commission and bonuses but did not actually agree it.

35. I turn now to the cash element of the claimant's pay which the respondents say came from the car wash business. Here, too there is a stark contrast in the evidence about the sums of money. The claimant says that the sums actually paid into her bank account are the only salary she received. She denies receiving cash. The respondents say that the claimant was also paid cash which was collected by the claimant from the car wash. Originally, the respondents pleaded case at paragraph 9 of its response was this:

*'In addition, and pursuant to a completely separate agreement the second respondent entered into an arrangement with the claimant whereby she would manage a car wash business located in the car park of the office building. The second respondent believed and believes that this management agreement was not a contract of employment and that the claimant carried out this role as a self-employed individual.'*

36. This is no longer the respondents' case. Mr Kanda denies owning the car wash business. The respondents' case now is that the car wash is an entirely separate business which leases part of the car park of Albion House where it carries out its car washing. It pays its rent in cash each week. The claimant did not manage it (and if it was an entirely separate business it is difficult to see how she could have been engaged as its manager by Mr Kanda). The claimant's role, say the respondents, was limited to collecting the rent in cash each week.
37. The claimant agrees that she collected the rent in cash each week. She says that she used some of that cash to buy cleaning equipment, deposited a small sum, as instructed by Mr Kanda orally, into the post office and then took the remainder to head office and dropped it there where it was put into a safe. I have not heard from any person at head office who accounted for that money. I have not been shown any written lease agreement with the car wash. There is no document in writing which sets out the claimant's relationship to the car wash, the nature of the cash payments in her hands, or what ultimately happened to the remainder of the cash.
38. It is the respondents' case that the claimant was paid that cash in sums which added up to a total of £974 per month given that she was already paid £536 into her bank account. The figures in the documents vary from time to time but the totals always add up to £974 per month.
39. On the balance of probability and on examination of the documents, I think it more likely than not (and so I find) that the claimant did in fact receive cash payments which brought her monthly salary up to the sum of £974. The written documents from head office contained notes in the claimant's own handwriting consistent with the cash payments being intended for her, for example '£5 to be reimbursed to Christina'. The most rational explanation for the precise figures involved and the type of handwritten notes made is that both parties intended the claimant to retain cash which would give her a



particular monthly salary. I make no findings about the parties' motivation for doing this because neither party has advanced such motivation as a necessary part of their case.

40. To be clear, I find that the parties' own conduct shows that they actually agreed that the claimant should be paid the sum of £974 per month (gross: albeit the respondent only paid tax and National Insurance on the sums actually paid into her bank account).
41. The claimant was employed to work from 9:30 am to 3 pm. I find that Mr Kanda did not spell out to her precisely who was her employer. There being no offer letter and no statement and terms and conditions, the matter was left unsaid.
42. The claimant was based at Albion House and she had responsibility for bringing in and looking after the tenants. She managed the advertising for tenants and all the energy contracts. She had authority to sign energy contracts and to sign agreements with tenants. This was for the benefit of the second respondent which was owned jointly by Mr Kanda and Mr Pelmont. The claimant also had some involvement overseeing the renovations for a house owned by Highcourt Estates Limited which was owned jointly by Mr Pelmont and a Jonathan Middleborough.
43. Mr Pelmont showed little interest in the amount of work the claimant also did for other companies although he had no financial interest in those companies. One of those companies was Albion Homes. The claimant also did work for ABC, including the work necessary to set up a 'unit', that is a house which had to be made ready to be lived in. The claimant was involved in buying the soft furnishings, helping to choose the décor, collecting paint from Wickes and setting up the utilities. Before a house was bought by ABC, the claimant would look for properties online and arrange and attend the viewings. The claimant helped to the measurements for blinds in the bay windows of one property.
44. As Mr Walcott put it, the claimant did not have a specific role: she had a role in everything for ABC do with services and in particular the upkeep and quality of service although she also did the maintenance side.
45. The evidence shows that the claimant was employed initially to be someone with general management responsibility for Albion House, but Mr Kanda and to a much lesser extent, Mr Pelmont, readily deployed her to carry out a wide range of other tasks within her skill set, apparently without any reflection or concern about any demarcation between the different companies involved.
46. The claimant also dealt with energy contracts relating to 5 properties which belonged to Mr Kanda privately.
47. The claimant's wage slips are headed 'Kingsbury Investments (UK) Ltd'. Her bank statements show the salary being paid by Kingsbury Investments.

48. In late 2012 Mr Kanda wished to raise funds to expand ABC. He asked the claimant and Mr Walcott first whether they had any money to invest and then when they said that they did not, asked if they had friends who did. The claimant and Mr Walcott asked around and found 5 individuals from their church and who had connections with the charity, the Gig, who did have money available to invest. The Gig itself was not making the investment but the investors were the 5 individuals, one of whom was the claimant's sister, who shared her surname.
49. The claimant and Mr Walcott together acted as 'go-betweens' between Mr Kanda and the 5 individuals. By this means, the terms of the agreement were negotiated. The claimant and Mr Walcott were not parties to the agreement. I find that Mr Kanda gave them authority to carry out this role and that they were conscientious and careful in communicating to the investors what Mr Kanda was prepared to agree.
50. The investors regarded the claimant and Mr Walcott as agents for ABC. On 7 December 2012, the claimant and Mr Walcott met the 5 investors at the house of one of the investors, Mr Bethanni. Minutes were taken of this meeting. I note that the claimant and Mr Walcott told the meeting that they would approve the contents of the minutes with Mr Kanda once the minutes were complete. I do not read that as meaning necessarily that they agreed to show Mr Kanda the typed minutes themselves, but that they undertook to convey back to him the content of the minutes. This is what they did: they did not actually show Mr Kanda the notes but they did tell him the detail of what was said.
51. Amongst other things, the claimant and Mr Walcott relayed accurately to the investors that Mr Kanda agreed that the investors would be made both directors and shareholders in ABC but that Mr Kanda asked the investors to delay before their names be added formally to the company's documents. This was said to be so that new homes could be opened as soon as possible with little delay. On account of this 'special request' by Mr Kanda, he offered that during the delay period the investors would receive a guaranteed minimum income of £133.33 for every £10,000 plus a £50 bonus each month.
52. The investors agreed to this with the proviso that a three-year break clause be written into the agreement to allow for assessment of the company. That 3 years would serve as the latest time by which the company documents would be updated to show the investors as directors and shareholders.
53. The minutes contain a 'post meeting note' that the claimant and Mr Walcott reported back that Mr Kanda had agreed to those terms. I find that they did report this and that he had agreed to the terms.
54. The claimant drafted a short agreement to give effect to the terms agreed between the investors and Mr Kanda. She did so at Mr Kanda's request. That the agreement is short indeed.

55. The version before me has a cover page which says that the agreement has been mutually certified by the parties as legally binding, is dated 1 January 2013 and that it is a capital protected investment legal agreement relating to the amount of £45,000. It sets out the parties as:

Mr. BAL KANDA of ABOVE BEYOND CARE LTD  
(the Investee)

And

Miss Carolyn Frimpong  
Miss Angela Pike  
Miss Wendy Alleyne  
Miss Melissa Jennings  
Mr Paul Bethanni  
(the 'joint' investors)

56. The third page is the signature page. The terms are contained therefore in one page which *may* explain why Mr Walcott remembers seeing only one page.

57. The agreement states that the amount of £45,000 has been invested by the investors at no risk to their capital. The term is for 5 years from the date of the agreement with a minimum fixed period of 3 years where-after a review may take place. Under a heading, 'monthly interest to be paid' there is a term that a fixed monthly fee of £600 shall be paid by the investee to the investors. There is provision for a fixed yearly bonus fee of £2700 to be paid on the last day of each year. There is a term that additional deposits may be added to the investment by the investees at any time in minimum increments of £5000 with interest paid at the rate of £66.67 per month and £300 bonus interest per year each £5000 invested.

58. On a day in late December 2012 the claimant, Mr Walcott and Mr Kanda met in Mr Kanda's office. The claimant had drafted the agreement and she went to print it. Mr Kanda was sitting at his desk and was engaged on the telephone. The claimant had a pen and the draft agreement for Mr Kanda to sign. Mr Kanda gestured for the claimant to sign it. The claimant waited until Mr Kanda had finished his telephone call. She then told him that he needed to sign it.

59. Mr Kanda said to the claimant that she could sign it. She said that she would therefore have to change it so that she could sign it on his behalf. She left the office again and returned with an amended draft which she gave to Mr Kanda to look at. The claimant had amended the page to say:

"Signed on behalf of, and with the authority of the investee:  
Mr BAL KANDA of ABOVE BEYOND CARE LTD"

60. He read the agreement briefly, although he did not concentrate on the detail, and said that it was fine. She then signed it in his presence and on his behalf. She did so in clear view of Mr Walcott who saw her sign it, although she did not date it. Mr Kanda accepted in evidence that he had agreed the terms contained in the written agreement.
61. I find that Mr Walcott and the claimant had Mr Kanda's authority both to agree with the investors that they would become shareholders and directors of ABC and that the claimant signed the investment agreement with Mr Kanda's authority on his behalf. I find too that Mr Kanda knew that he had given Mr Walcott and Miss Pike authority to reach that agreement and that he had given the claimant to sign the investment agreement on his behalf.
62. On 30 December 2012, the claimant took the same document and met with the 5 investors after church. They all signed the document in front of a witness, dating their signatures, and the claimant then wrote the date of 30 December 2012 next to the signature she had made on behalf of Mr Kanda.
63. The sum of £45,000 was paid by the investors to Mr Kanda. Subsequently they paid him a further sum of £20,000. Mr Kanda often made his payments to the investors late, however he did pay them monthly interest in the sum of £866.66.
64. By email dated 3 January 2014 the claimant sent to Mr Kanda a copy of the investment agreement. This was the unsigned version which she had stored electronically. She did this at Mr Kanda's own request.
65. By email dated 13 February 2014 Carolyn Frimpong wrote to Mr Kanda direct, requesting him on behalf of all the investors to pay the outstanding interest of £3300 under the terms of the signed agreement.
66. Solicitors acting for Mr Kanda replied on the same day on his behalf. They said,
- "We note that you refer to a 'contract' under which our client supposedly owes the sum of £3300.00. We are instructed that our client does not recall having sight of the contract at any time and certainly does not recall signing any such document. We request that you provide us with a copy of the 'contract' signed by our client for his perusal."*
67. Mr Kanda had instructed his solicitors to respond to say that he did not owe the 'bonus' although the written version of the contract which the claimant had sent him a little over one month earlier showed him that he did owe the bonus. Mr Kanda only paid the bonus when his lawyers advised him that whether he had signed the contract or not it would be binding upon him because he had been paying the monthly payment.
68. On 8 December 2015 claimant sent an email to Mr Kanda headed 'PAY RISE'. In this email the claimant described how Mr Kanda made her an offer

of employment in 2011 saying that he would match her current working hours, holidays, pay and more. She said that he promised that she would get regular pay rises and bonuses and so she accepted a job selling offices at Albion House. She describes difficult circumstances with lack of equipment when she started work and said that Mr Kanda had promised her a monetary 'thank you' that never came. The email describes the claimant being given increasing responsibilities. The claimant says that she got on with those responsibilities believing that Mr Kanda would recognise those responsibilities and offer the pay due for them along with pay increases and bonuses as promised. The claimant says that in her 5<sup>th</sup> year of working for Mr Kanda he has made no offer recognising her increased workload and nor has he honoured pay increases and bonuses that he promised her.

69. The email describes in detail work that the claimant has done for ABC as well as for the second respondent. It ends by requesting a pay rise to reflect an annual salary of £25,000 per annum as of 1 January 2016 and also that a contract should be drawn up for the claimant.
70. By email to Mr Kanda dated 14 December 2015 claimant complained to him that Mr Kanda's sister had told her that she would not be going to the end of year dinner because she thought it was pretentious. The claimant said that she thought Mr Kanda's sister had been bullying her and speaking to her in an abrupt tone.
71. By email dated 21 December 2015 Eric Charnley, a solicitor for the Cavendish Legal Group wrote to the claimant about the investment agreement. Mr Charnley appeared to believe mistakenly that the claimant was one of the investors. Mr Charnley wrote that Mr Kanda wished to bring the investment relationship to an end. The email records that Mr Kanda had offered to repay the capital sum of £65,000 but that 'you' had refused to take the cheque.
72. By email dated 7 January 2016 Mr Charnley wrote to the claimant apologising for sending the email dated 21 December to her by mistake. He said that he now realised that the claimant was not one of the investors.
73. On 15 January 2016 Mr Kanda caused a CCTV camera to be installed in the claimant's office without prior warning. This made the claimant feel uncomfortable. On 15 January she spoke to Mr Kanda about this and he responded that she should not work in that office. Later that day he agreed to remove the camera from her office.
74. In evidence Mr Kanda said that there were cameras on all sites and a camera was placed in the claimant's office for her safety because she is a woman alone, there was no security and she could have been assaulted or raped. I find this explanation unconvincing given that there has been no evidence of any reason to fear for the claimant's safety and it would be unusual to place a camera in a person's individual office, and to do so without prior discussion with her.

75. On or about 22 January 2016 Mr Kanda asked the claimant to give him updates three times a week about what was going on in the building. The claimant complied by email the same day giving a detailed update.

76. On 1 February 2016 the claimant met with Mr Pelmont who gave her a written statement of terms and conditions. Mr Pelmont subsequently emailed the claimant on 2 February to say that there was no economic justification for increasing her salary but that he and Mr Kanda had agreed to give the claimant a rise of £1500 per annum as an acknowledgement of the claimant's good work and recognition that Albion House was 90 percent full. His email continued,

*'In line with our legal obligation to you as employer, I gave to you a statement of terms of your employment, I think this represents the factual outline of your job, I believe the figures for the remuneration may be slightly out so please come back to us on this so I can amend and we can get it signed up.'*

77. The wording of this email suggests that Mr Pelmont at least regarded himself together with Mr Kanda as the claimant's employer or as representatives of her employer. He plainly regarded himself as sharing responsibility.

78. The statement of terms and conditions gives the name of the employer as Kingsbury Investments (UK). It describes the claimant as a general manager. It says that she is to be based at 470 Church Lane, Kingsbury, London (this is Albion House) but she may be required to work at 28 Shaftesbury Avenue, Harrow (this is the site of Mr Kanda's office and ABC). It describes her pay thus:

*'The rate of remuneration is £974.00, of which £536.00 is paid on a monthly basis and is subject to PAYE and National Insurance contributions. The Employee receives the balance of £438.00 on a consultancy basis and is therefore liable for their own tax and NI responsibilities.'*

79. The claimant did not sign that statement of terms and conditions.

80. By email dated 26<sup>th</sup> of February 2016 Mr Kanda told the claimant that she would no longer be taking cash as part payment for her wages as this would be transferred to her in full on the last working day of each month.

81. The claimant replied on the same day saying,

*'Is this the money that you have been forcing me to take since you told me that I should leave my old job to come and work for you, where you will pay me £25,000 +, But then after waiting for me to leave my job and start working for you, you then changed your mind and said that you will only give me minimum wage on the books, and told me how to claim the rest on housing benefit and tax credits as you said I have a child?'*

82. A 'catch up' meeting between the claimant, Mr Kanda and Mr Pelmont was set for 2 March 2016. The claimant was not told what this meeting was to be about. At Mr Pelmont's request it was moved to 10 March 2016.

83. The claimant made a number of requests to be told what the meeting was about. She received no answer.

84. By letter dated 4 March 2016 Messrs Slater Gordon, solicitors, wrote to Mr Charnley. Slater Gordon acted for the 5 investors. That letter recorded that Mr Kanda acknowledged a liability of at least £69,766.66. It also asserted an agreement that the investors would be made directors and given an equal shareholding in ABC Ltd for 3 years from 1 January 2013. The letter enclosed a copy of the minutes of the meeting of 7 December 2012 as evidence of the agreement. Also attached was the signed copy of the investment agreement with the claimant's signature on behalf of, and with the authority of the 'investee' Mr Bal Kanda of Above Beyond Care Ltd.

85. Cavendish Legal Group replied on 9 March 2016 on behalf of ABC Limited. The letter contained the following:

*'You have supplied us with a signed copy of an Agreement dated 1 January 2013. Our client categorically denies having sight of this document prior to us providing it with the copy supplied by you. All that it had on file was an unsigned copy of the same draft. This was purportedly signed on his behalf by one Christina Pike. Ms Pike did not have the authority of our client to sign this document. It is also evidence that Christina Pike is the sister of Angela Pike, one of your clients!*

...

*Ms Pike and Mr Walcott claim they were acting as representatives of our client but we have received nothing to confirm this was the case. What authority do you claim they had for attending? What evidence do you have substantiating the post-meeting notes which the alleged representatives claim to have discussed with our client? What evidence have you to substantiate its agreement to the terms? Again, our client categorically denies any knowledge of the meeting and was not made aware of it until receiving a copy of your letter and its enclosures.'*

86. The claimant was in her office on 10 March 2016. Mr Kanda arrived together with Mr Pelmont and Miss Taylor who is Mr Kanda's personal assistant. Two others remained outside the room. The claimant recorded the meeting without Mr Kanda's knowledge. The transcript of the words used at that meeting has not been disputed before me.

87. Mr Pelmont told the claimant that initially they were coming to talk to her about their intentions for the building but then the letter from Slater and Gordon had been received. The claimant had not seen that letter. She read it but she did not fully understand its legal terminology. Mr Pelmont assumed that the claimant was part of the group who had instructed Slater and Gordon. The claimant gradually realised that the meeting was about the investment agreement.

88. Mr Pelmont told the claimant that so far as he and Mr Kanda were concerned the claimant had entered into 'very serious agreements' without authority. He said that Mr Kanda did not know anything about those agreements. Without asking the claimant for an explanation he told her that her employment for 'Kingsbury' was terminated on grounds of gross misconduct: that is, purporting to act on behalf of the company and give away half of the company without Mr Kanda knowing. The claimant said that Mr Kanda agreed to everything. She said that Mr Kanda had agreed to the shares and directorships part of the agreement in the beginning. When she said that he had given her authority he replied, repeatedly, 'have you got it in writing?'
89. The claimant said that she was being dismissed unfairly. She said that Mr Kanda was bullying her because he did not want to keep to the agreement. She also made reference to her request for a pay rise.
90. The claimant confirmed what had happened by email but she was not sent a letter of dismissal by the respondent. She was not given an opportunity to appeal.

**Concise statement of the law.**

91. My starting point in a complaint of unfair dismissal is always the wording of section 98 of the Employment Rights Act 1996 which says, so far as is relevant:

*" (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-*  
*(a) the reason (or, if more than one, the principal reason) for the dismissal, and*  
*(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

*(2) A reason falls within this subsection if it-*

- (a)...*  
*(b) relates to the conduct of the employee,*  
*(ba)...*  
*(c) ...*  
*(d) ...*

*(4) In any other case where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-*

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*



*(b) shall be determined in accordance with equity and the substantial merits of the case.”*

92. Where an employer has a suspicion or belief of an employee's misconduct and dismisses for that reason I have to apply the three stage test set out in British Home Stores v Burchell [1980] ICR 303 as set out in the relevant passage in the judgment of Arnold J:

*“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, at any rate at the final 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..”*

93. The burden lies upon the employer to prove the reason for the dismissal: that it had a genuine belief in the misconduct. Thereafter the burden is neutral. If the respondent has discharged the first burden then on that neutral burden I ask whether the employer had in its mind reasonable grounds upon which to sustain that belief, and also, on a neutral burden of proof, I ask whether the employer had carried out as much investigation as was reasonable in all the circumstances.

## **Analysis**

*Who is the correct respondent?*

94. When the contract was formed, there is no evidence that anyone told the claimant exactly who was to be her employer. There was no correspondence. There was no offer letter. Until February 2016 there was no attempt to give the claimant a written statement of terms and conditions. In the course of her duties the claimant used her own private email address. Mr Kanda wrote to her by email using an Albion Homes address. Her payslips were headed Kingsbury Investments UK Ltd and the money appears to have come from Kingsbury Investments UK Ltd. The statement of terms and conditions in February 2016 describes Mr Kanda as the claimant's line manager; certainly he appears to have been the person who gave the claimant most of her instructions. She was physically based at Albion House which was owned by Kingsbury Investments UK Ltd. However, the evidence shows that although she did a great deal of work for Albion House, she also did so much work for ABC that in early 2016 Mr Kanda's sister told the claimant that she no longer worked for ABC. On occasions she did work for a company owned by Mr Pelmont. It was Mr Pelmont who actually dismissed, her albeit with Mr Kanda was present and in agreement.

95. Mr Kanda and Mr Pelmont have deployed the claimant's services as if there were no lines of demarcation between the different companies involved. No doubt it was convenient to do so.
96. There being no express agreement or statement about who was to employ the claimant when the contract was made, what does the parties' conduct show objectively that they have in fact agreed? The evidence is far from clear. Mr Kanda and to a lesser extent Mr Pelmont 'controlled' the claimant, but they might have done so as themselves personally, or as agents for the second respondent. The fact that the claimant did so much work for other companies and indeed for Mr Kanda personally confuses the issue. There is however no reason why a person may not be employed by one employer in order to work in whole or in part for another. So this is not decisive. The evidence shows that the claimant was being paid by the second respondent and knew that she was. Her pay slips and bank statements showed her that. She was based in the premises owned by the second respondent and worked initially and primarily for the second respondent. Weighing it all up, I consider then that she was employed by the second respondent, paid by it (albeit some of the funding came to her indirectly from the car wash business) and given her instructions by Mr Kanda and Mr Pelmont as its agents. She was employed to work for the benefit of the second respondent, but also for the benefit of other companies and individuals. Therefore, I find that the employer was the second respondent and dismiss the claims against the first and third respondents.

*Has the respondent proved the reason for the dismissal?*

97. On the balance of probability, the reason the respondent dismissed the claimant on 10 March 2016 was in response to the letter from Slater and Gordon dated 4 March. However, the claimant had not committed any misconduct as my findings of fact show. More pertinently, Mr Kanda knew that the claimant had signed the investment agreement with his authority and he knew that the claimant accurately told the investors of his offer to make them directors and shareholders in ABC.
98. I have weighed up whether the evidence shows that the dismissal was because of the claimant's request for a pay rise. The evidence does show that the respondent was starting to take a stricter approach to the claimant, which may have been in response to her increasing assertiveness, including about pay. On the balance of probability however, I consider that although the meeting with the claimant was set up before receipt of the letter from Slater and Gordon the transcript demonstrates that Mr Pelmont at least thought that that meeting was to do with non-disciplinary matters at first. On balance, and taking into account the chronology of events, I find that the purpose of that meeting was changed once Mr Kanda saw the letter from Slater and Gordon. I consider that he did react to that letter by dismissing the claimant not because he considered that she had committed any misconduct but because her actions had committed him by evidence to terms of an agreement which he might otherwise have avoided. The claimant's contemporaneous insight into the reason for her dismissal was correct. No reasonable employer would view

the claimant's actions as misconduct or dismiss for them. She had acted with authority and with appropriate care.

99. Although the respondent has admitted already that the dismissal was unfair because of lack of procedure and investigation I find that it was unfair additionally because the respondent has not proved a fair reason for the dismissal.
100. Therefore, there will be no deduction for contributory fault because the claimant is not guilty of any fault. There will also be no reduction for 'Polkey'. Had the respondent adopted a fair procedure and carried out a fair investigation there is no chance that the claimant would have been fairly dismissed by the respondents acting within the reasonable range of responses. This is because Mr Kanda knew, and acting in fairness would have said, that the claimant signed the agreement with his authority and made representations that the investors would become shareholders and directors with his authority. Any fair investigation would also have involved speaking to Mr Walcott who would have confirmed that that was the case.

*Unauthorised deductions from wages/breach of contract*

101. My findings of fact show that Mr Kanda did not agree with the claimant that he would pay her £25,000 per annum. He did not agree that she would be paid bonus or commission. The claimant was in fact paid sums in cash each month which brought her salary as paid into her bank account up to the sum agreed with Mr Kanda. For those reasons the complaints of unauthorised deductions from wages and breach of contract fail.

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Employment Judge Heal

Date: 19 June 2017.....

Sent to the parties on: .....

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For the Tribunal Office