EMPLOYMENT TRIBUNALS

Claimant: Mrs G Oakes

Respondent: Carrs Court Limited

HELD AT: Manchester **ON:** 26 February 2018

BEFORE: Employment Judge Horne

REPRESENTATION:

Claimant: Mr Kane, Partner
Respondent: Mr Anderson, Consultant

JUDGMENT having been sent to the parties on 9 February 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Issues for determination

1. By a claim form presented on 12 September 2017, the claimant raised a single complaint of unfair dismissal. There was no doubt that the claimant had been dismissed and had the right not to be unfairly dismissed. The parties confirmed at the start of the hearing that the issues for me to determine were:

   1.1. Whether the respondent could prove the sole or principal reason for the dismissal – this involved making a finding about who, within the respondent's organisation, actually made the decision;

   1.2. Whether that reason related to the claimant's conduct; and

   1.3. If so, whether the respondent acted reasonably or unreasonably in treating that reason as sufficient to dismiss the claimant.

Evidence

2. I considered documents in an agreed bundle. Mr Sharples was called as a witness for the respondent, followed by Mrs Hackett. The respondent also submitted witness statements from Mrs Swinburn and Mrs Wilshire, but ultimately

did not call these two witnesses to give oral evidence, accepting that it would not be relevant to the issues I had to decide. The claimant gave evidence on her own behalf, but did not call any witnesses.

Facts

3. The respondent is a management company responsible for the day-to-day running of Carrs Court in Wilmslow. Carrs Court is a development of 47 sheltered housing retirement apartments. The apartments belong to residents in retirement, described as "owners". The freehold owner is actually Retirement Security Limited (RSL), which owns some 32 similar developments nationwide.

4. The respondent's directors are all Carrs Court residents. Its chairman was Mr Bob Bessell, who was replaced by Mr Peter Metcalfe.

5. As well as directly employing about 20 employees, the respondent has entered into a separate management agreement with RSL, to whom they delegate human resources and other functions. RSL's Chief Executive is Mr Richard Sharples.

6. The claimant was employed by the respondent from 12 November 2001 to 18 May 2017, latterly as Court Manager. Her line manager was Mrs Michelle Hackett, RSL's Services Manager.

7. On 5 August 2008 the claimant signed to acknowledge receipt of the respondent's written statement of main terms of employment. It stated that the respondent's disciplinary rules were shown in the Employee Handbook, to which the claimant was required to refer.

8. The Employee Handbook contained a written disciplinary policy. It contained a list of examples of gross misconduct. Amongst these were "acceptance of any … cash … from any Owner…"; and "to engage in paid employment for an Owner except as a [RSL] employee; and "trading with Owners…".

9. The claimant's written job description contained the following warning:

> "Owners are particularly susceptible to exploitation and even though it seems hard, the staff… are forbidden to receive individual presents…because of the danger of misunderstanding and corruption developing".

10. On 12 December 2016, Mrs Hackett e-mailed the claimant to invite her to a meeting with Ms Karon Swinburn, another Services Manager. As Mrs Hackett explained in a later e-mail the same day, the purpose of the meeting was to discuss the processes that the claimant followed in relation to the refurbishment of the guest suite, her handling of funds, and taking of deposits. The meeting took place on 19 December 2016 and resulted in a report being sent by Ms Swinburn to Mr Sharples. Her report concluded, "…I do not feel it is appropriate to take disciplinary action at this stage." The body of the report highlighted the claimant's perception that Mrs Hackett was hostile to her and had treated her in a bullying manner. It also relayed how upset the claimant had felt on receipt of Mrs Hackett's 12 December 2016 e-mail.

11. On receipt of Mrs Swinburn's report, Mr Sharples arranged a three-way meeting to try and "clear the air" between the claimant and Mrs Hackett. That meeting took place on 17 January 2017, following which Mrs Hackett wrote to the claimant on 23 January 2017. Her letter apologised for the upset caused by her 12 December 2016 e-mail. In passing, Mrs Hackett referred to standard letters provided by their consultants, Peninsula. The letter also proposed an action plan

to assist the claimant with areas where the claimant had acknowledged she needed additional support.

12. The claimant did not regard Mrs Hackett's apology as sufficient. At RSL's invitation she sent a draft of the apology she wanted. Mr Sharples replied on 9 February with an apology of his own. He also commented positively on the ongoing progress towards agreeing and implementing the action plan. Mr Sharples' apology matched neither the claimant's draft nor her expectations. Matters were made worse by the escalation from an action plan to a formal Performance Improvement Plan (PIP). By e-mail on 28 February 2017 the claimant gave notice of her resignation. Mrs Hackett replied on 3 March 2017, asking to her reconsider, and confirming that in the meantime she would be on gardening leave for her notice period. The claimant agreed to retract her resignation. A return to work meeting was arranged for 14 March 2017.

13. Whilst the claimant was on gardening leave, Mrs Hackett attended to the management of Carrs Court. For the first time she walked into the claimant's office and was dismayed at what she saw. She reported back to Mr Sharples, who agreed that further investigations should be carried out. By the time the claimant attended her "return to work" meeting, Mr Sharples had already decided that the claimant should be suspended before she had a chance to do any work. Accordingly a decision was made to conduct the "return to work" meeting, seamlessly followed by a discussion in which the claimant should be informed of her suspension. This is what happened on 14 March 2017.

14. By letter dated 17 March 2017, the claimant was invited to an investigation meeting, at which she should:

> "provide an explanation for the following matters of concern:
>
> - Potential negligence
> - Refusal to carry out reasonable management instructions
> - Other issues that have arisen before and during your absence through poor administration."

15. On 23 March 2017 the claimant met with Mrs Kelly Wilshire, RSL's Head of Services. The meeting lasted from 11.15am to 2.15pm and covered a wide range of topics. Initially the discussion covered broadly the same subject-matter as the previous investigation that had taken place in December 2016. It moved on, however, to talk about other things. These included the following:

    15.1. The claimant's use of a company credit card in the name of the respondent. She confirmed that she had used it to purchase a laptop for £350.00 on the recommendation of the accountants.

    15.2. An incident in which an assistant, T, was accused by an owner of theft. The claimant confirmed that she had kept the complaint "in house". She had spoken to the resident's daughter, and transferred T to clean for a different resident. She had not taken a statement from T.

    15.3. The displaying items for sale on reception. She confirmed that about four years previously she had set up a shop, selling items directly to owners. She could not say if she had received Board approval to start trading.

15.4. Health and safety training for staff. The claimant accepted that she had not arranged for staff to be trained in health and safety matters or manual handling. She made a generalised assertion that health and safety was "up to standard" and stated that she had instructed her staff to read a training manual on health and safety, but she had not kept records to show who had read the book.

15.5. The involvement by the claimant of Mrs L, another owner and former director on the respondent's Board. The claimant stated that she had e-mailed Mrs L about the circumstances of her resignation.

16. On 28 March 2017, Mrs Wilshire interviewed Mrs L. It was Mrs L's stated desire to do everything she could to help the claimant. Mrs Wilshire asked Mrs L about a period of time in which an assistant, D, was providing Mrs L with personal care. Mrs L confirmed that D had provided her with that care, that it must have been the claimant who arranged it, and that she (Mrs L) handed cash in an envelope to the claimant to pass on to D. When asked about the company credit card, Mrs L stated that she must have approved it whilst she was a Board member. She stated that the credit card statements still came to her every month and she forwarded them unopened to the claimant. In summary, Mrs L described the claimant as "a hardworking and caring person who is not fraudulent".

17. Mrs Wilshire re-interviewed the claimant for 37 minutes on 4 April 2017. She said that, when she received credit card statements from Mrs L, she checked them and forwarded them to the respondent's accountants. Regarding the items for sale to owners, the claimant said that she had just "sold a few scarves out of it" and that she had mainly sold to carers, rather than owners. The conversation turned to D's paid personal care work for Mrs L. According to the claimant, she did not actually get involved, or handle the money, but she knew about it. When Mrs Wilshire pointed out that this was a disciplinary matter, and asked the claimant how she had dealt with it, the claimant replied that she had given D a "verbal warning and if it ever happened again, she would be dismissed on the spot". The claimant said she did not know whether the warning had been recorded anywhere. Mrs Wilshire asked the claimant about health and safety training records. The claimant stated that they were kept in a box, but Mrs Wilshire could not find it.

18. Mr Prince of RSL checked with the respondent's accountants whether they would see the credit card statements when they did the management accounts. The accountants confirmed that they did not get the statements for the management accounts, but they were kept with the purchase invoices and seen at the year end as part of the audit.

19. On 13 April 2017, Mrs Wilshire concluded her report. Running to 15 pages, the report identified a number of matters of concern and summarised the evidence in relation to each of them. She recommended that the matter be taken forward to a disciplinary hearing.

20. Mr Sharples reviewed the evidence and decided that the claimant had a case to answer.

21. By letter dated 27 April 2017, the claimant was invited to a disciplinary hearing, to be chaired by Mr Nick Chriscoli. The proposed venue was one of RSL's properties, away from Carrs Court. The letter informed the claimant of her right to

be accompanied by "a fellow employee", but omitted to mention that her companion could be a trade union representative instead.

22. According to the letter:

> "The matters of concern are as follows:
>
> > [1] It is alleged that you have obtained a credit card in your name for Carrs Court Limited and the information is sent to an ex-director, no prior consent was gained and therefore if proven represents a gross breach of trust as this has not been authorised…
> >
> > [2] It is alleged you have allowed employees to give personal care to owners which the court is not allowed to provide personal care therefore putting the company at risk if proven.
> >
> > [3] It is alleged that health and safety documents provided had false information on them and also there is no evidence of staff health and safety training recorded and employees have not received the training, if proven this is a serious breach of health and safety.
> >
> > [4] It is alleged you have been direct trading with owners and a cabinet was set up, no approval has been agreed by the board and it is alleged that this was for your own gain which if proven represents a gross breach of trust.
> >
> > [5] It [is] alleged that you have failed to deal with serious HR matters such as an alleged theft issue which is not acceptable as these matters should have been investigated in line with the company's policies and procedures.
> >
> > …
>
> If these allegations are substantiated, we will regard them as gross misconduct. If you are unable to provide a satisfactory explanation, your employment may be terminated without notice."

23. The letter went on to list 13 further allegations "viewed as misconduct".

24. Enclosed with the letter were, amongst other things, credit card information, a statement from Mrs L, a statement from D, health and safety forms, photographs of the display of items for sale, the investigation notes and the disciplinary rules and procedures.

25. The claimant replied to the invitation letter by e-mail on 3 May 2017. Amongst the points raised by her e-mail, the claimant requested all transcripts of interviews held with owners and Board members. She objected to Mr Chriscoli conducting the meeting on the ground that he would not be impartial. (Pausing there, I did not think it necessary to make a finding as to whether Mr Chriscoli was biased or not). She also insisted on the meeting taking place at Carrs Court. She also announced her intention to be accompanied at the disciplinary meeting, "but not by any of my staff from Carrs court". She did not ask to be accompanied by a trade union representative. This is unsurprising because she was not in fact a member of a trade union.

26. Mr Sharples replied the same day, asking for further details of the claimant's proposed companion, "as if they are not an employee they will not be allowed into the meeting". He stood by the decision to appoint Mr Chriscoli to chair the

meeting. Shortly afterwards, the claimant maintained her position that she would not attend a hearing chaired by Mr Chriscoli. Her e-mail concluded by announcing her resignation.

27. Mr Sharples decided to break the deadlock by postponing the disciplinary meeting to 8 May 2017 and standing Mr Chriscoli down. In his place, Mr Sharples arranged for the hearing to be chaired by a consultant from HRFace2Face ("HRF2F") a human resources consultancy operated by Peninsula. He asked the claimant for more details of the transcripts she required. His e-mail acknowledged the claimant's resignation and confirmed that her notice period would expire on 2 June 2017. In reply, the claimant made clear that she would not attend "any further hearings with RSL or their nominated counterparts". Her reason was that she had heard that Mr Sharples had been reportedly telling owners that the claimant was going to be dismissed for gross misconduct.

28. The appointed day of the meeting came and went. True to her word, the claimant did not attend. Mr Sharples decided to reschedule the meeting for 15 May 2017. Again, the claimant did not attend the meeting.

29. The 15 May meeting was chaired by Mr Andrew McCabe of HRF2F. Mr McCabe was provided with the information and evidence that had been sent to the claimant. On reviewing this material, and without the benefit of the claimant's attendance at the meeting, Mr McCabe prepared a report dated 16 May 2017. Here are some of its key findings:

    29.1. Mr McCabe partly upheld Allegation 1. It appeared to Mr McCabe that, at the time of obtaining the credit card, the claimant had the approval of Mrs L, the chair of the Board, albeit not the approval of the full Board. He observed that the card was also known to the respondent's accountants. Where Allegation 1 was substantiated was in the claimant's failure to direct the credit card statements to a current Board member.

    29.2. Mr McCabe found Allegation 2 proved. He thought that the claimant had sought to deflect responsibility onto Mrs L for hiring D to give personal care, rather than acknowledging her own responsibility for ensuring that staff did not engage in this practice. He noted the claimant's explanation that she had warned D of the risk of summary dismissal, but it was his conclusion that the claimant had failed to take any action to stop or prevent D's activities from happening.

    29.3. Allegation 3 was also upheld on the basis of admissions made by the claimant to Mrs Wilshire about health and safety training.

    29.4. Mr McCabe took the claimant to have admitted to selling items to owners. On that basis, he found Allegation 4 proved.

    29.5. Under Allegation 5, Mr McCabe quoted at some length from the relevant passage of the claimant's interview with Mrs Wilshire. Proceeding on the claimant's version of the facts, he upheld the allegation. He criticised the claimant for not having undertaken any formal investigation, or indeed any formal procedure at all. He described the claimant's attitude as appearing to be dismissive and "rather flippant".

29.6. Mr McCabe went on to address the two remaining allegations of gross misconduct and the long list of allegations of lesser misconduct. With one exception he upheld them all.

29.7. The report concluded with a recommendation that the claimant's employment be terminated on the grounds of gross misconduct.

30. Mr McCabe's report was passed to Mr Sharples, who compared the report's findings with the report of Mrs Wilshire. He agreed with Mr McCabe's findings and recommendations. Generally speaking, he did not "drill down" into Mr McCabe's findings of fact, but did consider Mr McCabe's conclusions for himself. In relation to Allegation 2, Mr Sharples went further than Mr McCabe. The claimant had given an explanation that she had warned D of the risk of instant dismissal. Mr McCabe had not expressed a clear finding about whether the claimant had given this warning or not. Mr Sharples was clear in his mind: he did not believe the claimant's explanation. He thought it more likely that the claimant had knowingly allowed D's activities to continue. In Mr Sharples' view, the appropriate sanction was summary dismissal.

31. Mr Sharples was not, of course, the claimant's employer. Neither he nor RSL had any authority to dismiss her. He therefore approached the respondent's Board to have his decision ratified. An emergency Board meeting took place on 18 May 2017. Present were Mr Metcalfe, the Chairman, and three other directors. They unanimously agreed with the recommendation of Mr McCabe.

32. Following the meeting, Mr Sharples informed the claimant by letter dated 18 May 2017 that her employment had been terminated. He enclosed Mr McCabe's report and gave her seven days to appeal. It is not clear when the claimant received the letter.

33. Mr Sharples' letter was written in the first person. He described the decision to dismiss as "my decision". This description, I find, reflected the reality. Though he was heavily influenced by Mr McCabe's report, Mr Sharples brought his own independent judgment to bear on the decision, which was then rubber-stamped by the Board.

34. On 21 May 2017, before the deadline for appealing had expired, the respondent's Directors jointly distributed a letter to all the Carrs Court owners. The letter informed them that the claimant had been dismissed on the grounds of gross misconduct. It then gave a "sample" of six of the allegations that had been upheld. It set out the recent history of the claimant's resignation, retraction, disciplinary proceedings and dismissal. All of this was presented to the owners because they "now have a right to know the facts". The letter did not mention that the claimant could appeal. It concluded, "We now hope the whole matter can be considered done and dusted and we can….welcome our new manager when he/she is appointed."

35. Later that day, the Directors' letter was drawn to the claimant's attention. She immediately e-mailed Mr Sharples to inform him that she would not be appealing. Amongst her reasons for not pursuing an appeal, she included the fact that the owners had already been informed that the matter was closed.

Relevant law

36. Section 98 of ERA provides, 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 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…(b) relates to the conduct of the employee…
>
> (4) 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.

37. The reason for dismissal is the set of facts known to the employer, or the set of beliefs held by him, that causes him to dismiss the employee: *Abernethy v, Mott, Hay and Anderson* [1974] ICR 323, CA.

38. Where the reason for dismissal is the employee's misconduct, it is helpful to ask whether the employer had a genuine belief in misconduct, whether that belief was based on reasonable grounds, whether the employer carried out a reasonable investigation and whether the sanction of dismissal was within the range of reasonable responses: *British Home Stores Ltd v. Burchell* [1978] IRLR 379, *Iceland Frozen Foods Ltd v. Jones* [1983] ICR 17.

39. In applying the test of reasonableness, the tribunal must not substitute its own view for that of the employer. It is only where the employer's decision is so unreasonable as to fall outside the range of reasonable responses that the tribunal can interfere. This proposition is just as true when it comes to examining the employer's investigation as it is for the assessment of the decision itself: *J Sainsbury plc v. Hitt* [2003] ICR 111.

40. The tribunal must consider the fairness of the whole procedure in the round, including the appeal: *Taylor v. OCS Ltd* [2006] IRLR 613.

41. The following provisions of *ACAS Code of Practice 1 – Disciplinary and Grievance Procedures (*"COP1") appear to us to be relevant:

> 1. This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace. Disciplinary situations include misconduct ....

…

…

4. …whenever a disciplinary … process is being followed it is important to deal with issues fairly. There are a number of elements to this:

...

• Employers should allow an employee to **appeal** against any formal decision made.

…

12…The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this.

…

26. Where an employee feels that disciplinary action taken against them is wrong or unjust they should appeal against the decision…

27. The appeal should be dealt with impartially and, wherever possible, by a manager who has not previously been involved in the case.

42. In *Orr v. Milton Keynes Council* [2011] ICR 704, the majority of the Court of Appeal (Sedley LJ dissenting) held that, in its approach to section 98, the tribunal should examine the reasoning of the person deputed by the employer to decide whether or not to terminate the employment.

43. In *Royal Mail Group Ltd v. Jhuti* [2017] EWCA Civ 1632, Underhill LJ, giving the leading judgment in the Court of Appeal. The tribunal had been correct to follow the "separate acts" approach. Considering himself bound by the majority's judgment in *Orr,* Underhill LJ concluded at para 57:

> "… for the purpose of determining "the reason for the dismissal" under section 98(1) of the 1996 Act the tribunal is obliged to consider only the mental processes of the person or persons who was or were authorised to, and did, take the decision to dismiss".

44. Underhill LJ went on to outline some possible circumstances in which the motivation of a person other than the decision-taker may be attributed to the employer. These may include where the decision has been manipulated by a person with responsibility for the investigation (para 62), or by a senior manager such as the chief executive (para 63).

Conclusions

45. The decision to dismiss the claimant was made by Mr Sharples. Mr Sharples did in fact make the decision, and he was authorised by the respondent's Board to make the decision on its behalf. It is his reasoning that falls to be scrutinised.

46. I am persuaded that Mr Sharples' reason for dismissing the claimant was his belief that the claimant had committed seven acts of gross misconduct. This is a controversial finding. The claimant argues that belief in misconduct could not have been the real reason for dismissing her, because Mrs Swinburn had already carried out an investigation into her conduct and no further action was considered necessary. I do not accept that Mrs Swinburn's recommendation supports the conclusion that the claimant seeks to draw from it. True it is that Mrs Wilshire asked the claimant about matters that had already been covered by Mrs Swinburn's investigation. But the gross misconduct allegations that went forward to the disciplinary hearing were entirely new.

47. It hardly needs to be said that Mr Sharples' belief was a reason that related to the claimant's conduct. I therefore need to consider whether Mr Sharples acted reasonably or unreasonably in treating that reason as a sufficient reason to dismiss her.

48. In my view, the respondent's decision-making and procedures fall to be judged against the benchmark of what would be expected of a large employer. Although the respondent itself was a relatively small, resident-led, organisation, it had access to the resources of RSL's much larger undertaking, with support from Peninsula.

49. I am satisfied that Mr Sharples genuinely believed that the claimant was guilty of misconduct.

50. Mr Sharples had reasonable grounds for his belief. He had before him the investigation report of Mrs Wilshire and the detailed disciplinary report of Mr McCabe. Under each allegation the two reports set out evidence, largely in the form of comments made by the claimant herself in interview, that were reasonably capable of supporting the conclusion that the allegation was proved.

51. Many of the claimant's criticisms of the dismissal are based on the procedure followed by the respondent and Mr Sharples in particular. These criticisms need examination as they potentially affect whether the respondent carried out a reasonable investigation.

52. One area about which Mr Sharples was questioned was in relation to the claimant's suspension. There is a rather technical dispute about whether the claimant's return to work discussion and her suspension happened at one single meeting or two back-to-back meetings. Either way, it is clear that the decision to suspend the claimant was made before the claimant returned to work. I understand the claimant to be inviting the inference that, by that time, the respondent had decided to terminate the claimant's employment. If that is right, the later disciplinary procedure was just a charade. I do not accept this argument. It seems to me that if Mr Sharples was determined to dismiss the claimant before she returned to work, he would not have tried to clear the air between the claimant and Mrs Hackett. And if Mrs Hackett had wanted the claimant to leave, she would not have asked the claimant to reconsider her resignation.

53. Another challenge to the procedure relates to alleged bias on the part of Mr McCabe. Here I ought to distinguish between impartiality and independence. Mr McCabe was not acting independently of RSL's interests or those of the respondent. He worked for Peninsula, who had been providing services to RSL

for at least the past few months if not longer. His interests and RSL's were, to some extent, aligned. But in my view it is asking too much of a reasonable employer to appoint someone who is entirely independent. Most disciplinary investigations and decisions are conducted entirely internally. The managers involved would normally be serving their employer's interests. Few people would argue that this fact alone would make a dismissal unfair. What employees are entitled to expect is impartiality in the sense of lack of prejudgment. In order for the investigation to fall outside the reasonable range, I would need to find that Mr McCabe's conclusions were based on irrelevant factors rather than on the evidence before him. Such factors might be innate prejudice against certain employees, a secret instruction given to him by RSL that he should recommend dismissal, or a misguided assumption on his part that his client (RSL) would be more satisfied with his report if it contained a recommendation for termination of employment. There is insufficient evidence to enable me to find that Mr McCabe was influenced by any improper factor of this kind.

54. I did not think it necessary to make any finding as to whether Mr Chriscoli was biased. Any bias on his part would not affect the reasonableness of Mr Sharples' decision to dismiss. Though Mr Chriscoli was initially appointed to chair the disciplinary hearing, he did not ultimately get involved in the decision, because he was replaced by Mr McCabe.

55. The claimant argues that the respondent acted unreasonably by allowing excessive delays to the process. In my view the timescales were reasonable. It took just over two months between the claimant's initial suspension and the decision to dismiss her. I am sure that that time hung very heavily on the claimant the days would have seemed to drag by very slowly. But from the point of view of a reasonable employer, two months was not an inordinate time to carry out an investigation of this kind. There were seven separate allegations of gross misconduct and numerous lesser allegations. The last two weeks of the process were attributable to the disagreement over who would chair the disciplinary meeting and the claimant's failure to attend the meeting on 8 May 2017.

56. Another of the claimant's criticisms of the procedure is that she was not given the opportunity to be accompanied by a union representative. That omission had virtually no impact on the fairness of the proceedings because the claimant was not a trade union member and at no stage asked to be accompanied by a trade union representative.

57. The claimant's final point, in my view, has the most force. She was denied an effective right of appeal because there was no prospect of her being reinstated once the Directors had circulated their letter to the owners. In many cases this fact alone would be sufficient to bring the entire procedure outside the reasonable range. This is not one of those cases. In fact, my view is that this is one of the rare cases where, despite the provisions of the ACAS Code, it was open to a reasonable employer not to offer an appeal in the first place. This is because it was reasonable for the respondent to think of any appeal as being futile because the claimant would not engage with it. The claimant had already refused to attend a disciplinary meeting to be chaired by Mr Chriscoli and two further meetings to be chaired by Mr McCabe. She had not suggested that any other member of the respondent's organisation, or any other body, would be suitable to hear her case. Indeed, by the time of the dismissal decision, already given notice of termination which was shortly due to expire. She did not appear to have any

serious interest in keeping her job or turning up to any meeting to discuss the future of it.

58. Having dealt with the claimant's specific objections to the procedure, I have attempted to step back and take an overview. In my view, even by the standards of a large employer, the overall procedure was a reasonable one. There was a detailed investigation by Ms Wilshire, who had had no previous involvement. The claimant was interviewed at length. The claimant had three opportunities to attend a disciplinary meeting. Mr McCabe examined the evidence in a detailed and structured way and Mr Sharples exercised his own independent judgment before making his decision.

59. I now turn to the sanction of dismissal. Was it within the reasonable range of responses? In my view it was. The claimant was long-serving with a clean disciplinary record. She was entitled to expect that she would not be dismissed for misconduct unless her conduct was found to be particularly serious in nature. Had the only allegation facing the claimant been Allegation 1 (the credit card), it would have been very difficult for the respondent to justify its decision. As it was, there were allegations beside the credit card that were rightly thought to give serious cause for concern. The claimant was in charge of supporting a group of vulnerable people. The respondent's Handbook was very clear in its prohibitions of direct trading with owners and receiving cash from owners. On Mr McCabe's findings, the claimant had knowingly allowed that to happen and had personally participated in direct trading. In those circumstances it was reasonably open to the respondent to view her conduct as meriting dismissal.

60. In my view, Mr Sharples acted reasonably in treating his belief as a sufficient reason for dismissing the claimant. The dismissal was therefore fair.

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Employment Judge Horne

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21 March 2018

REASONS SENT TO THE PARTIES ON

13 April 2018
FOR THE TRIBUNAL OFFICE