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EMPLOYMENT TRIBUNALS

Claimant: Mr H Karim

Respondent: KPMG UK Ltd

Heard at: East London Hearing Centre

On: 12-14 September 2018

Before: Employment Judge Russell

Representation
Claimant: Mr J Dillon (Counsel)
Respondent: Mr K Wilson (Counsel)

JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

- (1) The claim of race discrimination is dismissed upon withdrawal.
- (2) The claim of unfair dismissal fails and is dismissed.
- (3) The Claimant's application for leave to amend to include a claim of wrongful dismissal is refused.

REASONS

1 By a claim form presented to the Employment Tribunal on 19 October 2017, the Claimant brought claims of unfair dismissal and race discrimination. The Respondent resisted the complaints, all of which arise out of the circumstances leading to the Claimant's summary dismissal following allegations of gross misconduct in connection with the submission of expenses. The Claimant vigorously denies the allegations.

2 At a Preliminary Hearing on 5 February 2018, at which the Claimant was represented by Counsel, Employment Judge Jones granted leave to amend to include a further allegation of race discrimination. There was no application to amend to include any wrongful dismissal claim. On the first day of this hearing, Mr Dillon confirmed that the Claimant withdrew his complaint of race discrimination. With the

agreement of the parties, the lay members were dismissed. Mr Dillon then made an application to amend to include a claim of wrongful dismissal. The Respondent opposed the application.

3 Having heard submissions by both and applying the guidance in **Selkent**, I refused the application. I gave full oral reasons but, in summary, concluded that the amendment sought to introduce a new cause of action arising out of materially the same facts. The legal and factual complexity of the case would be increased as a claim for wrongful dismissal requires the Tribunal to decide whether or not there was a repudiatory breach by the employee whereas a claim for unfair dismissal does not. To admit the application would cause undue prejudice to the Respondent by way of additional cost and expense. It was an application made late in the proceedings, the Respondent was not prepared to deal with it and a postponement of the hearing would be required. By contrast, the Claimant was represented by solicitors when he submitted his claim and by Counsel at the earlier Preliminary Hearing. There was no good explanation for the delay in making the application to amend (submitted in writing on 31 July 2018) and where the Claimant had an extant claim for unfair dismissal.

4 I heard evidence from the Claimant on his own behalf and from Mr Michael Israel, a former colleague who attended under Witness Order. For the Respondent, I heard from Mr Claire Morcher, the investigating officer; Mr David Skinner, the dismissing officer and Mr Philip Tippin, the appeal officer. I was provided with a witness statement signed by Ms Hulimar Miah, internal financial investigations manager. Ms Miah did not attend the Tribunal as she had recently moved to Canada on a six month career break for family reasons.

5 I was also provided with an agreed summary of the evidence of Mr Sannan Pervaiz, Mr Hossam Hashim and Ms Helen Davies who would have attended under a Witness Order if required. A Witness Order sent to Mr Mike Scanlan on 5 September 2018 was discharged. Mr Scanlan did not attend to give evidence but I was satisfied that the Order had been served on an address in Manchester given by the Claimant when in fact Mr Scanlan is working in Liverpool. For those reasons I was satisfied that the Order had not come to his attention. As an alternative to attendance, on the second day of the hearing I made an Order that he provide written answers to the points raised by the Claimant. The hearing concluded the following day without any response being received. Having regard to the very short notice of the request to Mr Scanlan, I do not consider any further action against him to be required.

6 I was provided with an agreed bundle of documents and I read those pages to which I was taken during the course of evidence. I was also provided with some further analysis documentation by the Claimant which I took into account in reaching my conclusions.

7 The issues in this case were agreed at the outset as follows.

7.1 Did the Respondent have a genuine belief that the Claimant had committed an act of misconduct? The Claimant disputes this and says that he was dismissed for reasons of internal politics, namely a desire to remove him a client project.

- 7.2 Did the Respondent hold any such belief reasonably following a reasonable investigation? The Claimant says that the Respondent failed to interview the required witnesses, failed properly to investigate the logistics of the project and that there were multiple inaccuracies in the notes of various hearings which were then used against him. As the hearing progressed, the Claimant also complained that relevant disciplinary information had been provided to him at short notice and that the Respondent did not investigate computer records.
- 7.3 Was dismissal fair in all the circumstances of the case? The Claimant says that the sanction was unduly harsh, that the Respondent failed properly to take into account and/or the procedure was unfair. In particular the Claimant relied upon: (i) the effect of his health at the time of the alleged misconduct and during the disciplinary process; (ii) his high achieving performance on the relevant project; (iii) grey areas in the expenses policy; (iv) the difficulty caused by being required to provide receipts which had already been submitted and lost by the Respondent; (v) the Respondent's failure to raise any concern with him closer in time to the expense claim forms and (vi) the limited nature of the appeal.

Findings of Fact

8 The Respondent is a multinational professional services company providing services in audit, tax and advisory work to both public and private sector clients. It has offices throughout the country including Canada Square in Canary Wharf, London.

9 The Respondent operates an expenses policy which is made available to all employees. Annually, all staff and partners are required to confirm that they have read, understood and will adhere to the details within the policy. The policy is lengthy running to some 25 pages and has sections giving specific guidance on particular categories of expense such as accommodation, entertaining, food and drink etc and some general advice and assistance on the administrative process of claiming for reimbursement. It is made clear in the introduction that:

"It is the responsibility of all Partners and staff to familiarise themselves with this policy. The firm will not consider a lack of understanding as a valid reason for inappropriate or incorrect claims.

...

You must adhere to this policy and behave with honesty and integrity when making business expense claims or business purchases on behalf of KPMG. When considering any disciplinary action, KPMG will assess to what extent an individual has followed both the rules and spirit of the policy."

10 Under the heading "Fundamental Principles" the Respondent expresses the great trust placed in employees when incurring expenses and emphasises that honesty and integrity are at the heart of the business and their reputation, particularly in financial matters. The policy makes clear that breach of the policy is very serious and potentially a disciplinary offence which could lead to a written warning or dismissal. It is fundamental that employees do not claim expenses for costs which are not directly related to the performance of work responsibilities; there should be no double recovery; best value for money should be obtained wherever possible and the employee is

personally responsible for ensuring that all expense claims are properly processed within the terms and spirit of this policy. Records of expense claims must be accurate, up-to-date and supported by appropriate documentary evidence, with a valid VAT receipt obtained where available.

11 The policy expressly provides that the cost of entertaining KPMG UK staff can only be reclaimed where there is an agreed budget and there are limits to the amounts which can be claimed. For example, a maximum of £15 for an evening meal which can be reclaimed if the employee has worked at a client location or base office later than 9pm but not for working at home. The cost of a taxi journey will only be reimbursed where it is the most cost effective form of transport and in an officially licensed taxi.

12 Employees are provided with a corporate Amex card. That card must not be used for personal expenditure other than in limited exceptions which do not arise in this case. The section dealing with expense claim administration provides that expenses must be claimed in a timely manner, where possible within the same month as being incurred, and if older than 12 months prior approval is required. This section also provides that:

“If you submit a claim online but do not forward the claim and corresponding itemised receipts to the Expenses team in UK Finance you will not be reimbursed for any out of pocket expenses until the claim is received. Please note individuals who do not submit the claim and corresponding itemised receipts may be subject to KPMG’s disciplinary procedures.

Out of pocket expenses are only permissible in circumstances where the KPMG Amex card is not accepted as a method of payment. ...

It is recommended that you retain copies of all your itemised receipts and where possible attach these to the corresponding claim in SAP. If a claim is “lost in transit” and you have not retained copy receipts, you should print a copy of the claim from SAP and obtain approval from your People Leader. Claims will not be processed and paid without this approval.

You are required to retain and submit all itemised receipts to support all expense claims, it is not sufficient to submit the Amex slip or Amex statement.”

13 The Claimant holds a degree in Accounting and Computer Information and has 13 years of experience in professional services. He joined the Respondent in June 2014 to work on a range of projects. It was his first job in the United Kingdom. Prior to May 2016, he benefitted from secretarial support and his secretary would help him amongst other things to complete and submit his expense claims. Over the course of his employment he would familiarise himself with the parts of the policy as required, for example initially with airfares and latterly with travel and other related categories. From the commencement of employment, the Claimant signed the annual confirmation that he had read, understood and would comply with the expenses policy.

14 In May 2016 the Claimant was asked to lead a project for a public sector client with sites throughout the UK. This was an important project to the Respondent and an opportunity for the Claimant to develop his career. His work on the project required him to meet the client at its various sites nationally and to meet potential vendors of

software for the client's new information management system. The clients' offices were, amongst other places, in Westminster, Leeds, Warrington and Crewe and the Claimant. Whilst the Claimant was not the sole KPMG employee working on this project, I accept that he was the principal employee assigned to its early stages. In June and July 2016, he was assisted by Mr Richard Oldroyd. To a lesser extent between June and September 2016, the Claimant was assisted by Mr Pervaiz and Mr Hashim. In August and October 2016, he was assisted by Mr Michael Israel. The Claimant frequently travelled in London and to national offices during this time, sometimes accompanied by colleagues and sometimes not.

15 To submit an expense claim online, employees would access a SAP system with a form to be completed with a mixture of options selected from drop-down menus and fields into which data can be entered. The form included the summary of the claim period and total amounts with a section headed "Receipts" in which a detailed breakdown of the date, type of expenditure, amounts, type of payment and cost centre to which it was assigned would be entered by the employee. There was a further section in which the employee could add comments about a particular receipt. So whilst the type of expense was chosen from options on a drop-down menu (say taxis) the comments box permitted further data to be entered (say the start and end points of that taxi journey). The form expressly required that it be signed by the claimant with all receipts attached before setting out the following statements to be attested to:

"I also confirm that these expenses have been wholly, exclusively and necessarily incurred in the course of authorised KPMG business duties, that the expenditure is reimbursable under the current KPMG Expenses policy and has not been previously claimed.

As an employee I acknowledge that I am required to submit my expenses accurately, in accordance with the firm's expenses policy and in a timely manner. I understand that KPMG reserves the right to review and audit any submitted expense claims. Any claimed items outside of the Expenses policy may result in disciplinary action and/or repayment (which the firm may deduct from salary/bonus/profit share at its discretion)."

16 Receipts can be uploaded to the system and attached to the online claim form. Alternatively, the form can be submitted online, printed and both form and receipts submitted in hard copy to the expenses team in Watford. It is not in dispute that the hard copy claim form would be put in a brown envelope with a specific bar code. The Respondent's case is that receipts would be submitted in the same envelope; the Claimant's case is that receipts were submitted separately.

17 Whilst working on the project, the Claimant made a number of claims for expenses paid on his Amex card and for which the transaction is automatically registered electronically on the Respondent's expense system. The Claimant also submitted the following relevant claims for out of pocket expenses:

17.1 25 July 2016: a claim for £100.21 for meals, sundry items, taxis and public transport during the period 1 June 2016 to 17 July 2016. Receipts were attached. The form is not signed.

17.2 25 July 2016: a claim for £149.70 for meals and taxis during the period 1 July 2016 to 18 July 2016. The Claimant selected the "no receipt" option in the drop-down menu. In the comments section, he identified five

taxi journeys on 5, 6 and 7 July 2016, seven lunches at the client's Leeds office on 4, 5, 6, 7, 11, 12 and 14 July 2016 and a dinner in Leeds on 13 July 2016. The form is signed by the Claimant.

- 17.3 15 August 2016: a claim for £507.15 for meals and taxis during the period 15 July 2016 to 12 August 2016. The Claimant selected the "other" receipt option in the drop down menu. In the comments section, the Claimant gave a date of 29 July 2016 for "taxi costs in Leeds" and 10 August 2016 for "dinner with [client name] and KPMG colleagues in Crewe." The form is signed by the Claimant.
- 17.4 23 August 2016: a claim for £707.55 for meals and taxis during the period 15 August to 19 August 2016. The receipt option is selected as "other". The comments section refers generally to taxis costs to the client offices and "dinner with [client name] colleagues in Leeds." Although three specific dates are given, the amounts are agreed to refer to 'bulk' claims (in other words a number of separate trips). The form is signed by the Claimant.
- 17.5 5 September 2016: a claim for £968.97 for meals and taxis during the period 1 August 2016 to 31 August 2016. The receipt option is selected as "other". The comments section has two entries for various taxi trips to and from client offices, one entry for "Dinner with KPMG colleagues" and one entry for "Dinner with [client name] colleagues in Birchwood". The form is signed by the Claimant.
- 17.6 14 September 2016: a claim for £1,377.35 for meals, taxis and public transport during the period 1 September to 12 September 2016. The receipt option is selected as "other". The comments section refers to various taxi journeys, a client workshop in Leeds and (for meals) "Dinner with [client name] and KPMG colleagues in Crewe." The form is signed by the Claimant.
- 17.7 20 September 2016: a claim for £334.17 for meals and taxis during the period 12 September to 19 September 2016. The receipt option is selected as "other". The comments section refers to various taxi fares to and from client offices and "dinner with KPMG and [client name] colleagues in Crewe." The form is signed by the Claimant.
- 17.8 15 November 2016: a claim for £972.21 for meals, taxis and public transport during the period 5 September to 21 October 2016. The receipt option is selected as "other". The comments section refers to taxi fares to and from client offices in Leeds and "dinner with KPMG colleagues in Leeds". The form is signed by the Claimant.
- 17.9 29 November 2016: a claim for £408.83 for meals and taxis during the period 1 July to 29 November 2016. The receipt option is selected as "other". The comments section refers to various trips from the station to client offices and dinner while staying in Leeds. The form is signed by the Claimant.

17.10 5 December 2016: a claim for £1,052.34 for hotel, meals, taxis and public transport during the period 30 September to 30 September 2016 (sic). The receipt option is selected as "other". The comments section refers to various taxi trips from the station to the client offices and "dinner with KMPG colleagues in Leeds." The form is signed by the Claimant.

18 In October 2016, the Claimant was removed from this particular client project following a meeting with Mr Krishnan. The Claimant says that this was internal politics as Mr Krishnan wanted his own Cyber Security team to be more involved and that, when challenged, Mr Krishnan reacted negatively towards him. The Respondent says that it was because the client was unhappy with the Claimant's performance. The Claimant was absent from work by reason of sickness from 1 November 2016 until 25 November 2016. Three out of pocket expense claim forms were submitted by the Claimant after he had been removed from the project, two of which during his period of sickness absence.

19 The Respondent operates a number of systems to monitor compliance with the expense policy. It does not check each expense claim but audits between 5 and 6% of expense claims at random. It checks Amex debt management reports for significant outstanding balances and a report which highlights suspicious expense activities such as expenses claimed on a weekend, sickness or leave days, high levels of out of pocket expense claims or unusual vendors. The Claimant suggested that this system was in breach of HMRC requirements. I disagree and prefer Ms Morcher's evidence that the sheer volume of expense claims from some 15,000 employees renders it impracticable to check each one, hence the reliance on random spot checks. In practice, the Respondent would pay expenses upon receipt of the claim form and even without receipts but with the right to recover the expenses if it subsequently transpired in an audit that they had been improperly incurred or evidence. This is consistent with the degree of trust placed upon employees as expressed in the expenses policy and I find is consistent with HMRC requirements.

20 On 18 November 2016 the Claimant was asked to provide all original receipts to finalise an audit of one of his claims. In correspondence with the audit team during December 2016, the Claimant said that he had sent the receipts, asked the Respondent to check whether they had been received and said he would check his own records. The expenses team confirmed that no receipts were provided in the submission envelope at the time that hard copies were sent by the Claimant nor were they uploaded electronically with the online filing.

21 At or about the same time, the Claimant came to the attention of the financial investigation team due to a significantly overdue debt on his Amex card and a report which identified a high level of personal spend on the business Amex card. An internal financial investigation was carried out by Ms Hulimar Miah which carried out an initial three-month review of the Claimant's expenses and was satisfied that there were significant apparent irregularities requiring full investigation.

22 The Claimant was asked to attend an interview to explain discrepancies in his expense submissions. He was asked to bring his work diary and calendar including dates of client attendances for the period from January 2016 to 22 March 2017. The

invitation letter attached a list of the unreceipted expenses and repeated the request that the Claimant provide receipts.

23 The interview took place on 22 March 2017 at 11am. The Claimant disputes the accuracy of notes taken by Ms Miah. Ms Miah confirms in her statement that the notes are accurate. For reasons set out below when dealing with evidence relating to the accuracy of the notes of the disciplinary investigation meeting, I found the Claimant to be an unreliable witness who challenged the accuracy of any answers given by him at the time but which now contradict his explanations to the Tribunal. On balance I preferred the evidence of Ms Miah and find that the notes were accurate.

24 The Claimant told Ms Miah that he spent 70% of his working time at client sites; that he would only work after 9pm if at Canada Square and never at the client site and did not identify any late meetings with vendors. He described working in Leeds for approximately three days per week with visits to Crewe, Birchwood and Warrington approximately twice a month. The Claimant accepted that the dates in his timesheets may be inaccurate. The Claimant confirmed that he had read the expenses policy early the previous year, was no longer able to rely on his secretary and so submitted expense claims on the rare occasions he was in the office. He claimed that he would send a hard copy of the claim form in the prescribed bar-coded brown envelope but would send his receipts in a separate white envelope put in a white post bin for sending to the expenses team. Ms Miah was unaware of a process where employees sent the expenses claim form and supporting receipts separately.

25 In the meeting, Ms Miah and the Claimant considered in detail each of the expenses claimed which were set out in 119 separate lines in a spreadsheet prepared by Ms Miah. The Claimant accepted that two transactions claimed as taxis (lines 78 and 79) were in fact purchases on his corporate Amex card in a toy shop. The Claimant also accepted that he had claimed on his Amex card for a stay at the London Marriot west for a personal stay caused by a flood at his flat (line 45). Despite having told Ms Miah initially that he had never entertained client or KPMG staff, when considering the expense items the Claimant told Ms Miah that some of the meals were for two employees of the client who had travelled down to London and named the same two people in connection with dinners claimed in Crewe and Leeds. The Claimant accepted that he could not claim for dinners when working at home on weekends. Other than those items which the Claimant accepted were mistakenly claimed, the Claimant asked for time to check dates and revert.

26 On 27 March 2017, the Claimant sent in his responses to the expenses identified in the spreadsheet. He split these into four broad categories: rail, hotel, meals and taxis. Generally, the Claimant was able to provide a response where payment had been made using his Amex cards. There were few, if any, detailed answers for the out of pocket expenses claimed. More than once the Claimant referred to not having the receipt anymore, stating it had probably been misplaced. In respect of the claims for meals, the Claimant claimed that there had been a team dinner with KPMG colleagues only, he did not recall exactly who had attended but provided a list of six people whom he was happy for Ms Miah. The employees named were Messrs Hashim, Pervaiz, Davies, Chaplin, Singh and Oldroyd. The claims for expenses incurred on days which he had not worked were a mistake caused by him incorrectly recording his sickness days. As for the Uber taxis, the Claimant said that he could not

provide further details as his Uber account was linked to a previous mobile telephone number and he did not know how to obtain the receipt. Overall, the Claimant was unable to provide much further information to support his expense claims.

27 Ms Miah included the Claimant's explanations at interview and in his email response in separate columns on the spreadsheet which she had produced. This was referred to extensively during the course of this Tribunal hearing.

28 In her report dated 4 May 2017, Ms Miah set out the background to the investigation, its scope and the financial anomalies identified. She gave some specific examples; for example, at line 90, an out of pocket claim for £420 for a four night stay at the Leeds Hilton from Friday 30 September 2016 and for which the hotel said it had no record of the Claimant staying. Over 93% of meal claims were unreceipted. Ms Miah highlighted the Claimant's changing evidence about whether they were with the client or KPMG colleagues: at interview he had identified by name employees of the client but in his written response had said it was KPMG colleagues only. Other anomalies include by Ms Miah in her report were expense claims for meals to the value of £341.89 which were said to be on dates which were either a weekend or when the Claimant was on sick leave and apparent double recovery of certain items. Ms Miah reported that the Claimant had been evasive and hostile in a further conversation on 28 March 2017 and had failed to provide receipts from sources such as his Uber account or directly from the hotels.

29 The contents of Ms Miah's report disclosed a potential disciplinary matter which Ms Claire Morcher was appointed to investigate. Ms Miah contacted the expenses department who confirmed that they had received the hard copies of the Claimant's expense claim forms but no receipts in support. The Claimant's name was also included on a 'resignation list'. I accept Ms Morcher's evidence that this list exists so that if the employee under financial investigation subsequently resigns during a disciplinary process, the finance team are informed and can pursue repayment even though employment has terminated. The Claimant's name on the list was not evidence of a predetermined decision to dismiss him.

30 By letter dated 30 May 2017, the Claimant was invited to an investigation meeting on either 2 or 5 June 2017. In her letter dated 1 June 2017, Ms Morcher confirmed that the meeting would take place the next day and detailed the allegation as repeated breach of the expenses policy and gave examples including claiming expenses for non-working days, claiming double recovery of expenses, claiming illegitimate expenses, claiming a retail purchase as a taxi expense and claiming expenses for taxis where not the cheapest or most appropriate means of transport. The Claimant was provided with a copy of the disciplinary policy. This policy does not apply to cases relating to genuine sickness absence, performance or redundancy. The disciplinary policy defines gross misconduct as conduct so serious that it affects the working relationship and trust between employee and KPMG. The non-exhaustive list of examples includes theft, fraud or any form of financial crime including expense and timesheet irregularities or any breach of KPMG's anti-financial crime policy. The Claimant was not provided with a copy of Ms Miah's report.

31 Despite the allegation being one of potential gross misconduct, the Claimant was not suspended and retained full access to his work diary, emails and other

business-related information. Further, in her letter of 1 June 2017, Ms Morcher asked the Claimant to confirm if there was anybody whom he felt she should interview. The Claimant provided no names in response.

32 The investigation meeting took place on 2 June 2017. The Claimant did not complain that it had been convened at short notice nor that he had had inadequate information in advance. Notes of the disciplinary hearing were taken and, with some amendments, were contemporaneously confirmed by the Claimant as accurate. In this Tribunal hearing, the Claimant asserted for the first time that there are material inaccuracies in the notes and suggested that this may be because Ms Morcher could not hear him properly by reason of the hearing difficulty which she disclosed to the Tribunal when asking those questioning her to keep their voice audible and not cover their mouth. I accepted Mr Wilson's submission that this was an opportunistic attempt by the Claimant to avoid comments recorded in the notes which are inconsistent with his evidence to this Tribunal. This seriously undermined his credibility in respect of the contents of this meeting and the investigation meeting with Ms Miah (see above). I find that the notes of the investigation meeting are an accurate record of what was said.

33 Again, the Claimant explained that his work on the project often required him to be out of the office and that he was required to do a lot of travelling as there were not enough people on the project. The Claimant accepted that he had made a number of mistakes, for example failing to provide paper receipts on his Amex claims, not submitting receipts for months after the expense was incurred and that he was not recording his time accurately (he would note the overall hours worked but not necessarily for the right day). He attributed his errors to not having read the expenses policy in detail, previously relying upon his secretary and the stress of dealing with the client work. The Claimant said that the client would be able to verify that he was always on-hand to help them and was on the phone to them frequently. He confirmed that Mr Oldroyd and Mr Singh were the colleagues with whom he worked "day-in day-out" on the project with others joining and leaving at various times. The Claimant maintained that he had submitted receipts for his out of pocket expense claims in a separate white envelope, although he accepted that the expenses team said that they had not received them. The Claimant said that he had chosen to submit claims in bulk, not realising that each item had to be particularised, and that he was not aware that he could copy and attach receipts online.

34 Ms Morcher asked the Claimant if he wanted to provide any additional information regarding his personal circumstances. The Claimant described his disappointment at being removed from the project and his difficulties with Mr Krishnan; he did not suggest that he had been on medication which had affected his ability to concentrate or complete expense forms.

35 The Claimant was asked about the different categories of expenses queried. For entertaining the client, the Claimant again identified by name two employees of the client with whom he would go out for food after workshops and that this was "very rare and only occasional ... at times Sannan Pervaiz (SP) would be with him at these dinners", "that some months these dinners might happen a few times and other months there would not be any" and "this had happened fewer than 10 times". He knew that he had to work after 9pm to claim dinner expenses but claimed not to know that he had to be in the office to make the claim. The Claimant could not explain the four night Hilton stay over a weekend

and for which the hotel had no record of him being there. The Claimant said that he generally used his Amex card and tried to minimise out of pocket expenses.

36 In this Tribunal hearing, the Claimant maintained that he had referred to dinner only with Mr Pervaiz and not with clients. Ms Morcher disagreed and relied upon the notes as evidence that the Claimant said that he had attended dinner with the clients at which Mr Pervaiz would be present. I preferred the evidence of Ms Morcher whom I found to be a credible and reliable witness. The Claimant signed as accurate a copy of the notes shortly after the meeting and the natural reading of the note is that 'these dinners' was a reference to the dinners the Claimant said he occasionally attended with the two named employees of the client. The Claimant's interpretation of the passage in the notes is not credible and I find is designed to avoid evidence which is inconsistent with his case as now advanced.

37 In respect of the claims for taxis, the Claimant said that he could not access his Uber account to provide receipts as it was linked to an old email and both the Uber account and his bank account had been compromised. The Claimant accepted that he had made an error claiming for Uber journeys made at the weekend and for some items where he had claimed the expense twice. Ms Morcher noted the high value of the taxi claims, including a claim for £1,157.20 in a period of seven working days (17 to 25 August 2016). The Claimant accepted that the figures did not sound right and suggested that it was because they were bulk claims covering journeys over many different dates. I accepted as truthful Ms Morcher's evidence that she was concerned by the Claimant's failure to provide any additional evidence, including relatively easily accessible items such as records from his Uber account, and the inexplicable variance in amounts claimed for what were said to be the same journey from Leeds station to the client office.

38 Following the meeting with the Claimant, Ms Morcher interviewed Mr Thompson and Mr Krishnan as quality lead and engagement lead respectively on the client project. Mr Thompson was not aware of excessive client demands or late working but accepted that the Claimant had been used highly on the project; it was a 10 minute taxi ride from Leeds station to the client office. Mr Krishnan asserted that the Claimant had been removed from due to poor performance. He said that the key client stakeholder had confirmed to him that the Claimant had not taken any of its staff out for dinner on any occasion. The client was demanding but as it was in the public sector, long working days were not required. THE project required travel to Leeds with occasional visits to Crewe or Warrington. Ms Morcher also interviewed Mr Oldroyd. He said that all of his working time in the period 6 June 2016 to 1 August 2016 was on the project, during which time he had only travelled to Leeds once although he did not know how much the Claimant was travelling to Leeds. Mr Oldroyd went through his diary to given dates of workshops he was aware had taken place. He had never been for dinner in the evening with the Claimant whilst working on the project. He did not consider the project to have been under-resourced.

39 I accepted as truthful Ms Morcher's evidence that due to the sensitive and confidential nature of the allegation, she decided that the involvement of junior grade employees should be kept to a minimum; as Mr Oldroyd was identified as the colleague with whom the Claimant had worked most closely, he was the appropriate person to interview. After the investigation meeting, Ms Morcher asked the Claimant

to provide certain items of specific information, in particular calendar invites, evidence as to his compromised bank account, further explanation of the Friday night hotel stay and contact with Uber.

40 Ms Morcher produced a summary of her investigation detailing the evidence she had considered and her conclusions. The summary addressed the different expense claims in detail and set out the Claimant's evidence under each of the allegations identified. The matter was referred to a disciplinary hearing.

41 By letter of 10 July 2017, the Claimant was informed that he must attend a disciplinary hearing on 14 July 2017, given details of the allegations (the same as in the investigation letter) and provided with copies of the documents to be discussed at the hearing. The Claimant's was advised of his right to be accompanied and that if the allegations of gross misconduct were established he was liable to potential dismissal.

42 The disciplinary hearing was chaired by Mr Skinner on 14 July 2017 and lasted 54 minutes. Notes were taken. The Claimant did not express any concern that he had had insufficient time to read the disciplinary file nor did he ask for additional time. These were matters first raised in evidence to this Tribunal and I find on balance that it was not a genuine concern at the time. The Claimant explained to Mr Skinner the nature of the client project, the difficulties caused by lack of secretarial support and accepted that he could not evidence all of the expenses claimed. He admitted that there were likely to be many mistakes and that he may have "screwed up" but this was out of recklessness and carelessness rather than personal gain. The Claimant did not tell Mr Skinner that he had been taking medication which affected his cognitive function, as he has asserted in this Tribunal. The Claimant was asked why he was unable to provide evidence given that the request had first been made by Ms Miah in January 2017. The Claimant said that he had been stressed and again repeated that he had been reckless and thoughtless including putting claims through that he was not meant to for example, buying dinner for his team. He stated that he had not read the expenses policy as he had insufficient time and he was not good on the SAP system.

43 The Claimant was asked if there was anything further that he wanted to state or any further questions he wished to ask; he said that he did not have any. With the exception of one point in connection with a train trip to Leeds for an interview in December 2015, the Claimant did not raise any alleged inaccuracies in Ms Morcher's notes of the investigation meeting, the comments recorded in Ms Miah's original spreadsheet which was considered at the disciplinary hearing and he did not name any other witnesses for Mr Skinner to interview.

44 By letter of 20 July 2017, the Claimant was informed of the decision to dismiss him summarily for gross misconduct. Mr Skinner found that there had been repeated breaches of the expenses policy, including an expenses claim for £12,782.08 for which the Claimant was unable to provide supporting documentation. The letter refers to the Claimant providing contradictory explanations throughout the investigation and whilst there had been a short period of sickness absence, there were erroneous expense claims when not sick.

45 Mr Skinner gave evidence to the Tribunal which I found to be credible and reliable. I accept that in reaching his decision that the allegation was proven, he did

not rely upon any one particular expense or category of expense but the range of issues, including the volume of claims, the absence of receipts, the number of expenses which the Claimant admitted had been claimed in error and the Claimant's signature on his claim form to confirm its accuracy and need to submit receipts. Mr Skinner considered the most significant specific examples of misconduct upon which he relied were the Claimant's two expense claims for the same rail journey (lines 56 and 112), claiming for a personal weekend hotel stay caused by a flood in his flat (line 45) and claiming an expense as a taxi journey when it was in fact a purchase in a toy shop (lines 78 and 79). His concern about the taxi claims was not based upon whether or not it had been appropriate to take a taxi but the fact that Claimant could not prove that he had in fact taken the taxi for which he was claiming. Overall, he concluded that there was a total lack of credibility in the Claimant's evidence.

46 In respect of the claims for meals, Mr Skinner interpreted the Claimant's expense claim forms and the reference to "dinner with client and KPMG colleagues" as meaning employees from both the client and from KPMG. During this Tribunal hearing the Claimant's case was that the meals were with KPMG employees working on the client project, not with employees of the client. His evidence that his choice of words on the actual expense claim forms was an error caused by 'cut and paste' was unconvincing, not least as the Claimant had named to Ms Miah and to Ms Morcher the two client employees said to have been at dinners for which he was claiming expenses. This example of the Claimant changing his explanations as the case progressed was consistent with Mr Skinner's belief at the time of dismissal that there were a number of occasions when the Claimant had changed his story.

47 Mr Skinner did not speak to Mr Krishnan nor did he consider the reasons for the Claimant's removal from the project to be relevant. I accept that the decision to dismiss was entirely due to a genuine belief that the Claimant had improperly claimed a large amount of money by way of expenses which were not properly incurred or evidenced.

48 The Claimant appealed against his dismissal by an email sent on 21 July 2017 on grounds that the circumstances and evidence around the client project had not been wholly and thoroughly examined and that he had documented evidence to show that he attended workshops and other meetings with the client. In his appeal email, the Claimant again accepted that he had breached elements of the expense policy during but unintentionally, due to work pressure and whilst off sick.

49 Mr Tippin was appointed to hear the appeal and Mr Clayton appointed to undertake a further investigation. The Claimant was interviewed by Mr Clayton on 1 August 2017. He expressed dissatisfaction with the failure to investigate the accuracy of Mr Krishnan's comments about his performance. The Claimant explained the pressure of work on the project and that he was the only person dedicated to the client for the duration of the project. The Claimant named Mr Oldroyd as the person who worked with him most (for around 50 to 60% of the time over a two month period) and named several other colleagues who had worked on the project albeit for a week or two or less. The Claimant again accepted that there were errors in his expense claims and that he was potentially missing receipts. Mr Clayton asked the Claimant for more information in relation to his sickness; the Claimant referred to a period of self-certified sickness but to medication which affected his mental abilities at the time that

he had submitted his claim forms. The Claimant maintained that he had submitted receipts with the original expense claim.

50 Mr Clayton interviewed Ms Stanier who had provided HR support to Mr Skinner. She said that the significant factors in the decision to dismiss were the volume of claims outside of the expenses policy, the inconsistency in the Claimant's responses and that security access data contradicted the Claimant's claims in many respects. Mr Skinner had accepted that the Claimant may have been under pressure and the Claimant's sickness absence but considered it insufficient mitigation, many of the claims had been submitted whilst not off sick. She confirmed that Mr Skinner had also considered an Occupational Health report which identified stress in November 2016 and confirmed that the Claimant had been on medication, however the Claimant had not relied upon side effects of medication during the disciplinary hearing.

51 The Claimant was interviewed a second time by Mr Clayton on 24 August 2017. In the period between dismissal and appeal, the Claimant had retained access to his work emails and he provided some emails to Mr Clayton relevant to the work being done on the project. The emails did not provide specific dates or details for the expenses claimed. Mr Clayton did not consider that more of the Claimant's colleagues should be interviewed as Mr Oldroyd was the person with whom he worked most on the project. In his summary of the investigation, Mr Clayton confirmed that the appeal was limited to consideration of the dismissal and not the amounts to be repaid which would be decided by the internal financial investigation undertaken by Ms Miah.

52 The appeal hearing on 6 September 2017 was chaired by Mr Philip Tippin. The Claimant explained again the details of his work on the project, saying that the client would often impose requirements at short notice and required him to take a taxi. The Claimant again accepted there inaccuracies in his timesheets. The Claimant accepted that he had signed the annual confirmation that he had read and understood the expenses policy. The Claimant said that due to pressure of work, he would gather receipts and submit his expense claims when time permitted often some weeks later. Upon return from sick leave, he had found a collection of receipts from his time on the project, due to passage of time he could not recall the exact dates and had submitted them in bulk. There were mistakes in his claims but these were not intentional. The Claimant did not suggest that notes of earlier meetings were inaccurate.

53 By letter of 19 September 2017, Mr Tippin rejected the appeal. He did not accept the Claimant's explanations, he was not satisfied that work pressure was sufficient mitigation and sickness absence had been properly taken into account at dismissal stage. In evidence, Mr Tippin explained the reasons for his conclusions further. I found him to be an honest and reliable witness who had approached his role at appeal carefully and diligently, looking for reasons to find that expenses were legitimate rather than trying to find evidence to implicate the Claimant.

54 I accept as reliable Mr Tippin's evidence that the Claimant had not said, as he does now, that his medication had affected his cognitive ability or that the various sets of notes contained inaccuracies. Nor had the Claimant asked for named colleagues to be interviewed or his network access records checked. Despite the limited nature of the appeal, Mr Tippin considered some of the lines of expenses set out in the spreadsheet in more detail. He was satisfied that despite ample opportunity to provide

more evidence or detail to support the claims, the Claimant had failed to do so. Whilst Mr Tippin accepted that the Claimant had provided circumstantial evidence of some expenses being for legitimate business-related activity, the Claimant had not provided evidence that the significant sums claimed were appropriate and he was concerned about the large number of undetailed and unreceipted expense claims.

55 On balance, Mr Tippin had concluded that, contrary to the Claimant's case, receipts had not been submitted by the Claimant at the time of the initial claim given the number of expenses which were not detailed on the claim form itself. This was not lazy reasoning as Mr Dillon submitted. It was a genuine and reasonably held belief by Mr Tippin: if the Claimant had had the receipts in his possession when submitting the claim, he would have identified the date and detail of the expenses and would not have made the mistakes which the Claimant himself admitted. As for the taxi claims, Mr Tippin's concern was not whether or not taking a taxi was appropriate but that there was no evidence to show that many of the taxi journeys had been taken at all. Given that the Claimant had claimed for personal retail purchases as taxi expenses, this was a reasonable conclusion for him to reach. A general requirement to travel to the client offices did not justify the high level of specific expenses incurred and for which no dates or details could be given, whether by way of receipt or other evidence such as emails or diary entries for a particular date. I accept that in reaching his negative view about the Claimant's credibility, he relied upon the Claimant's explanations in the appeal hearing and inconsistencies in his case, not Mr Krishnan's views about the Claimant's honesty.

Law

56 The employer must show a potentially fair reason for dismissal within section 98 of the Employment Rights Act 1996. The Respondent relies upon conduct within section 98(2)(b). The legal issues in a conduct unfair dismissal case are well established in the case of **BHS -v- Burchell** [1978] IRLR 379, namely:

- (1) did the employer genuinely believe that the employee had committed the act of misconduct?
- (2) was such a belief held on reasonable grounds? And
- (3) at the stage at which it formed the belief on those grounds, had the employer carried as much investigation as was reasonable in all the circumstances of the case?

57 Section 98(4) of the Employment Rights Act 1996 requires the Tribunal to determine whether the Respondent acted reasonably or unreasonably in treating any such misconduct as sufficient reason for dismissal in accordance with the equity and substantial merits of the case. This will include consideration of whether or not a fair procedure has been adopted as well as questions of sanction.

58 In an unfair dismissal case it is not for the tribunal to decide whether or not the claimant is guilty or innocent of the alleged misconduct. Even if another employer, or indeed the tribunal, may well have concluded that there had been no misconduct or that it would have imposed a different sanction, the dismissal will be fair as long as the

Burchell test is satisfied, a fair procedure is followed and dismissal falls within the range of reasonable responses (although these should not be regarded as 'hurdles' to be passed or failed).

59 The range of reasonable responses test or, to put it another way, the need to apply the objective standards of a reasonable employer, applies as much to the adequacy of an investigation as it does to other procedural and substantive aspects of the decision to dismiss, see **Sainsbury's Supermarkets Limited v Hitt** [2002] IRLR 23, CA. As confirmed in **A v B** [2003] IRLR 405, EAT and **Salford NHS Trust v Roldan** [2010] ICR 1457, CA, in determining whether an employer carried out such investigation as was reasonable in all the circumstances, relevant circumstances include the gravity of the charges and their potential effects upon the employee. There is a spectrum of gravity of misconduct which needs to be taken into account in deciding what fairness requires in any particular case.

60 The gravity of the misconduct is not determinative in assessing the extent of investigation reasonably required. This will also depend, amongst other things, upon the extent to which the employee disputes the factual basis of the allegations concerned and the nature of the defence advanced by the employee, **Stuart v London City Airport** [2013] EWCA 973. The reasonableness of the investigation should be looked at as a whole and it is not necessary for the employer to investigate every point made by the employee in his defence, **Shrestha v Genesis Housing Association Ltd** [2015] IRLR 399.

61 The test for the range of reasonable responses is not one of perversity but is to be assessed by the objective standards of the reasonable employer rather than by reference to the tribunal's own subjective views, **Post Office -v- Foley, HSBC Bank Plc -v- Madden** [2000] IRLR 827, CA. There is often a range of disciplinary sanctions available to a reasonable employer. As long as dismissal falls within this range, the Tribunal must not substitute its own views for that of the employer, **London Ambulance Service NHS Trust v Small** [2009] IRLR 563. However, the range of reasonable responses test is not a test of irrationality; nor is it infinitely wide. It is important not to overlook s.98(4)(b) the provisions of which indicate that Parliament did not intend the Tribunal's consideration of a conduct case to be a matter of procedural box ticking and it is entitled to find that dismissal was outside of the band of reasonable responses without being accused of placing itself in the position of the employer, **Newbound -v- Thames Water Utilities Ltd** [2015] IRLR 734, CA.

62 Relevant factors in the overall assessment of reasonableness under s.98(4) include, amongst other matters going to the equity of the case overall:

- (a) the conduct of an employee in the course of a disciplinary process, including whether they admit wrongdoing and are contrite or whether they deny everything and go on the offensive. This includes whether an employer acting reasonably and fairly in the circumstances of the evidence during the disciplinary hearing could properly have reached a particular assessment of a witness' credibility, **Linfood Cash & Carry Ltd v Thomson** [1989] ICR 518.

- (b) disparity which may arise (i) where an employer has led an employee to believe that certain categories of conduct will either be overlooked or at least not be dealt with by the sanction of dismissal; (ii) where evidence about decisions made in relation to other cases supports an inference that the purported reason for dismissal is not the real or genuine reason; and/or (iii) decisions made by an employer in truly parallel circumstances may be sufficient to support an argument in a particular case that it was not reasonable to adopt the penalty of dismissal that some lesser penalty would have been appropriate in the circumstances, **Hadjiannou v Coral Casinos Ltd** [1981] IRLR 352.
- (c) a finding of gross misconduct does not automatically justify a finding that dismissal was within the range of reasonable responses, **Brito-Babapulle v Ealing Hospital NHS Trust** [2013] IRLR 854.
- (d) mitigating factors. These include length of service and disciplinary record, although length of service will not save an employee from dismissal in cases of serious misconduct, **London Borough of Harrow v Cunningham** [1996] IRLR 734.

63 The fairness of dismissal must be judged by what the decision-maker knew or ought reasonably to have known at the time of dismissal. The knowledge of others within the organisation is not imputed to him merely because he is employed by the same employer, **Orr v Milton Keynes Council** [2011] ICR 704. It may however be relevant to whether or not the employer has carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

64 It will be unfair if the integrity of the decision to dismiss has been influenced by persons outside of the procedure, see **Chhabra v West London Mental Health NHS Trust** [2014] ICR 194 and **Ramphal v Department for Transport** [2015] IRLR 985 EAT. The employee being disciplined is entitled to assume that the decision will be taken by the appropriate officer without having been lobbied by other parties as to the findings he should make as to culpability. The question for the Tribunal is whether the influence of an external source was improper and if so whether it had a material effect on the ultimate decision of each relevant decision-maker.

65 In deciding whether the dismissal was fair or unfair, the tribunal must consider the whole of the disciplinary process. If it finds that an early stage of the process was defective, the tribunal should consider the appeal and whether the overall procedure adopted was fair, see **Taylor –v- OCS Group Limited** [2006] IRLR 613, CA per Smith LJ at paragraph 47.

66 The Tribunal must have regard to the ACAS Code of Practice which sets out basic principles of fairness to be adopted in disciplinary situations, promoting fairness and transparency for example in use of clear rules and procedures. This includes the requirement that employers carry out necessary investigations to establish the facts of the case.

67 If a dismissal is unfair due to procedural failings but the appropriate steps, if taken, would not have affected the outcome, this may be reflected in the compensatory

award, **Polkey v A E Dayton Services Ltd** [1987] IRLR 503, HL. This may be done either by limiting the period for which a compensatory award is made or by applying a percentage reduction to reflect the possibility of a fair dismissal in any event.

68 A basic and/or compensatory award may be reduced pursuant to s.122(2) and s.123(6) ERA respectively. In **Steen v ASP Packaging Ltd** [2014] ICR 65, the EAT advised Tribunals to address (i) the relevant conduct; (ii) whether it was blameworthy; (iii) whether it caused or contributed to the dismissal (for the compensatory award) and (iv) to what extent should any award be reduced.

Conclusions

69 As set out above, I have accepted the evidence of both Mr Skinner and Mr Tippin that they genuinely believed that the Claimant had committed an act of misconduct in connection with his expense claims. As for Mr Krishnan's involvement, the Claimant's case was that Mr Skinner and Mr Tippin had relied unduly upon his negative comments in the investigation interview about the Claimant's honesty. In fact, as I have found, both decision makers relied upon their own assessment of the Claimant's credibility based upon his explanations for the expenses. The reason dismissal was not internal politics or a desire to remove him from the client project. Such an argument is not plausible in circumstances where the Claimant had already been removed from the project in October 2016, before the investigation into his expense claims.

70 As for reasonable belief, in these proceedings, the Claimant relied upon an 88 page witness statement including a detailed analysis of expenses set out in the Miah schedule. During the course of the hearing, the Claimant submitted his own spreadsheet addressing each expense, line by line. As I explained to the parties, in an unfair dismissal it is not for the Tribunal to decide for itself which expenses were or were not properly claimed. Nevertheless, I considered the evidence relevant to the extent that it may support or undermine the reasonableness of the conclusions reached by Mr Skinner and Mr Tippin about the credibility of the Claimant's explanations in the internal disciplinary procedure.

71 Taking one example, in his expense claim submitted on 15 August 2016 the Claimant had claimed for meals in the sum of £85.70 said to be for meals on 10 August 2016 and with the comment that it was for "dinner with client and KPMG colleagues in Crewe". The Claimant told Ms Miah that two named employees of the client had attended this dinner. This explanation was included in Ms Miah's spreadsheet. In the appendix to his witness statement, however, the Claimant asserted that this was in fact a bulk claim for meals two meals: 9 August 2016 in Leeds and 11 August 2016 in Crewe. The Claimant's own spreadsheet then stated that the claim was for three meals: 7 July 2016 in London, 11 July 2016 in Warrington and 14 July 2016 in Leeds. These were significant discrepancies and I find that the Claimant's explanations varied significantly when challenged on specific points. This was particularly unimpressive as the Claimant maintained that he had possessed and submitted the actual receipts for the meal(s) at the time but had simply put 'random comments' into the claim. Overall, I concluded that the Claimant's explanations had changed significantly over time, appeared designed to make the evidence fit the expense claim rather than a genuine and reliable explanation and that it amply supported a finding that he lacked credibility.

72 On other points, the Claimant put at Tribunal a case which materially differed from his stance during the internal process. Examples included not only the challenges to the notes but also an assertion in oral evidence that he had worked at vendor offices after 9pm, something not raised with Ms Miah, Ms Morcher, Mr Skinner, Mr Tippin or even in his witness statement which refers (at paragraph 58) to work at client locations.

73 Mr Skinner and Mr Tippin rejected the Claimant's case that he had submitted the receipts at the time of making the expense claims. They were reasonably entitled to do so. The Claimant accepted that the claim form required receipts to be attached and it would have been easier to put everything into one envelope. The procedure of using separate envelopes was not supported by other evidence and, in any event, the Claimant knew how to upload the receipts electronically with the claim form. Finally, the Claimant's case that he had had the receipts at the time of making the claims was not plausible given the discrepancies with his subsequent explanations, for example the meals in the 15 August 2016 as set out above.

74 The Claimant accepted that he had made mistakes in his claim form and indeed had been reckless and careless in his expense claims. Another example considered in evidence was a claim for a meal on 13 August 2016 (line 44). This was a Saturday, was not a business related meal and the amount claimed exceeded the limit set in the policy. That one expense therefore involved three breaches of the expenses policy.

75 Both Mr Skinner and Mr Tippin held a reasonable belief that the Claimant had committed acts of misconduct in the submission of his expense claims.

76 The Claimant's case is that such a belief was not based upon a reasonable investigation in part because those he had named in the Miah spreadsheet as attending meals and who had worked on the project with him were not interviewed. The extent of an investigation need only be within a range of reasonable decisions and having regard to the case advanced by the employee. Many of the challenges of the Claimant in this hearing were new points. During the internal process, he had accepted that Mr Oldroyd was the colleague with whom he worked most on the project. Mr Oldroyd was interviewed by Ms Morcher accordingly. The Claimant relied upon the pressure of work on the project, the amount of travel required and the short notice demands of the client. Ms Morcher interviewed Mr Thompson and Mr Krishnan who were the quality and engagement leads on the project. Further investigation was undertaken by Mr Clayton on appeal.

77 In any event, I considered the evidence provided at Tribunal by three of the Claimant's former colleagues. Mr Pervaiz confirmed that he had been present at three meals with the Claimant, two being after 9 p.m. and one an appraiser lunch, that he had attended one workshop in Leeds and stayed with the Claimant in Leeds on one occasion, both in July 2016. Mr Hashim confirmed that he shared a taxi with the Claimant in Leeds and London on some occasions and attendance at the meals and workshop on the same dates as Mr Pervaiz. Ms Davies confirmed that she had been present with the Claimant at a workshop at Westminster, then taken a taxi and a train to Leeds on one occasion in August 2016. She denied being present with the Claimant in Leeds on 11 October 2016. Mr Israel gave evidence and his own expense claims confirmed that he had travelled to Crewe on 10 August 2016, to Leeds on 16 August 2016 and 6 October 2016 and that he had purchased a ticket on Sunday 16 October 2016 for travel on Tuesday 18 October 2016. Mr Israel confirmed that the Claimant

had travelled on the same day on each occasion. As for the receipts process he said that these were included with the expenses claim, in the same brown envelope as the hard copy claim and that he tended to book through the Respondent's corporate travel provider in order to retain electronic receipts.

78 The limited evidence provided by Mr Pervaiz, Mr Hashim, Ms Davies and Mr Israel did not address the sheer volume of inaccurate expenses claimed by the Claimant. Both Mr Skinner and Mr Tippin accepted that the Claimant had incurred some legitimate business-related expenses but the concern was the volume of unreceipted claims. Moreover, Mr Israel's evidence about the process for submitting receipts contradicted the Claimant's case that receipts were submitted separately. Even if such employees had been interviewed in the course of the disciplinary process, I am satisfied that it would have made no difference at all to the outcome.

79 The Claimant's submissions that the Respondent failed properly to investigate the logistics of the project and did not investigate his computer records are not well founded. The Claimant retained access to his work diary and emails throughout the disciplinary process and therefore could adduce his own evidence in support of his case that the expenses were genuinely business related, for example emails confirming specific trips or meetings. The network access data would not have been probative as it would not distinguish between time worked at home or in the office. Access data was considered. The project logistics were investigated with the Claimant, Mr Thompson and Mr Krishnan. As for the submission that the Respondent relied upon inaccurate notes and gave him the disciplinary file at too short notice, these were not complaints raised at the time nor are the notes inaccurate. In the circumstances, the Respondent conducted a reasonable investigation.

80 Section 98(4) requires that conduct must be sufficient for dismissal and that dismissal be fair in all of the circumstances of the case. The Claimant's principal argument was that the Respondent could not fairly have dismissed him due to the operation of the principle of promissory estoppel. Mr Dillon advanced the submission in the following way. The Respondent's expenses policy was a promise that there would be no reimbursement of expenses without receipts. The Respondent intended the employee to rely upon it by providing receipts in order to comply with HMRC rules and to avoid the need for employees to keep receipts (or copies) indefinitely. The Claimant relied upon the promise by submitting receipts and not retaining copies to his detriment as he was not then able to prove his expenses in the disciplinary process. The fundamental flaw in this submission is that neither Mr Skinner nor Mr Tippin accepted its premise that the Claimant had in fact submitted receipts in a separate white envelope at the time of making the original claims. Indeed, each believed that in many cases the expense had not in fact been incurred at all, particularly in respect of the large sums claimed for taxis.

81 Mr Dillon also relied upon the fact that the Respondent had paid the expenses claims without receipts (on Respondent's case) as evidence in support of the principle of promissory estoppel and/or evidence of unfairness generally. I do not agree. In an organisation employing over 15,000 people and the nature of its business undertaking client project work, the sheer volume of expense claims generated could not reasonably have led to a belief that each and every claim would be checked for receipts before payment. As the expenses policy made clear, the Respondent relied

upon the honesty of its employees and placed great trust in them to act with integrity. The spot check audit and the ability to reclaim expenses found to have been improperly claimed was sufficient and the payments to the Claimant at the time of the claims was not inconsistent with a conclusion that he had not in fact provided receipts as he claimed during the disciplinary process.

82 Part of the Claimant's case at Tribunal was that the disciplinary policy should not have been used as it did not apply due to his sickness absence. I do not agree. The disciplinary policy does not apply to cases relating to genuine sickness absence, performance or redundancy as these are not conduct matters. Sickness absence is a capability issue and would not be dealt with as a disciplinary issue under the policy. Misconduct during sickness absence is not excluded from disciplinary action and only one of the claims was submitted during the Claimant's brief period of sickness absence in any event. Mr Skinner and Mr Tippin both considered the Claimant's health but decided that it was not sufficient mitigation in all of the circumstances.

83 The Claimant submitted that there were 'grey areas' in the policy, for example about the entitlement to claim meals and when to use taxis. However, the Claimant had read the policy and confirmed that he understood it. Furthermore, insofar as the Claimant was dismissed because Mr Skinner and Mr Tippin believed that he had claimed for expenses not in fact incurred this arose not from a lack of understanding but a lack of honesty. As the conduct which led to dismissal was about honesty, I do not consider that high achieving performance on the project (not accepted by the Respondent in any event) puts dismissal outside the range of reasonable responses.

84 The Respondent raised its concerns with the Claimant upon first becoming aware of the possibility of improper expense claims and, contrary to the Claimant's submission, he had ample opportunity to answer those queries and provide relevant evidence (not just limited to receipts) to support his claims from January 2017. Given that three of the claims were in November 2016 and December 2016, this was not undue delay nor were the sums in issue low value as the Claimant asserts. The appeal process was detailed and considered carefully the Claimant's reasons for asserting that his dismissal was unfair.

85 In evidence to the Tribunal, the Claimant accepted that his admitted mistakes in his expense claims warranted a warning but that dismissal was unduly harsh. I do not agree and conclude that the decision to dismiss for the misconduct believed by Mr Skinner and Mr Tippin to have occurred in relation to these expense claims was within the range of reasonable responses. The Claimant was not unfairly dismissed.

Employment Judge Russell

2 January 2019