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# EMPLOYMENT TRIBUNALS

**Claimant:** Ms I Er  
**Respondent:** L'Unico Limited  
**Heard at:** East London Hearing Centre  
**On:** 9 and 10 July 2018  
**Before:** Employment Judge M Warren

## Representation

**Claimant:** Mr Gadhia (unregistered barrister)  
**Respondent:** Ms Hatch (Counsel)

# JUDGMENT

The Claimant's claim that she was unfairly dismissed fails and is dismissed.

# REASONS

## Background

1 In this matter, the Claimant, Ms Er, brings a claim of unfair dismissal arising out of the termination of her employment with the Respondent on 12 October 2017. There is no breach of contract claim for wrongful dismissal.

## The Issues

2 The issues in this matter were identified to me by an agreed list of issues sent to the Tribunal on 9 July 2018, the content of which appears cut and pasted, below:

1. Is the Respondent able to show on balance of probabilities that the dismissal was a lawful dismissal for the purposes of section 98 of the Employment Right Act 1996?

2. Was the dismissal for a potentially fair reason, namely gross misconduct?
3. Is the Respondent able to show that it followed a fair procedure in terminating the Claimant's contract of employment?
  - Was the Claimant given sufficient time to prepare her case?
  - Were the reasons for the disciplinary hearing stated to the Claimant in writing and were these reasons sufficient?
  - Were the reasons for the dismissal stated to the Claimant in writing and were these reasons sufficient? Was the Claimant given a full opportunity to state her case throughout the disciplinary and appeal proceedings and was her case taken into proper consideration throughout the proceedings?
  - Did the Claimant submit written responses prior to the disciplinary and appeal meetings and were these responses taken into proper consideration?
  - Were the reasons for the appeal decision stated to the Claimant in writing and were these reasons sufficient?
4. Did the Respondent believe that the Claimant was guilty of gross misconduct?
5. Did the Respondent have in mind reasonable grounds upon which to sustain belief?
6. At this stage in which that belief was formed on those grounds, had the Respondent carried out as much investigation into the matter as was reasonable in the circumstances?
7. Considering all of the circumstances, did the steps taken by the Respondent fall within the range of reasonable responses of a reasonable employer?
8. Was the procedure utilised by the Respondent during the internal disciplinary hearing fair?
  - Was the volume of material used fair?
  - Was the extent of the investigation fair, considering the Claimant had been suspended and had no access to colleagues and/or evidence in the Respondent offices?
  - Was the key focus surrounding only the alleged missing invoices, or were all allegations properly heard and considered?
  - Were the Claimant's written responses taken into proper consideration?
9. Was the procedure utilised by the Respondent during the internal appeal fair?
  - Was the key focus surrounding only the alleged missing invoices, or were all allegations properly heard and considered?
  - Was a full and proper investigation taken out?

- Was the appeal held independently? Did the Claimant agree to the appeal chairperson?

- Were the Claimant's written responses taken into proper consideration?

## **Evidence**

3 I had before me seven witness statements one from Ms Er and then for the Respondents, statements from Ms Eva Inzani and Ms Meri Inzani, Ms Laila Fatnassi, Mr Mohammad Ashraful Islam, Ms Roshani Shamila Kimari Perera and Mr Theodore Jemine Ogboru.

4 I also had before me a paginated bundle of documents running to page 713C. At the outset of the hearing I was provided with some further documents at the request of the Respondent, to which there was no objection. It is fair to say that finding documents in the bundle during the course of the hearing was from time to time, a tad confusing.

5 During a break at the outset of the hearing, I read the witness statements. I looked at the documents referred to in the witness statements. I was able to read very little of the documents due to pressure of time and relied upon the representatives to take me to the relevant passages within the bundle during the course of the cross-examination.

6 With seven witnesses to get through, we were under some time pressure to complete this matter within the two days allocation. The representatives agreed during my reading break to a time table, to which they have adhered. I am grateful to them both for their professionalism in that regard.

## **The Law**

7 Section 94 of the Employment Rights Act 1996 contains the right not to be unfairly dismissed. Section 98 at subsections (1) and (2) set out five potentially fair reasons for dismissal, one of which at subsection (2)(b) is the conduct of the employee. Section 98(4) then sets out the test of fairness to be applied if the employer is able to show that the reason for dismissal was one of those potentially fair reasons. The test of fairness reads:

*“Where the employer has fulfilled the requirement of subsection (1) the determination of the question whether the dismissal was 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.”*

8 We have guidance from the appeal courts on how to apply that test where the grounds for dismissal relied upon by the employer is misconduct. The first is the test set out in the case of British Home Stores v Burchell [1980] ICR 303. The Tribunal must be satisfied that the employer holds a genuine belief, based upon reasonable grounds and reached after a reasonable investigation. It is for the employer to show the genuine belief, the burden of proof in respect of the reasonable grounds and the investigation is neutral.

9 If the employer is able to satisfy that test, the Employment Tribunal must go on to apply the test set out in Iceland Frozen Foods Ltd v Jones [1982] IRLR 439. The function of the Tribunal is to determine whether in the particular circumstances a decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. If a dismissal falls within the band the dismissal is fair, if the dismissal falls outside the band it is unfair. In judging the reasonableness of the employer's conduct, the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer.

10 The band of reasonable responses test also applies to the question of whether or not the employer's investigation into the alleged misconduct was reasonable in all the circumstances. See Sainsbury v Hitt [2003] IRLR 23.

11 We should look at the overall fairness of the process and not be distracted by questions such as whether an appeal is a rehearing or a review, see Taylor v OCS [2006] IRLR 613.

12 In this case, the Respondents say that Ms Er was guilty of gross misconduct justifying dismissal without warning. The test for gross misconduct, or repudiation, is that the conduct must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in its employment, see Neary v Dean of Westminster Special Commissions [1999] IRLR 288.

13 More serious allegations, which might have more serious consequences if upheld, call for a more thorough an investigation. The ACAS 2014 Guide to Discipline and Grievances at Work, (not the code of practice) advises as such and the EAT confirmed as such in A v B [2003] IRLR 405.

14 Section 207(2) of the Trade Union & Labour Relations Act 1992 provides that any Code of Practice produced by ACAS under that Act which appears to an Employment Tribunal to be relevant shall be admissible in evidence and shall be taken into account. One such code of practice is the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2009) which I have taken into account

### **Credibility**

15 I have to say, I found no reason to disbelieve the honesty of the evidence from the Respondent's six witnesses. In contrast, I am afraid, Ms Er's evidence was shot through with examples of inconsistency, contradiction and lack of credibility, for example:

15.1 Not least the example Ms Hatch referred to in closing, which was a change

in story regarding the circumstances in which she called for payment of a sum of £1,160 to her father in March 2017, when she returned from holiday in Jamaica. Various she said she had been into the office and seen on her desk a list of the deliveries her father had made, or her sister had informed her what her father had done, or a co-worker, (George) had informed her.

- 15.2 She said in cross examination that she never lied, ever. She was then taken to transcript of the disciplinary hearing where she clearly gives Ms Fatnassi the impression that she will not record the proceedings and yet proceeds to do so. In evidence, she suggested the recording was not done in secret because her device was on the table in front of them, which is disingenuous; she clearly gave the Respondent the impression that she would not record the hearing, (which was openly being recorded by the Respondent by agreement). It is not that she was wrong to record, it is that she was dishonest and would not acknowledge that in evidence.
- 15.3 Her evidence was that even now, after criminal investigations, she does not know what her father's charges are and they have never had a conversation about them. I did not find that credible.
- 15.4 It is odd that she was able to prepare her father's invoices, but did not know his charging basis. When put to her, her answer was a sarcastic, "luckily he has a mobile phone".
- 15.5 She insisted that she was open and co-operative in the disciplinary hearing, but there are examples in the transcript that she was taken to, where that is not the case at all. For example, where she refuses to say whether her father invoices any other clients, where she says she does not know if her father looks at the invoices before they are submitted, where she refused to comment on how she did the invoices, when she denies any knowledge of her father's charging rates.
- 15.6 Her expressed uncertainty as to whether she had kept copies of the invoices was not credible.

## **Facts**

16 It helps us in this particular case, which is otherwise presented in a way that is somewhat confusing, to actually begin the findings of fact by looking at the dismissal letter of the 12 October 2017 at page 526, because from this letter, it is apparent that almost all of the matters forming a reason for dismissal relate to the issue of Ms Er failing to invoice, or failing to produce invoices, in respect of monies paid for taxi services provided by her father. There are a couple of exceptions, there is a reference of her answering the telephone with the greeting, "sex line" and a reference to her colluding in sending a Michael Kors handbag by courier service. Those are minor matters compared to the main thrust of the dismissal letter, which is clearly the Respondent's stated belief that Ms Er had been dishonest in respect of payments for her father's taxi service.

17 The Respondent is a wholesaler of hot drink machines. It had 26 employees at

the material time and no human resources facility; it relied upon the Federation of Small Businesses, (FSB) for advice, from which source it was able to obtain legal advice in respect of its dealings with Ms Er.

18 The Managing Director of the Respondent is Ms Eva Inzani. Many members of her family are involved in this business, which I am told has a turnover of £7million a year. Those members of her family include her mother Ms Meri Inzani, who is the Company Secretary; she had in fact originally set up the business in 1993.

19 Ms Er began her employment with the Respondent on 23 March 2015. I understand she was originally described as a Customer Service Admin Assistant. She became known as Service Manager. A copy of her contract is at page 36 of the bundle, appended to which is a disciplinary procedure, which includes at page 50, examples of gross misconduct for which a person may be dismissed without any prior warning. Amongst those examples, non-exhaustive in the usual way, are fraud, including making fraudulent or false expense claims, deliberate falsification of records, false declarations and any form of dishonesty.

20 Ms Meri Inzani and Ms Er formed a close relationship; Ms Meri Inzani regarded Ms Er almost as part of the family. Ms Er was generally regarded as friendly, good natured and willing to learn.

21 Ms Er's sister began working for the Respondent July 2015.

22 The Respondent employs delivery drivers. Occasionally, if deliveries need to be made and no drivers are available, the Respondent will use local taxi firms, those that they know are prepared to lift things in and out of their vehicles and take them into the customer.

23 Ms Er's father operated a taxi. The Respondent agreed to use Ms Er's father for this purpose and also agreed to pay the money that he would be due, direct into Ms Er's bank account. It was also agreed that Ms Er would prepare and submit invoices on behalf of her father.

24 Ms Meri Inzani was responsible for paying suppliers. She would pay Ms Er for her father's taxi service by bank transfer, paying whatever sum she was told by Ms Er to transfer, without seeing an invoice. She did this because she trusted Ms Er and regarded her as family. She assumed that Ms Er submitted the invoices to the accounts department.

25 In March 2017, Ms Er had been away on holiday. She telephoned Ms Meri Inzani at the end of her holiday and asked her to transfer £1,160 into her account in respect of her father's services to the Respondent whilst she had been away. Meri Inzani did so, but she was concerned that on this particular occasion, the amount was so large. She therefore, several times over the next few months, asked Ms Er for a copy of that particular invoice, so that she could understand why it was so high. Ms Er kept promising to bring it in soon, but never did.

26 On 26 June 2017, Ms Eva Inzani overheard her mother chasing for the invoice

again. She then learned that the amount was £1,160 (which surprised her) and that the invoice had been outstanding for some time. This prompted her to go to the Financial Controller, Mr Islam, to ask if there were other missing invoices in respect of Mr Er's services. He confirmed that they were many. He showed her emails to Ms Er, chasing for them. The in-house Company Accountant, Mr Palmer, also confirmed to Ms Eva Inzani that he too had been chasing for outstanding invoices from Ms Er in respect of payments made to her father.

27 Ms Eva Inzani was shown a sample invoice that had been received and was surprised to note on it, the lack of detail. She told me that surprise related to the lack of an invoice number, of a carriage number, of an address, of customer ID and more importantly, lack of any breakdown of the charge for each particular journey and how such charges were calculated.

28 In some instances, these journeys would have been necessitated by the customer, for example a customer running out of coffee and wanting a delivery in an emergency, in which case the customer would be charged by the Respondent. That was not possible on the basis of the information supplied on Ms Er's invoices for her father.

29 Ms Er was asked by Ms Eva Inzani to bring in the missing invoices and she said that she would do so.

30 On making further enquiries, Ms Eva Inzani established that payments totalling £10,745 had been made to Ms Er on behalf of her father that were not covered by invoices in the possession of the Respondent.

31 In the meantime, over June/July 2017, Ms Eva Inzani, Ms Meri Inzani and Ms Fatnassi had each noticed a change in Ms Er. She had become in their view, rude and disruptive. The Respondent had disciplined her sister in relation to her conduct during early July. Her sister had then resigned. That may or may not have had something to do with it. Ms Er was also thought to have become lax in respect of certain procedures, including completing work sheets and call logs.

32 On 23 June 2017, Ms Er met with Ms Meri Inzani, who spoke to her about her attitude. Ms Er acknowledged that she had been rude and indicated that she may in due course resign.

33 On 6 July 2017, Ms Er's line manager, Ms Fatnassi, had returned from one year's maternity leave. Ms Eva Inzani explained to her that she had concerns about Ms Er's work.

34 On 11 July 2017, Ms Fatnassi met with Ms Er to discuss those concerns. Notes of this are at page 128. There were a number of concerns, but the issue relating to the invoices was not apparently mentioned on that occasion.

35 On 17 July 2017, Mr Islam emailed Ms Er in relation to the invoices, page 146A. He explained that there were invoices missing and reminded her that he had earlier, on 23 June, emailed her requesting copies, that she had said that they were at home and that she would bring them in. He noted that they had not yet been received and said that at

that point, there was six missing going back to January 2017, representing a total in value of £1,930. Ms Er replied on 19 July to say that she had brought the invoices in and had given them to Mr Andrew Palmer, the Company Accountant. She further said that due to family difficulties, she was having limited contact with her father and therefore, obtaining copies was not going to be easy for her as she was no longer living with her parents.

36 On 17 July 2017, Ms Er was invited to an investigatory meeting scheduled to take place on 1 August, (page 148) although the investigation meeting in fact subsequently took place on 31 July at the Respondent's request. The chair of that investigatory meeting was Ms Fatnassi. There are handwritten notes at page 153. During this meeting, Ms Fatnassi and Ms Er discussed various customer complaints which had been received and discrepancies with the work sheets. During the meeting, Ms Er was asked to provide the missing invoices in respect of her father's services. She replied that she had given them all to somebody called Roshan Perera, that is an auditor with the Respondent's accountants, Raymond Lee & Partners.

37 Between 2 and 28 August 2017, Ms Er was on leave. While she was on leave, Ms Fatnassi investigated matters further. This included speaking to Ms Perera, who said that she had not been given any invoices by Ms Er. She also investigated the invoices that they did have and found that in respect of some of the journeys claimed for, other drivers had in fact made the deliveries.

38 On 29 August 2017, Ms Er returned from leave and met with Ms Fatnassi, who told her that serious concerns had come to light and that she was therefore to be suspended. There is a note of this at page 163. That she was suspended was confirmed by email dated 29 August, which is copied at page 167. This letter refers to Ms Er being suspended because of allegations involving her failure to provide invoice copies.

39 On 22 September 2017, Ms Er was invited to attend a disciplinary hearing on 27 September. A copy of that letter of invitation is at page 178. There is a clear explanation of what the concerns are in a paragraph in the opening passages of this letter, which reads:

*"As Service Manager to the Company, your responsibilities include booking installations and deliveries with our engineers and delivery drivers, regarding our coffee machine and coffee service plus helping to guarantee a minimum 24 hour backup service for engineers, strict company procedures to facilitate this. It is your responsibility to organise the deliveries around your installations and the method of delivery, as our delivery drivers being first choice, you suggested your father's cabbage service is a way of saving money for the business and recommended his use for this as good value, however almost straight away it appears that charges started growing without any good reason however this was not apparent immediately at the time until a thorough review of your work was undertaken in line with out year end and various invoices were outstanding from you."*

40 The letter goes on to identify that a total sum of £10,745 has been paid for which there is no accompanying paperwork. Under a heading, "Failing to put the company's interests first" it provides a comparison of taxi fees incurred both before and after Ms Er



joined the company. The difference is dramatic.

41 The content of the disciplinary invitation letter mostly deals with the invoices problem, utilising headings lifted from the disciplinary procedures examples of gross misconduct. There are one or two exceptions, for example the reference to using a courier for a Michael Kors handbag and to answering the telephone with the greeting, "sex line". Attached to the letter, which had been sent by email, was a large volume of supporting evidence.

42 Although the disciplinary hearing was scheduled for 22 September 2017, it was rescheduled at the request of the Claimant for 2 October.

43 On 29 September 2017, Ms Er was able to provide a full and detailed written response, which is at page 399. Within this response, on the invoices issue, she expressed surprise that this had not come to light sooner, given that there had been two financial audits in the period of time she had been working for the Respondent. She also suggested that if there was any absence of invoices, this was the responsibility of the financial controllers and accountants with the Respondent company. She asserted that she was certain that the invoices were provided either to Ms Meri Inzani or to somebody called Tsering. She explains that she will not be able to provide a copy of the invoice for £1,160 in respect of the payment made on 10 March 2017, because she cannot access her home, because she has fallen out with her father.

44 The disciplinary hearing took place on 2 October 2017. The chair was Ms Fatnassi. The hearing was recorded. From the opening exchanges, it rather looks as if Ms Er pretended to agree that she would not herself record the hearing as the Respondent was doing so, but in fact proceeded to do precisely that. The meeting appears to have lasted 3 ½ hours. During the course of this meeting, she repeated an earlier suggestion that she had handed invoices over to Roshani Perera, page 437. Asked why they were not already with Tsering or Meri, she answered that these were duplicate copies which she had kept under her desk, page 438. She was uncertain whether she had scanned them, she could not remember, page 445. She was asked to explain how she went about preparing the invoices? To which her answer was, "no comment". She was asked whether her father had looked at the invoices before they were submitted? She replied that she did not know. She was asked whether her father had an accountant? She said that she did not know. She was asked why on her return from holiday, she had not provided the invoices which she had been asked for? She said that she had mislaid them in her bedroom and could not remember where she put them, page 448. She was asked at page 449, whether she wrote up her father's invoices for other clients? Her answer was, that was between her and her father. At page 450, she was asked how much her father charged, her answer was that she did not know.

45 After the hearing on 11 October 2017, a copy of the recording was provided to Ms Er.

46 At each point of the disciplinary process, Ms Fatnassi had through Ms Eva Inzani, sought advice from the FSB lawyers. That is also so before she reached her decision that Ms Er should be dismissed. I am satisfied that Ms Fantassi decided to dismiss Ms Er, but on the basis of advice from those lawyers. I am also satisfied that it was her decision and that Ms Eva Inzani did not make the decision for her. Nor did Ms Eva Inzani interfere in

the process. If Ms Eva Inzani had wanted to run the process, she could have chaired the disciplinary hearing herself. The outcome was confirmed in a letter dated 12 October 2017, to which I have already referred, page 526. Somewhat bizarrely, Ms Er was also issued with a final written warning to be placed on record for six months, in respect of other matters on which I have not focused.

47 By a letter dated 19 October 2017, Ms Er appealed against her dismissal and the warning. A copy of her written appeal starts at page 534. In summary, the appeal complains of:

- 47.1 Her having received both a warning and a summary dismissal, which she said did not seem to be correct or fair;
- 47.2 The minutes of the disciplinary hearing being incomplete, giving a series of examples;
- 47.3 The decision to dismiss had already been made prior to the disciplinary hearing;
- 47.4 Insufficient justification had not been provided;
- 47.5 Ms Fatnassi had not followed up on matters following the disciplinary hearing;
- 47.6 She had not received a written contract or a copy of company procedures, and
- 47.7 The quantity of the allegations, 17 in total, was excessive and revealed a determination to dismiss her.

48 After some toing and froing, it was in the end agreed that the appeal would be heard on 2 November 2017, chaired by Mr Jones of the Respondent's accountants. Unfortunately, Mr Jones was taken seriously ill on 1 November. The appeal was then re-arranged for the 17 November. The appeal hearing went ahead on that date chaired by Mr Ogboru, of the Respondent's accountants.

49 I accept the evidence of Ms Eva Inzani and Mr Ogboru, that they did not discuss the case as such and that Mr Ogboru made it clear that he would agree to act as chair on the appeal, but it had to be understood that he would be independent and would consider the matter with a clean sheet.

50 The appeal minutes appear in the bundle at page 570. There was nothing in particular of note to refer to and nothing that I was taken to.

51 On 22 November 2017, Ms Er emailed Mr Ogboru with a copy of an invoice for the £1,160 charged in March 2017, (page 629). Mr Ogboru replied asking if there were any more invoices.

52 On 23 November 2017, Ms Er emailed Mr Ogboru to say that whilst she had now supplied the March invoice, the remainder of the invoices had been provided directly to the Respondent and there are no further invoices to send. Mr Ogboru replied:

*“However, during our meeting we agreed that you would look for these invoices and forward them to me as your dad should have kept copies. You indicated that you could get your sister to retrieve them if necessary as you knew where they were stored and did not think I should contact your father directly.”*

53 I also note that in this email exchange, (page 635) Mr Ogboru reported to Ms Er that he had spoken to Ms Roshani Perera, who had indicated that she did not receive and could not have received anything from Ms Er in December 2016, as she was not working at the Respondent’s premises at that time. Ms Er replied to say that she could categorically confirm she handed a folder of invoices to Roshani during the December 2016 audit. She goes on to give her father’s contact details, including his address and his telephone number.

54 Mr Ogboru tried calling Ms Er’s father on two occasions, but was unable to raise an answer. He said that he would then write to the father, but Ms Er pressurised him for an urgent decision, as evidenced at page 641 by an email of 28 November where she notes that Mr Ogboru had said that he is trying to contact her father and that he would be writing him and that,

*“respectfully I feel as though I have already made my position quite clear in respect of the further information which you have requested ... as you are aware my relationship with my father has broken down. I cannot therefore assist any further, and request that you respond to my appeal formally, as soon as practicably possible.”*

And at page 653, 2 December 2017, where she writes in strong terms, asking for an outcome to the appeal as soon as possible.

55 On 29 November 2017, in the meantime, Mr Ogboru had gone to the Respondent’s premises and there he had spoken to a number of people, including Ms Meri Inzani, Mr Islam, Ms Tsering Dolma, Ms Jessica Salmon, Mr Georgios Sakkiadis and Ms Eva Inzani. Mr Islam had confirmed to him that he had chased the Claimant for missing invoices and had drawn this to the attention of Ms Eva Inzani. The others confirmed that none of them had seen any invoices being handed over to Ms Roshani Perera.

56 Mr Ogboru provided an outcome to the appeal in a letter dated 8 December 2017, which begins at page 664. He upheld the decision to dismiss. It is a letter which is confusingly laid out, is difficult to follow, but which contains a great deal of detail. For example:

56.1 At page 668, on the suggestion that the invoices had been handed over to Ms Roshani Perera, Mr Ogburo comments that she had told him that is not so and that she was not at the Respondent’s premises in December 2016 as alleged. He commented that he had been able to confirm that for himself

from his firm's records.

- 56.2 He noted the Claimant had changed her story in respect of the colour of the folder in which the invoices were said to have been contained. He therefore concluded the invoices were not handed over to Ms Roshani Perera as alleged.
- 56.3 At page 669, he deals with the suggestion that invoices had been given either to Ms Meri Inzani or to Tsering. He notes that if that is so, one wonders why there were 45 invoices missing? He explains that he has spoken to the staff involved and they have denied receiving invoices which had been lost. Tsering had said that there were no other accounts from which invoices were missing. He concluded that he does not believe that anybody has misplaced the invoices and he finds that Ms Er had not handed over the missing invoices to any members of staff.
- 56.4 In respect of a spreadsheet the Respondent had provided, which Ms Er had said was fabricated, he said he had investigated, he had spoken to Mr Palmer and to Mr Islam and found that the spreadsheet was accurate.
- 56.5 He confirmed he had investigated the Claimant's father's charges and had found them to be much higher than what would have been charged by other cab firms.
- 56.6 He said he was unable to find any evidence to suggest that a decision had been taken to dismiss Ms Er before the disciplinary process and he referred to the care and thoroughness with which the process had been conducted.

## **Conclusions**

57 First of all, I will run through the questions posed in the parties' agreed list of issues:

- 57.1 The dismissal was for the potentially fair reason of conduct. The list of issues refers to gross misconduct, but of course the potentially fair reason under s98 is conduct. I am satisfied that Ms Fatnassi dismissed Ms Er because she believed she was guilty of misconduct.
- 57.2 Was the Claimant given sufficient time to prepare her case? Yes, she was, she had from 22 September until 2 October and she acknowledged in evidence, that was sufficient.
- 57.3 Were the reasons for the disciplinary hearing stated to the Claimant in writing and were they sufficient? Yes, they were, on both counts, very clearly, page 178.
- 57.4 Were the reasons for the dismissal stated to the Claimant in writing and were these reasons sufficient? Yes on both counts, page 526.

- 57.5 Was the Claimant given a full opportunity to state her case throughout the disciplinary appeal procedure and was her case taken into consideration throughout the proceedings? Yes, very clearly so, she was and they were.
- 57.6 Did the Claimant submit written responses prior to the disciplinary appeal meeting and were these responses taken into proper consideration? Yes, she did submit written responses, they were there in the bundle. Were they taken into proper consideration? Yes, on the evidence I heard from Ms Fatnassi and Mr Ogboru, they were.
- 57.7 Were the reasons for the appeal decision stated to the Claimant in writing and were these reasons sufficient? Yes, they were, page 665. I accept that they are a tad confusing, but on close analysis, they were certainly sufficient.
- 57.8 In light of the above answers, I answer the question as to the fairness of the procedure by confirming that a fair procedure was followed.
- 57.9 Question 4 in the list of issues is, "Did the Respondent believe the Claimant was guilty of gross misconduct?" I have already answered that question, yes.
- 57.10 Did the Respondent have in mind reasonable grounds upon which to sustain its belief? In my judgment they most certainly did. There were 45 missing invoices, leaving over £10,000 worth of payments unaccounted for. They had been provided with no satisfactory explanation from Ms Er. Such explanations as she did give, were not credible and all were contradicted by others. The taxi expenditure of the Respondent had increased phenomenally. Some of the jobs charged for had apparently been done by others. Ms Er could not explain her father's charging rate. There was a plethora of documentary evidence to support the conclusion that Ms Er had not been acting honestly.
- 57.11 Moving back to the list of issues and considering all of the circumstances, were the steps taken by the Respondent within the range of reasonable responses of a reasonable employer? Yes, they were.
- 57.12 I was then asked whether the procedure adopted by the Respondent during the internal procedure was fair in particular was the volume of material used fair? Yes, it was, that is an indication of the thoroughness of the Respondent's investigation.
- 57.13 At the stage at which the belief was formed, had the Respondent carried out as much investigation into the matter as was reasonable in the circumstances? Actually, one of Ms Er's complaints in the ET1 is that the Respondent was too thorough. It was a thorough investigation, appropriately so and not because the Respondent was searching for a reason to dismiss Ms Er.

- 57.14 It follows that, the volume of the material used was fair.
- 57.15 Was the Claimant denied access to colleagues and/or evidence in the Respondent's offices as a consequence of being suspended? She was, but she at no point indicated to the Respondent that she needed access to colleagues or to anything within the Respondent's premises in order to answer the charges. Nor has any point been made in this hearing that somehow, things would have been different had she been able to attend the premises or speak to her colleagues.
- 57.16 The next questions asks whether the key focus was only on the alleged missing invoices or were all allegations properly heard and considered. The fact of the matter is, there is undoubtedly a focus on the missing invoices and that is for a very good reason; they are the key issue for the Respondent, they are an indication that there may be dishonesty.
- 57.17 The question is repeated, were the Claimant's written responses taken into proper consideration and yes; I am satisfied that they were.
- 57.18 Was the key focus in the appeal on the missing invoices, or were all the allegations properly heard and considered? As with the dismissal process, the focus was on the missing invoices, for good reason.
- 57.19 Was a full and proper investigation carried out? Yes, it was plainly was.
- 57.20 Was the appeal held independently? On hearing evidence from Mr Ogboru, I am satisfied that he did approach matters with an independent mind.
- 57.21 Were the Claimant's written responses taken to consideration? Yes, they were. Mr Ogboru set out his careful consideration of Ms Er's points, in his outcome letter.
- 57.22 Overall, was the procedure adopted by the Respondent in the appeal fair? Yes, it was.

58 Dealing now with other points raised by Mr Gadhia during his closing submissions; he referred to Dr Ogboru speaking of alarm bells ringing when Ms Er had said that invoices had been given to Ms Roshani. Mr Gadhia suggested that indicated that Mr Ogboru did not have an open mind. I do not accept that at all. Mr Ogboru cannot help it if the Claimant puts to him an explanation, or asserts a fact, which he immediately thinks sounds unlikely, as it did to me, knowing how auditors work, (they do not ask for a full set of invoices, they ask for random invoices).

59 I am satisfied myself that that outcome of this disciplinary and appeal process was not predetermined. The Respondent had not simply decided to get rid of Ms Er. They genuinely thought that she had been dishonest and they thought so with good reason.

60 It was suggested by Mr Gadhia that 17 allegations against the Claimant amounted

to, “a shocking shopping list”. What seems to have happened is that the Respondent has taken the invoices issue and reiterated it a number of times, using various different examples of gross misconduct set out in the disciplinary procedure. Reiterating the problem several times certainly makes things clumsy and unnecessarily difficult for the Respondent, but not something liable to be called, “shocking”.

61 Mr Gadhia suggested that because the Respondent forgave Ms Er a mistake costing the Respondent £56,000 at the beginning of her employment, that somehow indicated that they would also have forgiven her for the missing invoices and so there must be some inappropriate motive behind the dismissal. I do not accept that at all; that they forgave her that mistake at the outset of her employment seems to me to indicate that they are a forgiving and understanding employer.

62 Mr Gadhia suggested that Mrs Meri Inzani processing requests for payment without invoices is remarkable and I agree it is. I am sure Ms Eva Inzani is wholly unimpressed and not happy with her mother, as was apparent from her evidence. But the Respondent was entitled to conclude that Ms Er seemed to be taking advantage.

63 It is suggested that there is some significance in the fact that nobody else has been disciplined arising out of these matters. I have no hesitation in accepting the evidence of Ms Eva Inzani that serious words had been had with several people, including her mother, but the bottom line is, nobody else is suspected of dishonesty.

64 Lastly, I refer to the case which Mr Gadhia has referred me to, that is the case of Ramphal v The Department for Transport UKEAT/0352/14. Every case of unfair dismissal is different and turns on its facts. It is the test of fairness in Section 98(4) that we must have regard to and look back to, in every case of unfair dismissal. The case of Ramphal is also noticeably different from this case. The Employment Tribunal was ticked off by the EAT for not adequately considering the potential for the improper influence of a human resources department on an investigating officer. The investigating officer had produced a draft report, in which he found that the employee under investigation had not been fiddling expenses, had not been dishonest and recommended a final warning. There followed several interactions with the human resources department, over the course of which it appears the investigating officer was persuaded to change his mind so that he recommended summary dismissal for gross misconduct. Quite a turnaround. That is nothing like what has happened in this case, there is no suggestion that Ms Fatnassi thought there was nothing in the allegations against the Claimant and that she was persuaded otherwise by the interference of Ms Eva Inzani.

65 One point Mr Gadhia might have made, which he did not, is that the same person conducted the investigation and chaired the disciplinary hearing. It is generally regarded as good industrial relations practice to have separate people undertake these two tasks. It is a recommendation, (paragraph 6) of the ACAS code, where practicable. Ms Fatnassi could have investigated, Ms Eva Inzani could have chaired the disciplinary hearing and someone from the accountants such as Mr Ogboru hear the appeal, so it was practical. However, I do not consider this oversight to be sufficient to render the dismissal unfair and as I have said, it was not suggested to me that it was.

66 To recap, applying the law as I explained it at the outset:

66.1 The reason for dismissal was the Claimant's misconduct.

66.2 The Respondent genuinely believed that Ms Er had been dishonest. They had reasonable grounds to reach that conclusion, having conducted a reasonable investigation.

66.3 In those circumstances, where the conclusion is that the employee has been guilty of dishonesty, the decision to dismiss without warning or notice, is well within the range of reasonable responses.

67 For these reasons, I am afraid the claim fails.

Employment Judge Warren

20 July 2018