



EMPLOYMENT TRIBUNALS

Claimant: Miss A Driver
Respondent: North Yorkshire County Council
Heard at: Leeds **On:** 19 and 20 March 2019
Before: Employment Judge O'Neill

Representation

Claimant: Mr Willoughby of Counsel
Respondent: Mr Menon of Counsel

RESERVED JUDGMENT

1. The claim of unfair dismissal succeeds.
2. The claim for breach of contract (notice pay) succeeds and the Respondent shall pay to the Claimant compensation in the sum of £2769
3. In respect of the unfair dismissal claim the Respondent shall pay the Claimant the following sums
Basic Award £3,840
Compensatory Award £16,016
Total £19,856

REASONS

Background

As a consequence of matters arising in a Resolving Issues at Work Investigation (RIAW) under the Council's procedures concerns emerged about the conduct of the

Claimant as a consequence of which she was suspended and investigated under the Council's disciplinary procedure and ultimately dismissed. Her dismissal was upheld on appeal. The Claimant contends that her dismissal is unfair and she has not committed the misconduct alleged and that there were no reasonable grounds on which a conclusion could be reached that she had done so.

Agreed Issues

1. The Agreed issues are as follows
 - a) has the respondent established a permissible reason for dismissal under section 98 i.e. misconduct
 - b) did the respondent genuinely believe the claimant to be guilty of the misconduct
 - c) did the respondent have reasonable grounds for believing that the claimant was guilty of that misconduct
 - d) did the respondent carry out as much investigation as was reasonable
 - e) was the dismissal and the procedure leading up to it, within the range of reasonable responses of a reasonable employer
 - f) would the claimant have been dismissed in any event if a fair procedure had been followed
 - g) has the claimant contributed to her dismissal
 - h) if the claimant is entitled to compensation should that compensation be adjusted by reason of her contribution, the ACAS uplift
 - i) was the respondent entitled to dismiss the claimant summarily
2. The parties agree that wrongful dismissal / breach of contract for want of notice or notice pay is an issue for today.
3. The Schedule of Loss is agreed save for adjustments for Polkey, contribution, Acas uplift. The Respondent accepts that the Claimant has taken all reasonable steps to mitigate her loss. The Claimant seeks only compensation as a remedy.

Law

4. The relevant sections of the Employment Rights Act 1996 (ERA 96) are section 94, 98 119 and 123. As both parties have been represented by Counsel, I do not set out those sections in full.
5. I had regard to the well-known case of British Home Stores Limited v Burchell 1978 IRLR 379 and the Burchell tests which may be summarised as follows:
Did the respondents have a genuine belief in the misconduct?
Did the respondent have reasonable grounds on which to sustain that belief?
Have the respondents carried out as much investigation as was reasonable and was dismissal a fair sanction to impose under section 98(4).
6. In addition, I gave consideration to the case of Iceland Frozen Foods v Jones 1982 IRLR 432 and reminded myself about the direction regarding substitution set out in Tayth v Barchester Health Care Limited 2013 IRLR 387.
7. Counsel for the Respondent referred to me Linfood Cash and Carry v Thomson 1989 IRLR 235.
8. Counsel for the Claimant referred to me the cases listed below:

Mezey v South West London and St. George's mental health NHS trust 2007 IRLR 244
Gogay v Hertfordshire County Council 2000 IRLR 703
Crawford v Suffolk mental health partnership NHS trust 2012 IR LR 402
RSPCA v Cruden 1986 IRLR 83

Evidence

9. There was an agreed bundle of documents of almost 355 pages to which was added the Respondents Policy Document on Professional Standards.
10. Oral testimony was given by the Claimant and a written statement was submitted by her and the Respondent witnesses. Oral testimony was given by the following Respondent witnesses – Mrs C Price Chair of the Dismissal Panel and Mr D Bowe Chair of the Appeal Panel, each of whom is a Senior Manager with the Council.
11. Counsel for each party made very helpful submissions.

Credibility

12. Mr Bowe who chaired the Appeal Panel was an unhelpful witness in that on a number of occasions in cross examination he gave rambling and verbose answers in which he did not answer the question and had to be reminded several times to listen to the question and address it directly and I found him to be evasive.
13. I found Mrs Price to be a frank and credible witness.
14. I also found the Claimant to be a credible witness.

Findings of Fact

15. Having considered all the evidence both oral and documentary I make the following findings of fact on the balance of probabilities which are relevant to the issues to be determined. When I heard or read evidence on matters which I make no finding or do not make a finding to the same level of detail as the evidence presented to me that reflects the extent to which I consider the particular matters assist me in determining the issues. Some of my findings are also set out in my conclusions in an attempt to avoid unnecessary repetition and some of my conclusions are set out in the findings of fact adjacent to those findings.
16. The claimant was employed as a team leader by the respondent at a residential care establishment. Her employment began on 9 March 2010 as a resource worker and she was promoted to team leader in April 2014.
17. She was expressly dismissed by reason of conduct on 21 March 2018. The three charges which were upheld against her were as follows
 - a) breaches or professional codes of conduct and standards which amount to a breakdown of trust and confidence in that you did not maintain confidentiality regarding the reasons for a colleague's absence
 - b) breaches of professional codes of conduct and standards which amount to a breakdown of trust and confidence in that you made inappropriate comments to colleagues about other members of staff

- c) racially discriminatory and bullying behaviour towards colleagues at Jubilee Lodge which brings the county council into disrepute
18. The disciplinary panel comprised Mrs C Price accompanied by Mr Ramsay. The tribunal heard from Mrs Price.
 19. The claimant appealed against the dismissal on 29 March 2018, her appeal was heard on 22 August 2018 by a panel comprising Mr David Bowe and another but her appeal was not upheld.
 20. In 2016 a client of the establishment raised the safeguarding issue against the Mr M Hussein (the manager) which led to his suspension and an investigation into his conduct. The complaint was not upheld. The claimant had been involved in the provision of information relating to the matter which was not supportive of the manager.
 21. In December 2016 the manager raised a grievance under the RIAW procedures which was investigated. The outcome report of that investigation was not before the tribunal. According to the grounds of resistance – paragraph 3, the Investigating Officer concluded that there was a culture of bullying and harassment at the establishment underpinned by racial prejudice, homophobia and Islamophobia. It was suggested that the Claimant who is a white woman, was in effect a ring leader and her conduct required investigation under the Disciplinary procedures. Assuming that to be the report's recommendation the council did not act unreasonably by instigating a disciplinary investigation into her conduct. The RIAW investigation was not concluded until June 2017 some seven months after the grievance was first raised.
 22. It took a further month for a decision to be taken to commence a disciplinary investigation into the conduct of the claimant (13 July 2017). A letter of suspension was issued on 27 July 2017 setting out the charges in the briefest of terms as below (paragraph 1 a) Conclusions).
 23. The claimant was eventually suspended on 27 July 2017 and the letter suspending her gives the following information the reasons 'I am also confirming that a decision has been made to temporarily suspend you from your current post team leader as a precautionary measure, with immediate effect, pending the outcome of an investigation into the allegations of misconduct'. None of the respondent witnesses were able to explain to the tribunal why such a precautionary measure was indeed required given that throughout the RIAW investigation the claimant had continued to work without any complaints from her colleagues or the management.
 24. Although the letter describes the suspension as temporary it continued from 27 July 2017 until 21 March 2018 when she was dismissed. Neither of the respondent witnesses were able to explain why the investigation into the claimant's conduct took so long and why she was suspended for so long. The claimant described to the tribunal the circumstances of her suspension, the trauma that the manner of suspension caused her, her distress, her sense of isolation due to the fact she was prohibited from contacting former colleagues or entering the workplace, her declining confidence in her ability to return given that she was excluded from training and updating. She also described her fear of

returning because other people would believe she was guilty because of the length of the suspension and she herself had begun to mistrust her former colleagues.

25. The only reason that has been given for the length of the suspension is that the investigation was in some way complex. I do not accept that explanation. The respondent held only one hearing. They interviewed face-to-face only three witnesses. They secured four short witness statements. A passing reference was made to the difficulty in making arrangements because of leave but there was no proper explanation given to the effect that people were on long-term sickness, maternity, secondment, holiday or other leave to prolong the arrangements to the extent that happened. I find it to be unreasonable and unnecessary for the suspension to have been so long and Mr Bowe appeared to accept that it was not satisfactory.
26. The investigation was initially put in the hands of Judith Cotter, but the matter was subsequently transferred to John Coates who led the investigation until its completion and came to the conclusion that the claimant was guilty of gross misconduct and that summary dismissal was the appropriate sanction. As Mrs Price accepts, Mr Coates exceeded his authority in his recommendations and it was a matter for the disciplinary panel to determine the finding of gross misconduct and the appropriate sanction if any.
27. During the course of the RIAW investigation the respondents interviewed 25 members of staff including the claimant. Of those only four statements were presented in the material provided to the disciplinary panel. Those were the statements from Nasir Bashir, Emaan Razaq (ER), Navisa Mahroof (NM) and the Claimant. I infer therefor that the remaining 21 RIAW statements not before the Disciplinary Panel (DP) or the Tribunal, contained no allegations of impropriety on the part of the Claimant. No RIAW statement from Mr Hussain, the Manager raising the grievance, was presented to the DP or the Tribunal and I infer that he has not given evidence of any impropriety on the part of the Claimant. There was no statement from Ian.
28. During the course of the Disciplinary Hearing the Claimant presented witness statements from John Mabbett (JM) and Emma Leonard (EL) who also appeared before the Panel and a further 11 statements from colleagues and former colleagues attesting that they had never witnessed any inappropriate conduct or behaviour on the part of the Claimant.
29. The letter bringing the charges brings only general allegations as set out above described by Mr Bowe as generic charges. These generic charges have never been particularised by Mr Coates or anyone else. I asked Mrs Price if she had been given a list of the particulars of the charges and she had not. I asked if there was a list particularised the charges in the bundle and there was not. I also asked Mrs Price if there was a list of the findings of fact made by her panel and she said there was not.
30. In preparing for the disciplinary hearing Mrs Price prepared her own crib sheet of the charges but this document was never given to the claimant.

In order to identify what it was she was being accused of the Claimant could only read through the Bundle of paperwork that she had been given and extract for herself such particulars of the allegations as she could find, as best she could. I also note that the material from which she could extract the allegations was not sent to her until 22 February 2018 some seven months after she was suspended.

31. The crib sheet listed the page numbers in the disciplinary Bundle and the point on the page which was of interest, it was then necessary to find the passage in the Bundle. Even with the crib sheet of Mrs Price I found it very difficult to isolate the allegations. Without the crib sheet it would have been an almost impossible task for the Claimant.
32. Even with the crib sheet the general allegations may be identified but they are generally lacking any particularity as to what was said or done by whom and about when or where.
33. I have read the crib sheet and been through all the references listed. The following are all the examples from the crib sheet from page 78 (the end) to page 69:
 - page 79 point 26 'yes she was telling everyone that her and Nicky were in charge and that Maz would not be back'
 - page 78 point 24 'she was constantly talking about Maz it was all the time not a single nice thing said about him and she was the manager'
 - Page 77 point 16 'most of the team, Amy Nicky and the Angela. They spoke badly about him (Stan the Cleaner)... The standard of his work was criticised... They said he smiles and didn't wash'.
 - Page 77 point 17 'she (ER) came in on this one occasion that she had been on a shift, she was crying her eyes out and Amy was encouraging her to put complaints in'. This is in response to a question as to whether the Claimant picked on Emaan.
 - Page 74 point 5 'Nickey and Amy were good friends outside of work because they are friends outside of work the racist behaviour remained the same inside of work'. This was said in response to the question did you directly witness racist behaviour.
 - Page 69 point 16 'no I would never say that it was constantly being said by everyone else'. This is in response to it being put to ER that according to John she (ER) had described the manager as a typical Asian male.
34. The Respondent accepts that no steps were taken to find out if any of the alleged remarks or conduct was witnessed by other people and that would have been a reasonable line of enquiry given that the broad thrust of the allegations were that the Claimant acted openly in front of others. The Claimant produced 11 witnesses to say that they had never heard her be racist, Islamophobic or homophobic or act inappropriately and I infer that the Respondents are in possession of 21 RIAW statements which do not implicate the claimant in any wrong doing.
35. At the conclusion of the DP Hearing the Panel came to the conclusion that the Claimant was guilty of gross misconduct in the terms set out at paragraph 17 above. The Panel have never produced a report or a document of any kind setting out the findings of fact they made on which they based their conclusions that the

Claimant was guilty of misconduct. In preparing for the hearing and in producing this Judgement I have been unable to identify the findings of fact made by the Respondent. The Appeal notes record Mrs Price's verbal account of some of the allegations made by ER, NM and NB as abstracted from the documents. But does not identify expressly which of the allegations were found to be true. Neither Mrs Price nor Mr Bowe were able to tell me the findings of fact made by the DP.

36. For example, at page 15 point 12 one of the crib sheet allegations is that it is said by NM 'it was clear that A.D. disliked MH ... encouraging people to make complaints about him'. Mr Bowe was unable to tell me whether this was a finding made by the DP and if so, the facts found to support it. There is no record of whether the panel found that the Claimant encouraged others to make complaints about the Manager and if so, who she encouraged when and about what.
37. Mrs Price and the DP must have preferred the evidence of (ER), (NM) and (NB) to the evidence of the Claimant and her witnesses JM and EL and the 11 additional statements from other colleagues.
38. The Claimant asked the DP to accept that ER and NM were in a conspiracy with the Manager to get rid of the Claimant as a reprisal for her part in providing information which led to his suspension for safeguarding. There is no statement at all from the Manager although the principal generic allegations seem to be that he was the victim of insubordination and racial abuse.
39. Notwithstanding the fact that this was a principal plank of the Claimant's defence there is no evidence of any enquiry being made about it. Neither the Manager nor NM nor ER were asked about such a conspiracy. Nor were any enquiries made by the Respondent of any other member of staff in the team as to the possible existence of a conspiracy or to establish whether they had been approached by anyone to provide statements adverse to the Claimant; such information may have assisted in ruling in or out such an allegation by the Claimant. Only the Respondent was in a position to undertake such an enquiry because of the terms of the suspension which precluded the Claimant from doing so. The DP ruled out the possibility of a conspiracy without further enquiry. Mrs Price explained in cross examination that she doubted that NM had any motive to conspire against the Claimant because by the time of the disciplinary hearing she had left the organisation.
40. The Claimant worked in the Respite section at Jubilee house. NB began his career there but not on the same section as the Claimant and he worked in the Day section and in May 2016 he was transferred to a linked establishment at Skipton. NB makes no complaint against the Claimant on his own behalf and confirms their relationship was never negative. From his statements I find that he works on the Day Service and as such is not in the same team as the Claimant. Mrs Price in her remarks to the Appeal Panel refers to NB having complained about not being welcomed into the team as a factor against the Claimant. I cannot tell whether the Panel made an adverse finding to the effect that the Claimant was responsible but if they did it appears to me not to be well founded as they did not work in the same team and NB made no complaint of difference in treatment due to race or any other protected characteristic by the Claimant.

41. In rejecting the 11 witness statements provided by the Claimant Mrs Price said that a factor taken into account was the overlap in the shift patterns between them and the Claimant, but no such analysis appears to have been applied to their consideration of the comparative position of NB who worked in a different team.
42. In answer to questions from the disciplinary panel NB confirmed that he was in a different team to the claimant and their paths did not often cross. They were both team leaders and it was the claimant's evidence that they met at the team leaders meeting which took place once every three weeks or so. Insofar as she has said anything negative about the Manager in the presence of NB, she says she raised appropriate matters of concern at the Team meeting. This does not appear to have been put to NB nor to any other Team Leader from their meetings. In any event NB gives no particularity and the only allegation made by him which Mrs Price reports to the Appeal Panel is that 'Amy is very active in promoting a negative feeling around Mazar (the manager) and commented that Mazar is controlling and treats women negatively'. It is impossible to ascertain from the paperwork or the testimony of Mrs Price and Mr Bowe whether the panels found this to be a finding of fact and if they did precisely what they found the claimant to have said or done when and to whom about the manager and why that was inappropriate.
43. By the time NM gave evidence to the disciplinary panel she had left the respondent employment. Mrs Price therefore felt that she had no motive for giving false evidence which is a reasonable view in the absence of any evidence of a conspiracy involving NM. Mrs Price accepted under cross-examination that in one respect NM was found to be unreliable namely that on the day she alleged that the Claimant had telephoned her at home while off sick she was in fact in work and thus must have been mistaken. In weighing up the reliability of NM, Mrs Price did not take this into account. This doubt over the reliability of NM was not put before the Appeal panel.
44. Mrs Price asserted to the appeal panel that NM reported the claimant to have used racist language. The only racial discriminatory allegation made by NM recorded in the appeal notes is the use of racist language. In the notes of an interview with NM dated 8 December 2017 she makes no reference to such language having been used by the Claimant and in answer to a direct question as to whether she had witnessed any racist or discriminatory behaviour NM makes no specific allegations about the claimant. The notes of interview with NM dated 5 May 2017 contains no allegations of racist or discriminatory language. In a statement to the Unison Rep dated 5 January 2017 NM made allegations that the Claimant had 'said a lot of bad things about Mazar... This place would be better off without him. He is a nasty piece of work. He is unprofessional. He is a bully. He treated us as if we are Asian women, like their treated in their community. She seemed to think that somehow she was a victim of what Mazar did.' NM did not appear before the DP. Despite Mrs Price's statement to the Appeal Panel that NM reported the use of racist language by the Claimant the above are the only references that I am able to locate which might be regarded as such. In respect of the alleged statement 'He treated us as if we are Asian women, like their treated in their community'. The words 'She seemed to think that somehow she was a victim of what Mazar did' suggests that there may be a

context in which such comments might be mitigated if probed but they were not so probed.

45. There is an allegation that NM was questioned inappropriately about her decision to wear a headscarf at work after her marriage. I am unable to tell what the DP found that the Claimant said to whom about NM wearing a headscarf. NM makes a reference to a conversation with Nikki about wearing the headscarf but I can find no allegation in the statements of NM that the Claimant made inappropriate or culturally insensitive and hurtful questions or remarks about it.
46. The allegations made by NB and NM are few and relatively modest and not particularised. The mainstay of the evidence of the evidence against the Claimant comes from the statements of ER and her attendance before the Panel. Mrs Price says that the DP concluded that ER was not telling the truth about at least one issue where her evidence conflicted with that of the Claimant and other witnesses namely that the Claimant had said that the Manager had forced ER to come into work while sick and had collected her in his car to do so. This was denied by ER but she was found not to have told the truth about that. This finding is not recorded but was confirmed by Mrs Price at the Tribunal. Mrs Price reports that finding about the reliability of ER in a more equivocal way when addressing the appeal Panel.
47. Mrs Price accepted that a plausible explanation for ER being dishonest about this matter was her desire to protect the Manager but Mrs Price admits that she did not put her mind to this and whether it might have any impact on her view of the Claimants reliability in the disciplinary proceedings or the credibility of ER.
48. The claimant believed that she and ER were friends and has produced for the DP copy text messages which paint a picture of close friends and a supportive team leader. In those texts ER appears to be complaining to the claimant about bullying on the part of the manager. (This appears to be consistent with the account of NM comforting ER and suggesting that she made a complaint). In the disciplinary proceedings ER denied that the texts revealed a friendship with the claimant but said she pretended to the claimant that she was her friend in order to keep in with her because it suited her interest to do so. This reveals a person who is insincere. Mrs Price accepted the insincerity but was prepared to view it as a survival tactic. Mrs Price accepted that she did not weigh up the insincerity of the texts alongside the untruth over the sick leave matter when judging the reliability and honesty of ER. She agreed that she had not put her mind to whether ER made the statements during the disciplinary proceedings to keep in with the Manager.
49. The texts also demonstrate a context in which the claimant, as a supportive team leader, may well have been suggesting, for good reason, that ER raise a complaint.
50. Despite the finding of untruthfulness on the part of ER, Mrs Price said the Panel were able to accept the accusations of ER in preference to the denials of the Claimant but precisely what they found and why they disregarded the Claimant's evidence on any particular matter is not clear or recorded.

51. Mrs Price said that she found the Claimant to be a credible witness. She was unable to give the Tribunal any example of where the DP had found her not to be telling the truth.
52. The Claimant produced statements from two other team leaders namely Mr John Mabbett and Emma Leonard who were long serving members of staff and appeared before the DP. Mrs Price said that the DP found them to be credible but preferred the evidence of the management witnesses including ER where they conflicted. This was not so in respect of the difference in evidence about ER being compelled by the Manager to attend work while sick in which case the panel preferred the evidence of the team leaders.
Mrs Price said that they had found Mr Mabbett to be on occasions evasive. When asked for examples she was unable to produce one. She went on to explain that what she meant was that on occasions Mr Mabbett had answered that he could not recall and Counsel for the Respondent directed her and the Tribunal to Page 152 of the transcript of the disciplinary hearing. I find, having read the whole page and the questions (which Mrs Price agreed were unparticularised) that no reasonable person would have concluded that Mr Mabbett's answers were evasive.
53. In weighing up the comparative credibility of Mrs Leonard, Mrs Price said that the evidence Mrs Leonard had given appeared false in manner but Mrs Price accepted that Mrs Leonard's answers did not appear false in substance.
54. Mrs Price said she preferred yes or no answers and was taken to page 147 of the transcript where Mr Mabbett had answered in the plainest of terms that he had not witnessed any inappropriate language or behaviour by the claimant. Mrs Price explained that such an answer was not acceptable to her because 'he's a witness in Amy's case he is not going to say no (sic) ... He has been called by Amy to support a case so when he's asked a question like that is going to say no... You're only going to call a witness who is on your side'. Mrs Price explained that such an analysis would not apply to management witnesses because they had nothing to gain. She was unable to answer the question as to what Mr Mabbett might gain.
55. From these answers I find that Mrs Price had a predisposition against the claimant witnesses when weighing up the respective credibility.
56. The Panel paid little regard to the 11 statements from colleagues and former colleagues to the effect that they had never witnessed any inappropriate conduct.
57. One of the allegations made against the claimant is that she revealed the fact of the manager's suspension to other members of staff indiscreetly and in breach of a duty to keep such information confidential. NB is relied on by the respondent as the principal witness. By his own admission at the time of his conversation with the claimant he was already aware of the manager's suspension from other members of staff. The claimant says she did not use the word suspension in her conversation with NB. NB and the claimant are being asked to remember the exact words used almost two years earlier.

58. This is a small residential unit and a safeguarding complaint from a customer is a serious matter and will inevitably be a matter of discussion as soon as it becomes known and I take judicial notice that it is almost impossible to keep these matters absolutely confidential, sooner or later word gets out.
I accept the claimant's evidence that as Team Leader, she was duty-bound to give some instructions and information to staff and customers about the absence of the manager and the steps that people should now take in his absence.
As I understand it the respondent's case is that she should have used the words long leave rather than suspension. I suspect that in the particular context any member of staff hearing the words long leave would read into them the meaning 'suspension'. I doubt that any of the witnesses or the Claimant can be certain of the words used two years before. The witnesses do not say that the claimant disclosed details of the substance of the safeguarding complaint.
59. I accept the unchallenged evidence of the claimant that she was suspended in an indiscreet, unfair and hurtful manner. I accept her account that an announcement was made by very senior management to the whole team that suspensions were about to be made. I accept her account that she and the other team leaders were taken aside and told that one of their number would be suspended and she was held back in front of her colleagues who were then allowed to leave and it would have been apparent to all concerned that she had been suspended. Given the way that she was treated over her own suspension I find it inconsistent to the point of unfairness that she should be disciplined in respect of an indiscretion over the use of the word suspension in relation to the manager in 2016.
60. There has been a reference in the pleadings to misconduct by way of homophobic behaviour. I am unable to find within the papers or the verbal report made by Mrs Price to the appeal panel, that such a finding was made by the panel. There has been a reference to an employee called Ian who is said to be someone who cross dressed outside of work. There is no statement or complaint from him. I can find an assertion from ER that 'they all hated him', I can find a reference from NB that on one occasion 'staff were talking overheard talking about him dressing up as a woman' and that Ian 'had had homophobic comments said about him' but I can find no specific accusation or finding that the Claimant did or said anything inappropriate to or about him. There is no statement from him and no complaint from him.
61. Mrs Price accepted in cross examination that the Panel regarded the following as gross misconduct and having concluded that the claimant had committed acts of gross misconduct namely 'breaches of professional codes of conduct and standards which amount to a breakdown of trust and confidence in that you made inappropriate comments to colleagues about other members and staff' and 'racially discriminatory and bullying behaviour towards colleagues at Jubilee Lodge' the panel considered dismissal to be the only option and did not consider any alternative.

Conclusions

1. It is agreed that the Respondents had a genuine belief in the misconduct of the Claimant which is a permissible reason for fair dismissal under S 98 (2)(b) of the ERA 1996.
However, I find the dismissal to be unfair under S98(4) for the reasons set out below.
2. I find the procedures adopted by the Respondents in dismissing the Claimant to be unfair as follows
 - a) The charges set out in the suspension letter of 27 July 2017 were generic and vague and were that the Claimant had committed misconduct 'relating to racially discriminatory behaviour towards colleagues at Jubilee Lodge which brings the county council into disrepute, breaches of professional codes of conduct and standards which amount to a breakdown of trust and confidence'. It was impossible for the Claimant to discern from this letter what she was alleged to have done, when and to whom.
 - b) The Respondent never particularised the charges and the only way in which the Claimant could identify the allegations made against her was to go through the Bundle of documents and extract the allegations as best she could. This would have been a very difficult task and she was never provided with the crib sheet prepared by Mrs Price. Such a failure hampered the Claimant in her ability to answer the charges.
 - c) The material which the Claimant had to trawl through to discern the allegations in any more detail was not issued to her until 22 February 2018, some seven months after her suspension but only one month before the disciplinary hearing and nearly two years after some of the matters are alleged to have taken place when the recall of the Claimant and any potential witness would have been impaired to some extent.
 - d) The Disciplinary Panel did not prepare for themselves a list of the allegations made against the Claimant and the particulars which they were required to consider and find as matters of fact. Having not identified the particulars it was not possible for the DP to make findings of fact on which to reach a conclusion that the Claimant had committed the misconduct alleged.
 - e) The crib sheet prepared by Mrs Price directed the Panel and the Tribunal to the page numbers in the Bundle in the various statements of the Management witnesses where the accusations could be found. Having found the references I find that the allegations were vague and unspecific in most instances and did not state what the claimant is alleged to have said or done to whom, where and when and before which witnesses. In that respect, having insufficient detail, I conclude that the Claimant did not have a proper opportunity to answer the charges or seek appropriate witnesses.
 - f) Neither Mr Coates, the investigating Officer, nor the DP took any further steps to secure the particulars of the allegations.

- g) The Respondent made no attempt to discover whether there were any witnesses to the allegations made by ER, NM and NB.
 - h) I cannot tell what findings of fact the DP made, there is no report setting out their findings other than the generic grounds in the letter of dismissal set out above at paragraph 17. Mrs Price was vague in her evidence about the findings of fact and Mr Bowe was even less certain about what the Claimant is said to have done when, where and to whom. At the Appeal Hearing Mrs Price gave a brief summary of the evidence of the Management witnesses. Without clear findings of fact, the Claimant could not have been in a position to prepare properly for her appeal. Nor would the appeal Panel have been in a position to consider it.
3. I find that the approach taken by the DP to evaluating the evidence of the witnesses to be unreasoned and unreasonable.

As set out at paragraph 45 above I find that Mrs Price had a predisposition against the claimant witnesses when weighing up the respective credibility.

Mrs Price accepted that although she did not like Ms Leonards manner in giving evidence, she did not doubt its substance.

Mrs Price said that Mr Mabbett had been evasive but was unable to point to any part of the transcript to show where in her view his answer was evasive. She was directed by Counsel for the Respondent to a section but I conclude that no reasonable person would have considered those answers to be evasive.

Mrs Price found the Claimant to be a credible witness and was unable to point to any matter on which she was found not to have been telling the truth. Yet in reaching its conclusion the DP declined to accept her denials.

Despite a finding that ER had not told the truth about having been brought to work by the manager while sick for which her motive for concealing this can only have been to protect the Manager in some way, the Respondent found her to be a credible witness. The fact that she had been untruthful in this matter was not put to the Appeal Panel in unequivocal terms and thus prevented a proper evaluation of her credibility by them. Nor was ER's insincerity relating to the text messages given any consideration in evaluating her honesty.

Mrs Price accepted that NM had also been mistaken or dishonest in that she could not have been at home on the sick when she allegedly received a phone call. That unreliability was not reported to the Appeal Panel nor apparently taken into account by the DP.

4. The Respondent failed to look into the Claimant's explanations for example it was never put to NB that the criticisms made of the Manager in the presence of NB were made appropriately at Team meetings. It appears not to have been put to NM that given the background of the Manager compelling ER to work while sick the Claimant had acted appropriately in suggesting a complaint be made. There was no attempt to identify if there were any witnesses to resolve the conflict between the Claimant and the Management witnesses. There was no attempt to explore the Claimant's allegation of a conspiracy. The investigation was not sufficiently thorough.

5. The suspension period was excessive and the Respondents have failed to explain why this was. As conducted by Mr Coates only 3 witnesses were seen initially together with the Claimant.
6. Of the first charge (which the DP did not regard as gross misconduct) namely breaches or professional codes of conduct and standards which amount to a breakdown of trust and confidence in that you did not maintain confidentiality regarding the reasons for a colleague's absence related to allegations relating to the suspension of the Manager in 2016. I doubt that any of the witnesses or the Claimant can be certain of the words used two years before. The witnesses do not say that the claimant disclosed details of the substance of the complaint. Given the way that she was treated over her own suspension I find it inconsistent to the point of unfairness that she should be disciplined in respect of an indiscretion over the use of the word suspension in relation to the manager in 2016.
7. Mrs Price accepted that having concluded that the Claimant had committed acts of gross misconduct that summary dismissal was inevitable and no further consideration was given to sanction or mitigation. That is an unfair approach and consideration should have been given to alternatives including Equalities training to address the workplace culture and the Claimant's part in it.
8. There was not a fair appeal procedure. The appeal was conducted by way of review and not rehearing. The Appeal Panel were not given a clear statement of the findings of fact. They were not adequately told where the doubts had arisen in the credibility of ER and NM. They do not appear to have evaluated the witnesses' credibility or that of the Claimant. Mr Bowe who chaired the Appeal Panel was an unhelpful witness in that on a number of occasions in cross examination he gave rambling and verbose answers in which he did not answer the question and had to be reminded several times to listen to the question and address it directly. It should have been obvious to the Appeal Panel from the contents of the Bundle that there was a complete failure to particularise the charges and the Claimant had no reasonable opportunity to answer them fully.
9. The failures identified above are in my view not merely procedural failings but go to substantial unfairness and the rules of natural justice, in particular the failure to fairly appraise the Claimant of the particulars of the case against her and the predisposition against the Claimant witnesses for no apparent reason, they were long serving and loyal members of the Council's staff.
10. On a careful analysis of the Management witnesses it is ER who had made the greatest number of allegations and the most serious. I am not satisfied that the Respondents have made a reasoned decision for accepting her allegations as findings of fact (if indeed they did so). She is the most unreliable witness having been found not to have told the truth, to be evidently insincere in her relationship as shown by the texts and capable of pretending if it suited her purpose. I do not consider that an open-minded disciplinary panel weighing up the witnesses would have accepted the allegations she made and preferred her evidence to the Claimant or Mr Mabbett.

11. In the circumstances I do not conclude that the Claimant would have been dismissed in any event. Nor do I conclude that the Claimant has on a balance of probability been shown to have contributed to her dismissal by culpable or blameworthy conduct not least because I am unclear as to the findings of fact made by the Respondent as to her conduct at all or that there are well founded findings given the unreliability of the key witness and Mrs Price's unfair predisposition to the witnesses.
12. There was a lengthy RIAW investigation and it appears that this revealed some poor staff relationships and possibly poor management practice on the part of the Team Leaders and where a non-inclusive culture was operating in the workplace. It is not impossible that staff including the Claimant needed substantial retraining in Equalities. In such a situation I appreciate that an employer and a County Council in particular would wish to be seen to take action. However, to dismiss a person for such a serious matter as race discrimination and bullying it is imperative that a thorough and fair investigation, in which the accused is given a full and proper opportunity to understand and answer the particular charges against them, and in which the witness evidence is fairly evaluated and a reasoned conclusion drawn and a proper appeal opportunity given. This did not happen in the Claimant's case.
13. In the circumstances I find that this dismissal was substantially and procedurally unfair and that the Claimant has not been shown to have contributed to her dismissal or that her dismissal would have followed in the event of a fair procedure.
14. I make no uplift for the Acas Code because although I have found the dismissal to be unfair procedurally, I conclude that the Respondents were at all times seeking to honour the Code.
15. The Claimant seeks only Compensation and subject to the matter of adjustments and deductions the Schedule of Loss is agreed as follows

1. Total Award £22625
Basic Award £3840
Compensatory Award
Loss to date of Tribunal £9577
Future Loss £5839
Loss of Statutory Rights £600
Notice pay £2769
2. Prescribed Element Payable subject to DWP certificate

Period of Prescribed Element 16 May 2018 to 20 March 2019
Prescribed Element £9577
3. Non-Prescribed Element payable forthwith £13048

Basic Award £3840
Future Loss £5839
Loss of Statutory Rights £600
Notice Pay £2769

Employment Judge O'Neill

Date 22 March 2019

RESERVED JUDGMENT & REASONS SENT TO
THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS