



EMPLOYMENT TRIBUNALS

Claimant: Ms D Holmes-Langstone

Respondent: Denbighshire County Council

Heard at: Mold **On:** 14 – 15 September 2017

Before: Employment Judge T V Ryan

Representation:

Claimant: Ms K Barry (Counsel)

Respondent: Mr J Jenkins (Counsel)

RESERVED JUDGMENT

The Judgment of the Tribunal is as follows:

1. The Claimant was fairly dismissed for a reason related to her conduct on 28 September 2016. Her claim of unfair dismissal fails and is dismissed.
2. The Respondent dismissed the Claimant in breach of contract by failing to provide her with notice of termination of employment. The Claimant's claim of wrongful dismissal is well founded and succeeds.
3. Damages to which the Claimant is entitled in consequence of the above Judgment will be determined at a Remedy Hearing in respect of which a Notice of Hearing will be sent to the parties in due course.

REASONS

1. **The Issues**

The issues were agreed at the outset of this hearing in respect of the Claimant's claims that she was unfairly dismissed and dismissed in breach of contract as she was summarily dismissed.

- 1.1 Unfair dismissal. The Claimant was dismissed for gross misconduct specifically on allegations of bullying and harassment in respect of some members of the team that reported to her as their line manager. The Claimant denied the allegations. The Respondent considered that the Claimant was guilty of gross misconduct and dismissed her without notice such that the issues in respect of this claim were
 - 1.1.1 Did the dismissing officer have a reasonable and genuine belief that the Claimant had committed acts of gross misconduct?
 - 1.1.2 At the time that the dismissing officer reached his conclusion with regard to the disciplinary allegations against the Claimant did he base his conclusions upon, and had there been, a reasonable investigation?
 - 1.1.3 Did dismissal fall within the band of reasonable responses of a reasonable employer in respect of the allegations found to have been made out?
 - 1.1.4 In the event of there being an unfair dismissal ought the Claimant's compensatory award be reduced to reflect the risk she faced of being fairly dismissed?
 - 1.1.5 In the event of a finding of unfair dismissal ought the award to the Claimant be reduced to reflect contributory fault on her part and if so what was the behaviour in question?
- 1.2 In respect of the claim of wrongful dismissal, a dismissal in breach of contract because the Claimant was dismissed without notice or pay in lieu of notice, the issue was whether the Claimant acted in such a way that the Respondent was entitled to dismiss her summarily or did the Respondent breach the Claimant's contract by failing to give due notice of termination of employment.

2. **The Facts**

- 2.1 The Respondent is a Local Authority and a large employer. Amongst its enterprises the Respondent owns and manages Cefndy Health Care which makes aids for people with disabilities. The Respondent manages with the aid of many policies and procedures including a disciplinary policy (pages 523 to 575 of the trial bundle to which all further page references relate unless otherwise stated), an anti-bullying policy (pages 576 to 609), a social media policy (pages 610

to 621) and in relation to the disciplinary procedure an investigatory framework (pages 622 to 704).

- 2.2 The Claimant commenced her employment with the Respondent on 10 October 1994 and worked for it continuously until her dismissal on 28 September 2016. Latterly she was employed as a service manager at Cefndy Health Care where she was responsible for 50 employees.
- 2.3 Amongst those that were managed by the Claimant there was a commercial team comprising Chris Young (Customer Service Coordinator), Kevin Perkins (Purchasing Manager), Kim Jones (Community Services Coordinator), Nicola Pearce (Support Supervisor) and Simon Rowlands (Commercial Manager). The commercial team was perceived to be a close-knit unit that worked and socialised comfortably as a team but which did not enjoy a good working relationship with the Claimant. The relationship was indeed fraught. Over a period the Claimant attempted to introduce and did introduce a number of managerial steps and procedures and practices that were resented by members of the commercial team. The Claimant's approach to the introduction and implementation of her preferred management methods and style was at times perceived by the commercial team as being heavy handed, unwanted and it was resented.
- 2.4 Matters came to a head between the Claimant and her commercial team after she introduced a system of clocking in and out, not only in relation to the working day, but also during break periods. Those members of the commercial team that were smokers took this as directly aimed, and unfavourable treatment. The commercial team members raised formal grievances against the Claimant. The grievances are lengthy. In short the members of the commercial team raised a number of issues with the Claimant's managerial style accusing her of bullying and harassment.
- 2.5 Three main allegations emerged from the matters raised by the commercial team namely

2.5.1 It was alleged by Kevin Perkins that in August or September 2015 the Claimant had for no apparent reason and without provocation walked up to him and twisted one of his nipples causing him bruising. Chris Young and Simon Rowlands subsequently reported having seen the incident. Kim Jones and Nicola Pearce subsequently reported having been aware that something had happened whereupon they say they heard the Claimant comment she did not know why she had acted as she had whereupon they were

told by their male colleagues that the Claimant had twisted Kevin Perkins' nipple.

2.5.2 It was alleged by Kevin Perkins that in March 2016 the Claimant made a racially offensive comment about one of their customers whose first and second names the Claimant mistakenly transposed, but that when she explained this to Mr. Perkins and another colleague, Michelle Davies, she said that her mistake did not matter because the customer was a "paki" or that he was "only a fucking paki".

2.5.3 Amongst other complaints both Mr. Perkins and Mr. Young complained that the Claimant instructed them to read out loud in front of their colleagues an email that she had sent to them with a specific instruction with which they did not comply; they felt having to read the instruction out loud, or being so instructed publicly, was demeaning.

- 2.6 On 17 April 2016, the Respondent informed the Claimant that the allegations had been made (page 368) and on 20 April 2016 the Claimant commenced a period of sickness absence which only ended with the termination of her employment on 28 September 2016. In the meantime, she only returned to work for disciplinary interview and for formal hearings.
- 2.7 Mr. Bruce Knight was instructed to investigate the grievance raised by the commercial team. The Claimant was invited to prepare a response and she prepared a very detailed response to the grievance which appears at pages 182 to 296. Statements were obtained from each member of the commercial team that raised the grievance. Mr. Knight prepared a grievance investigation report dated 26 July 2016 and it appears at pages 301 to 339.
- 2.8 In his report Mr. Knight criticised several aspects of the Claimant's conduct and management style, but concluded in respect of most, by far the majority, of the allegations that her conduct whilst not always amounting to best practice nevertheless did not amount to bullying and harassment. With regard to the three most serious allegations detailed above he concluded that the allegations in respect of the nipple twisting ought to proceed to disciplinary investigation as well to proceed under the disciplinary procedure but he made no recommendation as to outcome, he discounted the allegation of the racial slur as there was insufficient evidence to substantiate it and he conceded only in respect of the email issue that being asked to read one out in public or before colleagues could be "slightly demeaning". In conclusion, he did not recommend any further action save in respect of the alleged nipple twisting. In his report Mr. Knight

specifically stated that whilst he had reached conclusions and made recommendations the eventual decision maker ought not to feel bound by either; he accepted that someone else could conclude differently.

2.9 Mr. Knight's report had to be sent to a decision maker and in this instance the decision maker was Mr. Graham Boase. There was a delay between the completion of Mr. Knight's investigation and any action being taken by Graham Boase and the Claimant complains specifically of a delay of approximately one month in the period from 29 July to 12 September 2016. The reason for the delay was the extent of the documentation for consideration and business as usual save as interrupted by holidays.

2.10 On 12 September 2016 Graham Boase met with the Claimant to discuss how best these matters should proceed. Notes of that meeting are at pages 343 to 346. Graham Boase decided that all matters should be "on the table" and should be considered under the Respondent's disciplinary procedure. In his report Mr. Knight had made it clear that he was submitting the report on the basis that the decision maker was not bound to follow his recommendations or to accept his conclusions. Graham Boase did not accept the conclusion that only the nipple twisting incident should proceed formally. He formed the view that the commercial team members who wished to pursue grievances ought to be able to do so unfettered and that the Claimant ought to be able to answer the allegations fully. He was satisfied from the extent of the grievance and the Claimant's response to it respectively that both sides in the dispute had plenty to say and were able to argue their respective positions. He was anxious not to exclude from consideration any potentially relevant matters that either side of the argument may wish to canvass and have taken into consideration. He did not wish to restrict the Claimant's right to reply to the extensive matters raised against her. This was important bearing in mind not least that subject to the outcome the claimant could be returning to work to manage the commercial team. The Claimant was disappointed; it was her belief and understanding based on Mr. Knight's conclusions that she would only face further investigation in respect of the nipple twisting incident which she vehemently denied and still denies. She had felt vindicated that her denial of the racial slur incident had satisfied Mr. Knight; she accepted that she did not handle the email reading incident particularly well, but again was content that Mr. Knight concluded that the incident did not amount to bullying and harassment of either Mr. Young or Mr. Perkins. She had not expected that everything would be back on the table under formal proceedings.

- 2.11 On 14 September 2016, the Respondent wrote to the Claimant inviting her to a disciplinary hearing (page 347) to face an allegation of bullying and harassment. The specific allegations were not put to her in the letter save by reference to the abundance of documentation already prepared and that was the subject matter of (and included) Mr. Knight's report.
- 2.12 On 21 September 2016, the Claimant attended a disciplinary hearing chaired by GB and she was represented by Meirion Hughes who had effectively been her mentor, (minutes are at pages 356 to 385).
- 2.13 Prior to the disciplinary hearing Graham Boase read all the documentation including the commercial team's grievance, the Claimant's response and Mr. Knight's report. The commercial team members had each prepared statements concerning their grievances and specifically with regard to the three significant allegations of nipple twisting, racial slur and in respect of reading out the email. Those matters were comprehensively covered by the Claimant in her response to the grievance and in Mr. Knight's report. The Claimant was given every opportunity to address each allegation raised against her and she did so. During his overall consideration Graham Boase concluded that the three significant events were those relating to the alleged nipple twist, racial slur and the email reading and he concentrated his considerations on them. He did not state this to the Claimant but she was clear that they were under primary consideration.
- 2.14 Graham Boase considered amongst the Claimant's many representations that she and others considered Mr. Perkins to be untrustworthy and that he had been accused of being a fantasist. She relied in respect of the racial slur allegation upon Mr. Knight's report and did not call a witness to at least part of the conversation in question, namely Michelle Davies. The Claimant says that Michelle Davies witnessed the entire conversation which Mr. Perkins relates and in which he says she made the racial slur about a customer. It was not clear to Mr. Boase from Mr. Knight's report that Michelle Davies was actually present throughout the entire conversation that the Claimant had with Mr. Perkins about the customer in question. On enquiry and in the light of all his reading Mr. Boase was not satisfied that Michelle Davies had witnessed the entire conversation and he believed the allegation made by Mr. Perkins. He disbelieved the Claimant's denial. His belief was based on all the evidence made available to him. He approached the matter thoroughly and conscientiously.

- 2.15 Regarding the nipple twisting incident Mr. Boase again took into account the assertion made on the Claimant's behalf that Mr. Perkin's was not trustworthy and was a fantasist. However, he felt the weight of witness evidence as to those who say they saw the event and those who heard of it in its immediate aftermath outweighed the evidence given by the Claimant; he preferred the account given by the commercial team members. He disbelieved the Claimant. He approached this allegation conscientiously and diligently and found as he did based on a careful perusal of the evidence.
- 2.16 Mr. Boase concluded that the nipple twisting incident and the racial slur incident constituted bullying and harassment and that in these incidences Mr. Perkins was the victim of harassment (albeit in respect of the racial slur it was a comment made in front of him and not about him). He accepted Mr. Perkin's perception of both incidents as creating an offensive working environment. On the basis that these matters amounted to bullying and harassment and the Respondent's policy's classify bullying and harassment as gross misconduct he then considered the appropriate sanction. In the light of his findings based on the investigative report available to him and the Claimant's submissions Mr. Boase concluded that dismissal was the appropriate sanction notwithstanding the Claimant's mitigating circumstances. He considered the Claimant's service and all that was said for, by, and on her behalf to defend the allegations in respect of the individual incidents and to mitigate in respect of them and also to mitigate against the sanction of dismissal in favour of a warning. Mr. Boase concluded that the matters were serious enough to outweigh the defence, explanations and mitigating circumstances advanced. I find that, notwithstanding the lack of reference to mitigating circumstances in his correspondence, his evidence that he took due account of all appropriate factors was given credibly, cogently, clearly and I believed it.
- 2.17 Mr. Boase gave the same consideration, that is thorough, comprehensive and diligent consideration, to the email reading incident. Notwithstanding Mr. Knight's conclusion that such an incident may only be "slightly" demeaning it was nevertheless perceived as creating an intimidating or hostile environment by both Mr. Young and Mr. Perkins and subsequently on investigation by Mr. Boase. He concluded it amounted to bullying and harassment. He concluded in accordance with the policy that this behaviour therefore amounted to gross misconduct but had he been faced with this allegation in isolation he would have imposed a sanction short of dismissal. He would not have been prepared to dismiss the Claimant for this one incident but as it amounted to gross misconduct and formed part of a bigger picture including the two more serious

allegations (nipple twisting and the racial slur) he felt it added weight to the decision to dismiss the Claimant for gross misconduct. In his view, it was not an isolated incident. He would have been swayed by the mitigating factors put forward by the Claimant had the email reading incident been an isolated allegation. The defence, explanation and mitigating circumstances advanced by the Claimant were taken into consideration.

2.18 Mr. Boase confirmed his decision to dismiss the Claimant in a letter dated 26 September 2016 which appears at pages 417 to 422.

2.19 The Claimant prepared a comprehensive detailed rebuttal of Graham Boase's letter by way of an appeal dated 10 October 2016 and that appears at pages 427 to 482. The appeal panel comprised Gary Williams, Head of Legal Services and Rebecca Maxwell, Corporate Director. Ms. Maxwell took the lead in the appeal hearing which took place on 7 November 2016. The minutes of the appeal hearing are at 483 to 509.

2.20 Ms. Maxwell and Mr. Williams read all the documentation which was extensive, including the grievance(s), the claimant's response(s) to it, the investigative report and Graham Boase's dismissal letter and the Claimant's appeal amongst other documents. I am satisfied that they read the appropriate documentation and gave it due consideration. The Claimant called to the appeal hearing Nick Bowles, Michelle Davies and Trish Davies all of whom gave supportive evidence and their evidence was considered by the appeal panel. The Claimant gave a full and detailed explanation, advanced her defence and presented mitigating circumstances. The appeal panel considered all that information.

2.21 On 14 November 2016 the panel produced its appeal outcome (pages 410 to 411 with accompanying report at pages 512 to 520). I consider that the appeal panel approached this matter fairly, conscientiously and diligently having heard evidence from Mr. Williams. Having considered all relevant factors representations and the appropriate documentation along with oral submissions and evidence the appeal panel upheld Mr. Boase's decision to dismiss the Claimant.

3. The Law

3.1 Unfair Dismissal:

3.1.1 Section 94 Employment Rights Act 1996 (ERA) states that an employee has the right not to be unfairly dismissed, while s.98 ERA sets out what is meant by

fairness in this context in general. Section 98(2) ERA lists the potentially fair reasons for an employee's dismissal, and these reasons include reasons related to the conduct of the employee (s.98(2)(b) ERA). Section 98(4) provides that once an employer has fulfilled the requirement to show that the dismissal was for a potentially fair reason the Tribunal must determine whether in all the circumstances the employer acted reasonably in treating that reason as sufficient reason for dismissal (determined in accordance with equity and the substantial merits of the case).

- 3.1.2 Case law has established that the essential terms of enquiry for the Employment Tribunal are whether, in all the circumstances, the employer carried out a reasonable investigation and, at the time of dismissal, genuinely believed on reasonable grounds that the employee was guilty of misconduct. If satisfied of the employer's fair conduct of the dismissal in those respects, the Employment Tribunal then has to decide whether the dismissal of the employee was a reasonable response to the misconduct. The Tribunal must determine whether, in all of the circumstances, the decision to dismiss fell within the band of reasonable responses of a reasonable employer; if it falls within the band the dismissal is fair but if it does not then the dismissal is unfair.
- 3.1.3 Questions of procedural fairness and reasonableness of the sanction (dismissal) are to be determined by reference to the range of reasonable responses test also (**Sainsbury's Supermarkets Ltd v Hitt [2002] EWCA Civ 1588** and **Iceland Frozen Foods Ltd v Jones [1983] ICR 17**).
- 3.1.4 The Tribunal must not substitute its judgment for that of the employer, finding in effect what it would have done, what its preferred sanction would have been if it, the Tribunal, had been the employer; that is not a consideration. The test is one of objectively assessed reasonableness. In **Secretary of State for Justice v Lown [2016] IRLR 22** , amongst many others, it was emphasised how a tribunal can err in law by adopting a "substitution mindset"; the point was made in **Lown** that the band of reasonable responses is not limited to that which a reasonable employer might have

done. The question was whether what this employer did fell within the range of reasonable responses. Tribunals must assess the band of reasonable responses open to an employer, and decide whether a respondent's actions fell inside or outside that band, but they must not attempt to lay down what they consider to be the only permissible standard of a reasonable employer.

3.1.5 Under the **Polkey** principle it may be appropriate to reduce an award by applying a percentage reduction to the Compensatory Award to reflect the risk facing a claimant of being fairly dismissed or to limit the period of any award of losses to reflect this risk, estimating how long a claimant would have been employed had he not been unfairly dismissed, in circumstances where the respondent would or might have dismissed the claimant. I must consider all relevant evidence, and in assessing compensation I appreciate that there is bound to be a degree of uncertainty and speculation and should not be put off the exercise because of its speculative nature.

3.1.6 Where a Tribunal finds that a complainant's conduct before dismissal was such that it would be just and equitable to reduce a Basic Award it may do so (s.122 ERA). Where a Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce any compensatory award by such amount as it considers just and equitable having regard to that finding (s.123 ERA). In doing so a Tribunal must address four questions (**Steen v ASP Packaging Ltd [2014] ICR 56 EAT**):

3.1.6.1 What was the conduct giving rise to the possible reduction?

3.1.6.2 Was that conduct blameworthy?

3.1.6.3 Did the blameworthy conduct cause or contribute to the dismissal?

3.1.6.4 To what extent should the award be reduced?

3.1.7 When a claimant argues that a respondent's disciplinary decisions were inconsistent and that this

gives rise to unfairness, it is important that the dismissing and/or appeals officers who are accused of being inconsistent are actually aware of the comparator cases. It is also essential that the comparators relied upon are in comparable situations to the claimant. Because of the need for respective facts to be truly comparable, arguments of inconsistency are difficult to maintain. That said, inconsistency of treatment in truly comparable situations may give rise to a finding of unreasonableness and unfairness on the part of the respondent, such as to render the decision to dismiss unfair.

3.2 Breach of contract: The considerations in respect of breach of contract are different to those in respect of the statutory protection against unfair dismissal. The issues relate to breaches of contract and not reasonableness of actions. The Tribunal must decide whether a Respondent employer was contractually entitled to terminate the contract of employment without notice. The Respondent is entitled to do so in respect of employees who commit acts of gross misconduct. It is not sufficient for the Respondent to prove a suspicion of gross misconduct or that it held a reasonable belief of such. If the Claimant committed an act or acts of gross misconduct the Respondent can dismiss or it could dismiss without notice, otherwise notice of termination would be contractually due to the Claimant. Gross misconduct must be proved. Entitlement to dismiss without notice must be established or put another way the Tribunal must consider whether misconduct has been proven.

4 Application of Law to Facts

4.1 Unfair dismissal

4.1.1 The Respondent conducted a thorough and conscientious investigation into the events relating to the disciplinary allegations facing the Claimant. The investigation is well documented and included not only the formal investigation carried out by Bruce Knight (BK) but also the enquiries made by Graham Boase (GB) subsequently. Appropriate witnesses were interviewed. Appropriate documents were obtained and considered. The situation generally, and events themselves, were scrutinized. BK and GB did not come to the same conclusions as to the

significance of what was said and done but that is a matter of judgment and does not reflect badly on the investigative process itself. BK admitted of the possibility that in presenting his factual conclusions GB might well reach different conclusions as to the significance of the words spoken and acts performed. The investigation was reasonable and provided the material on which GB could reasonably have concluded as BK did or as GB did; neither person's conclusion was perverse in the light of the information gathered. The Claimant was kept informed. She received copies of relevant documents and statements; she had and took the opportunity to respond. By virtue of the investigation of BK and C's preparatory submissions GB had ample, clear evidence on which to base his judgment as to whether the Claimant committed an act or acts of gross misconduct and as to sanction particularly when he raised further queries during the course of the disciplinary process. I could not find any unfairness in the investigatory stage.

- 4.1.2 GB approached this matter in good faith and conscientiously. He prepared by reading all available relevant material and there was a lot of it. GB raised appropriate and relevant questions of witnesses. He was familiar with the Respondent's procedures and understood his task. The Claimant presented a comprehensive and robust rebuttal of the allegations facing her and a considerable amount of information in mitigation. GB took everything relevant into account in reaching his decision. He had to form a judgment where allegations were emphatically made against the Claimant which she, as emphatically, denied. His task was difficult. GB had to weigh competing versions of events in the context of a dysfunctional department where the Claimant had, for any number of reasons valid or otherwise lost the confidence of her commercial team. I am satisfied that he carried out a reasonable assessment of the evidence and mitigating circumstances presented to him and he acted in good faith in doing his conscientious best. There is no evidence that GB had any ulterior or undeclared motivation or that he took account of irrelevant or undisclosed evidence. I did not find any unfairness in GB's approach or decision making but

rather that he had a reasonable and genuine belief in the Claimant's guilt in misconduct based on a reasonable investigation described above.

- 4.1.3 Having found as he did based on all relevant facts and circumstances GB gave due consideration to the appropriate sanction to impose. He considered the Respondent's policies and procedures, the investigatory information, and all of the circumstances put before him by the Claimant including her mitigating circumstances. Because of the seriousness of the allegations which pointed to a breakdown of the Claimant's managerial relationship with her direct reports dismissal must have fallen in the range of reasonable responses of a reasonable employer. Not all employers would dismiss in the given circumstances and some may have leaned towards BK's views (subject to reaching a conclusion on the alleged nipple twisting). Others could reasonably conclude that the situation was so bad that dismissal was appropriate. Dismissal was not outside the range of reasonable responses of a reasonable employer.
- 4.1.4 The Claimant complains of delay and specifically a delay of about one month during the process. The timescale from the Claimant being informed of the allegations to dismissal was dictated in part by the welter of information to be gathered and considered, business demands, the Claimant's ill health and GB's absence on holiday, and due to work commitments of various people concerned in the proceedings. Whilst delays are not ideal they are often inevitable. More importantly here whilst delay was of concern to the Claimant and may have hindered her recovery and or exacerbated her symptoms (but I am not qualified to conclude that) any delay encountered was not deliberate, mischievous, or capricious; it was genuine and did not prejudice the Claimant in respect of the investigation the hearing process or GB's decision making. The delay such as it was did not render the dismissal unfair.
- 4.1.5 The Claimant had believed that she was to be faced with disciplinary proceedings only in respect of the alleged nipple twisting. She was disappointed when she was told that GB would put "everything on the

table". This was a decision open to him; he made it in good faith for the mutual benefit of both the Claimant and the complainants believing that all matters had to be aired and resolved. It was abundantly clear that there were three substantive allegations. Significantly the Claimant was told in advance of the disciplinary hearing that all was on the table, and so she was fully aware of the three substantive allegations and the evidence in respect thereof. As the disciplinary hearing progressed she appreciated that GB was concentrating on the three substantive allegations. Of most significance is that the Claimant prepared fully a robust, comprehensive, and thorough defence to all the allegations particularly the three substantive ones. She was not in doubt by the time of the disciplinary hearing as to what she was facing, what she could and needed to say, and what potential outcomes faced her. I fully understand her disappointment at the widening of the issues by GB over and above BK's report and that she was not specifically told that GB then discounted from consideration (but not from potential relevance) all bar the three substantive issues from his substantive consideration. The Claimant wanted a more focused consideration by the Respondent. The fact remains that the Claimant knew that she faced those three main allegations and prepared a defence in respect of them. She was also prepared to address all contextual allegations either as context or as substantive matters that needed to be considered. The Claimant's preparation was complete, appropriate and thorough. This process did not create an unfairness for her although clearly it inconvenienced her.

4.2 Wrongful dismissal: The Respondent did not lead any evidence as to whether the Claimant actually committed the three substantive offences. I heard abundant evidence as to what information was put before GB and as to his thought processes and rationale for his ultimate decision. I did not have the benefit of considering the credibility and reliability of those who complained against the Claimant. The Claimant on the other hand gave a thorough, robust, forthright denial with evidence exculpating herself. She gave this evidence in a calm, clear, consistent, cogent and credible way. At least some of her evidence appeared to be supported by documents specifically the witness testimony of those who spoke for her during the disciplinary process. I appreciate that they

contradict the statements made by the complainants against her and I did not have the benefit of hearing either set of witnesses. That said the documentation gave some support to the Claimant. Most of all however I was convinced by her evidence or rather I was not convinced that the Claimant had committed the acts of which she was accused. In those circumstances, the Claimant has established that she was not given notice of dismissal and the Respondent has not established that it was entitled to summarily dismiss the Claimant because of her gross misconduct. As previously explained that is a different set of considerations to whether or not GB had a reasonable and genuine belief at the time he came to make his decision that the Claimant was guilty. I understand his reasoning and feel it was fair and reasonable. I remain however to be convinced that the Claimant was in fact guilty of the charges which she faced of the three substantive charges which she faced apart from requiring two of her line reports to read out emails publicly. She admitted that allegation. GB did not consider that was the most serious of the allegations and would not have dismissed for it alone. He put it in the context of the other two allegations and felt that there was a pattern of behaviour. The Respondent has failed to establish that this was the case to my satisfaction. I can see that the Claimant required two of her reports to read emails and that they found that demeaning. In all the circumstances, I do not consider that amounts to a repudiatory breach of contract by way of gross misconduct or conduct such as to trigger the employer's right to withhold notice. The Claimant was entitled to notice of termination of employment. The Respondent has breached the contract of employment in that regard. The Claimant's claim of wrongful dismissal succeeds.

Employment Judge T. Vincent Ryan
Dated: 28th October 2017

JUDGMENT SENT TO THE PARTIES ON

6 November 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS