



EMPLOYMENT TRIBUNALS

Claimant: Mr E Schjoren
Respondent: Jones Balers Farms Ltd
Heard at: Caernarfon **On:** 11 and 12 February 2019
Before: Employment Judge T Vincent Ryan

Representation:
Claimant: In person
Respondent: Mr Alan Roberts (Solicitor)

JUDGMENT having been sent to the parties on 16 February 2019 and reasons having been requested by the respondent in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

1. The Issues:

The claimant was summarily dismissed ostensibly for gross misconduct, in that as manager he misplaced and mis-accounted for two cheques received by the business, and he purchased stock in circumstances giving rise to suspicion that he had failed to properly account for the value of the items he acquired. The claimant contends that he was not guilty of misconduct, that he followed the respondent's established practices and that he was dismissed because, in his role as manager, he raised issues of health and safety management and made disclosures tending to show breaches of legal obligation and matters endangering health and safety. I had to determine whether the claimant had made such public interest disclosures. He says that his dismissal was generally unfair but also automatically unfair because the reason, or if more than one the principal reason for the dismissal, was that he had made those public interest disclosures. I had to determine the real reason for the claimant's dismissal and

if that was potentially a fair reason then, to determine whether in all of the circumstances the respondent acted fairly and reasonably in treating that reason as sufficient reason for dismissal. If the claimant was found to have been unfairly dismissed I would have to consider any contributory fault or conduct on his part and any risk he may have faced of being fairly dismissed in assessing what would be a just and equitable award of compensation.

2. Findings of Fact

- 2.1 The Respondent manages, amongst other things, a shooting range and sells associated products including, especially, firearms. It is a long-established family company; it has three Directors Noel, Guy and Justin Jones with three to four full-time and three to four part-time employees at any given time. It does not have a HR personnel function or department; it does not appear to have any documented personnel procedures; it relies on Mr. Alan Roberts, a solicitor in private practice (who appeared at the final hearing as advocate), for legal advice. It has a few internal cash accounting systems that are heavily reliant on informal, undocumented or paper-based procedures. When I say undocumented I mean that the procedure is not set out in a policy or procedure as to what one ought to do, but there are account books and receipt books and there is a SAGE computing system. The invoice books have handwritten notes on them added to the front page about outstanding payments and issues with any account and then when one book is finished any outstanding notes are handwritten onto subsequent books and the rest are crossed through.
- 2.2 Employees may buy stock such as guns, ammunition and accessories for firearms. There is no formal or documented procedure for the approval of purchases, the approval of costs (other than a known discount towards clothing), or reductions in prices or part-exchange practices or how to value the item being part-exchanged or to record receipt of cash installments.
- 2.3 When a customer pays in cash installments the Respondent would require full payment before release of the gun, or whatever the goods were, and receipts are issued but they are not marked as being cash paid. When a staff member pays cash for any items, in full or part payment, they may write "cash paid" on the receipt. This is confusing as it would indicate to a lay observer that payment had been made in full when it may not have been. There is no system to identify cash payments in the till by reference to a specific customer or product, whereas credit card payments include identifiable customer information. These historic cash purchase practices are weak and what the Claimant called a 'grey area'. These practices gave rise to the risk, or at least the suspicion, of dishonest activity by staff and possibly weaknesses in the respondent's accounting for cash received for guns sold.

- 2.4 Mr. Guy Jones is the Supervising Director and his father, Mr. Noel Jones, is on hand and involved but not on a day to day basis as he nears retirement. The third Director, Justin Jones, has other business interests elsewhere and does not appear to have taken any active role or been involved whatsoever in these matters.
- 2.5 Mr. Guy Jones lives in Catalonia, Spain, and he would visit the UK every 6 – 10 weeks. When he visited his family home and the respondent's business he would check through business activity looking through invoice books; he would do a reconciliation of the paperwork such as it existed.
- 2.6 In 2017, and maybe before, the Respondent was having financial difficulties. Mr. Guy Jones described the business as being "cash hungry" and "fighting to stay in the black". The directors were considering selling the business in the fairly near future. Part of the Claimant's remit on his appointment was to improve the business, and business systems, in readiness for sale within approximately five-years.
- 2.7 The claimant's employment started on 7 January 2015 and he was officially entitled Managing Director; that role was only relinquished in as far as Companies House records are concerned after his dismissal for a reason related to conduct on 20 March 2018. The Claimant only became aware of dismissal on receipt of a letter of dismissal on 21 March 2018 and that is the effective date of termination of employment for our purposes.
- 2.8 In his role, the Claimant adopted a professional approach to matters of management such as data protection, health and safety and personnel management. He tried to introduce some improved and more contemporary practices; he monitored and supervised working practices and was critical of methods that were seen as short-cutting safe and proper practices; this was not always well received by the Respondent's Directors. Mr. Guy Jones made a number of telling remarks in his evidence to the tribunal and I quote: "he seems to think that he was managing the Directors as opposed to managing the employees", it was "OK for him to have different opinions and it is OK for him to preach". Mr. Noel Jones referred to being "told off" by the Claimant. There was an allegation of sexual harassment against an employee which the claimant sought to deal with in accordance with ACAS guidance; the directors dismissed the alleged perpetrator forthwith to appease a customer and expedite matters, and Mr. Noel Jones, in answer to a question from the Claimant about this, said "you were going to go and save the world". These are an indication of the thinking of the two active Directors about the position of the Claimant.
- 2.9 In an agricultural environment with the added ingredient of firearms usage the claimant raised with the respondent a number of health and safety

deficiencies in the respondent's established and permitted practices. These matters were raised orally and on more than one (unspecified) occasion to the two active directors. His concerns were less about the use of firearms and more about matters such as the use of personal protective equipment and safe manual handling or safe usage of farm equipment. The respondent's daily practice was more practically based, taking short cuts with little regard for established and recognised "best practice"; it was more a case of just getting the job done. The claimant raised these matters in line with his managerial duties and for the sake of employees, visitors to or contractors at the site and in line with his objective of improving business practices.

- 2.10 On numerous occasions the Respondent's Directors would overrule the Claimant. An example (referred to above) was when Mr. Guy Jones wanted to make a quick decision to dismiss the said employee who had been accused of sexual harassment rather than risk the matter being drawn out and antagonising the alleged victim and her family; the claimant sought to follow due procedures in accordance with good employment law practice. Despite the claimant's objections the directors dismissed the employee in question peremptorily. The claimant raised these matters in line with his managerial duties and for the sake of employees in line with his objective of improving business practices.
- 2.11 At this time, or around this time, the Claimant embarked on promotional projects which he felt benefitted the respondent's business, for example through a supplier Edgar Brothers a project to promote the sale of Italian manufactured Zoli weaponry; this led to him having the benefit of a trip to Italy and the acquisition eventually of an expensive gun. Similarly, he organised or became involved in events such as giving executive entertainment at a charity shooting day for a local hospice and other events that both Directors referred to dismissively as "jollies".
- 2.12 Both Mr. Guy Jones and Mr. Noel Jones appeared to be concerned that the Claimant was spending a lot of money on expensive guns for himself and was acquiring an impressive collection; they felt that he "liked what he saw and he wanted to join the party"; he wanted to go on "jollies". That was the evidence of Mr. Noel Jones who then quoted a buyer as saying that the Claimant was "having a nice time" and he was "getting around a bit". All of this raised a suspicion in the directors' minds as to what the claimant was doing at work.
- 2.13 It follows that whilst the Claimant reported and raised several issues of concern to him in the management of the business including health and safety issues about work undertaken on the respondent's estate by agents and others, about legal obligations to employees, and the 'grey area'

regarding accounting for cash received, the respondent had other concerns about him and in theory the directors wanted any improvements necessary to make the business a saleable asset. The claimant acted conscientiously in raising matters that he believed from his observations gave rise to genuine concerns for the safety of workers and a lack of good industrial relations practice in respecting colleagues' employment rights. He wanted to improve management systems. The respondent required improvement, and its directors sought it although they did not always agree with the claimant's methods and suggestions. Meanwhile Guy Jones, regardless of matters such as these, was suspicious of the Claimant from about September 2017 against the background that I have described in paragraphs 2.11 and 2.12.

2.14 In March 2017 HMRC had sent a cheque to the business for £6,149.27, and it went missing as did another cheque for £2,185.00 from a firm of solicitors. When it could not be traced the Respondent commissioned its accountants, specifically Ms. Harris, to review the cash system, the 'grey area', and to try to find the cheques; she was to focus on cash transactions in the period from 1 May 2017 to December 2017, which was designed to include the period of time in which the Claimant acquired his expensive Zoli gun.

2.15 Ms. Harris prepared a report dated 17 January 2018 and then the following week another report, (pages 27 – 46 of the trial bundle to which all other page references refer unless otherwise stated) expressing her concern at accountancy practice at the respondent's business including in relation to the claimant's cash transactions for his personal benefit. She also sent a further email at pages 47 – 48 and at page 15 in the same vein. Furthermore, she gave compelling evidence to the tribunal of poor and suspicious accounting by the claimant, especially in relation to cash payments. She gave credible and reliable witness evidence as to anomalies in the accounting and in the Claimant's business activities. She said that her most significant findings related to guns that he had purchased for his own personal use, where payments could not be traced although paperwork indicated that the gun had been paid for in full; despite that, there was no evidence available to Ms. Harris of the payments having been made. She also identified anomalies in respect of the claimant's purchase of an Air Arms air rifle, and guns made by Ruger, Anschutz, Winchester and Miroku, where there had been sales, purchases, part-exchanges of equipment and at the end of which the Claimant retained the Anschutz, Zoli and Winchester. Of all the transactions it was the claimant's acquisition of the Anschutz and the Zoli that most concerned Ms. Harris.

2.16 She also reported on the missing cheques totaling £8,334.27 that the Claimant had paid into a business credit card account. He denied knowledge of the cheques, as he still does, and having paid them into the said account held by the respondent (he does not recall having done so) although there

is evidence that he did. Ms. Harris accepts the possibility of an innocent explanation, i.e. that it was a mistake because there was clearly no gain to the Claimant. The money was paid into the business' credit card account. Mr. Guy Jones believes that this was done to conceal the money so that it did not show in the business current account as available cash for him; he was not paid a salary at this time and would periodically request a payment from the available cash in the respondent's current bank account.

2.17 The Respondent's Directors and Ms. Harris did not tell the Claimant that he was being investigated. Ms. Harris gave evidence that she was conducting a business review that led into an investigation. The first the Claimant became aware that he was being scrutinised for disciplinary reasons was when he received the invitation to attend a disciplinary hearing, so he had no formal opportunity to prepare for that or to answer questions in an interview in advance of the hearing that he was warned, in the invitation, could lead to his dismissal.

2.18 The decision to proceed with a disciplinary hearing was not on the recommendation of Ms. Harris, but it was the decision made by both Guy and Noel Jones, the Directors, in consultation with Mr. Alan Roberts; they were to deal with the matter throughout the disciplinary process.

2.19 On Mr. Roberts' advice a disciplinary hearing panel was convened comprising Mr. Guy Jones, Mr. Noel Jones and their solicitor Mr. Roberts who was appointed Chairman. The Respondent's case is that Guy Jones was "the Presenting Officer"; he confirmed this in answer to repeated questions from Mr. Roberts during this hearing. Ms. Harris was a witness for the respondent at the disciplinary hearing. The Claimant was questioned and answered questions for approximately four hours during the disciplinary hearing. Mr. Guy Jones had concerns about the Claimant's purchase of the Zoli gun in September/October 2017 and he spoke to his father about it at that time. His concern was compounded by concern over the lost cheques. He was suspicious from the outset that the Claimant was hiding money from him and he felt that from September/October while the Claimant was buying expensive equipment he was concealing money so that he, Guy Jones, could not request any available surplus; there was none in the business current account. He believed, in his own words, that the Claimant was having a "field day" and that was the impression, attitude, and belief of Mr. Guy Jones at the disciplinary hearing and of which he had informed Noel Jones as long previously as September/October 2017. They jointly decided that they would dismiss the Claimant. They discussed the outcome with the Chairman of the panel, Mr. Roberts, in the absence of Ms. Harris and the Claimant. Whether ultimately it was Mr. Guy Jones who first said the words "dismiss" I do not know although that is possible, but he certainly arrived at his conclusion jointly with Mr. Noel Jones and with the advice and assistance of the chairman Mr. Roberts.

2.20 The Claimant had been unable to provide any evidence to satisfy Ms. Harris or the Respondent about the gun transactions or the cheques. His only mitigation in respect of the cheques was that he had forgotten them and what he had done with them or why; his mitigation in respect of the guns was that he followed an established procedure of undocumented cash payments with a self-issued receipt, which procedure he criticised to the respondent because he knew it gave rise to the risk of dishonesty or at least suspicion of dishonesty. He said he had listed some payments on a piece of paper but that he had subsequently lost that paper and he could not evidence having made the payments that were due for all of the guns and which he said that he had made.

2.21 At this time, Mr. Noel Jones' view, expressed in evidence, was that the Claimant was "a cancer in the business", that there was "betrayal, treachery", "his conduct was appalling" and he felt (and Guy Jones felt) that it was "too much". They are all direct quotations from Mr. Noel Jones' evidence. Mr. Noel Jones, who sat on the disciplinary panel was involved in the discussion with Mr. Guy Jones and Mr. Roberts around the decision to dismiss the claimant; he approved the decision to dismiss and Noel Jones required, agreed with and acted upon that approval.

2.22 Having received a letter of dismissal the Claimant appealed against that decision. On Mr. Roberts' advice an appeal panel was convened comprising him as chairman, and Messrs. Noel and Guy Jones; both Guy and Noel Jones had an input into the decision to uphold the dismissal and reject the appeal, assisted by Mr. Roberts. It may well have been Mr. Noel Jones who ultimately said those words and who ultimately dismissed two of the five allegations, but it was a joint decision. At page 192 of the appeal hearing Mr. Noel Jones refers to the Claimant's discontent and history of the last two years, "things you wanted or I wanted clashed. You thought we should go this way, I thought we should go that way and the circumstances for all of us were not good." That was his mindset entering the appeal. Neither Guy Jones nor Noel Jones approached the matter objectively, there was considerable background and suspicion, although ultimately the decision to dismiss the Claimant was based on the transactions which the Claimant could not adequately account for and the misplaced cheques. The claimant's appeal was dismissed. The directors no longer trusted the claimant and felt vindicated by Ms. Harris' report which would in any event have given rise to suspicion.

3 The law:

3.1 Section 103A Employment Rights Act 1996 (ERA) provides that an employee who is dismissed shall be regarded as being unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure. Section

43A ERA defines a protected disclosure as a qualifying disclosure which is made by a worker in accordance with section 43C to 43H ERA. Disclosures qualifying for protection are any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one of a number of things including that a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject or that the health and safety of any individual has been or is being or was likely to be endangered.

- 3.2 Section 94 Employment Rights Act 1996 (ERA) states that an employee has the right not to be unfairly dismissed, while s.98 ERA sets out what is meant by fairness in this context in general. Section 98(2) ERA lists the potentially fair reasons for an employee's dismissal, and these reasons include reasons related to the conduct of the employee (s.98(2)(b) ERA). Section 98(4) provides that once an employer has fulfilled the requirement to show that the dismissal was for a potentially fair reason the Tribunal must determine whether in all the circumstances the employer acted reasonably in treating that reason as sufficient reason for dismissal (determined in accordance with equity and the substantial merits of the case).
- 3.3 Case law has provided guidance but is not a substitute for the statutory provisions which are to be applied. Case law provides that the essential terms of enquiry for the Employment Tribunal are whether, in all the circumstances, the employer carried out a reasonable investigation and, at the time of dismissal, genuinely believed on reasonable grounds that the employee was guilty of misconduct. If satisfied of the employer's fair conduct of the dismissal in those respects, the Employment Tribunal then has to decide whether the dismissal of the employee was a reasonable response to the misconduct. The Tribunal must determine whether, in all of the circumstances, the decision to dismiss fell within the band of reasonable responses of a reasonable employer; if it falls within the band the dismissal is fair but if it does not then the dismissal is unfair.
- 3.4 Questions of procedural fairness and reasonableness of the sanction (dismissal) are to be determined by reference to the range of reasonable responses test also (**Sainsbury's Supermarkets Ltd v Hitt [2002] EWCA Civ 1588** and **Iceland Frozen Foods Ltd v Jones [1983] ICR 17**).
- 3.5 The Tribunal must not substitute its judgment for that of the employer, finding in effect what it would have done, what its preferred sanction would have been if it, the Tribunal, had been the employer; that is not a consideration. The test is one of objectively assessed reasonableness. In **Secretary of State for Justice v Lown [2016] IRLR 22**, amongst many others, it was emphasised how a tribunal can err in law by

adopting a “substitution mindset”; the point was made in **Lown** that the band of reasonable responses is not limited to that which a reasonable employer might have done. The question was whether what this employer did fell within the range of reasonable responses. Tribunals must assess the band of reasonable responses open to an employer, and decide whether a respondent’s actions fell inside or outside that band, but they must not attempt to lay down what they consider to be the only permissible standard of a reasonable employer.

- 3.6 Under the **Polkey** principle it may be appropriate to reduce an award by applying a percentage reduction to the Compensatory Award to reflect the risk facing a claimant of being fairly dismissed or to limit the period of any award of losses to reflect this risk, estimating how long a claimant would have been employed had he not been unfairly dismissed, in circumstances where the respondent would or might have dismissed the claimant. I must consider all relevant evidence, and in assessing compensation I appreciate that there is bound to be a degree of uncertainty and speculation and should not be put off the exercise because of its speculative nature.
- 3.7 Where a Tribunal finds that a complainant’s conduct before dismissal was such that it would be just and equitable to reduce a Basic Award it may do so (s.122 ERA). Where a Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce any compensatory award by such amount as it considers just and equitable having regard to that finding (s.123 ERA). In doing so a Tribunal must address four questions (**Steen v ASP Packaging Ltd [2014] ICR 56 EAT**):
 - 3.7.1 What was the conduct giving rise to the possible reduction?
 - 3.7.2 Was that conduct blameworthy?
 - 3.7.3 Did the blameworthy conduct cause or contribute to the dismissal?
 - 3.7.4 To what extent should the award be reduced?
- 3.8 When a claimant argues that a respondent’s disciplinary decisions were inconsistent and that this gives rise to unfairness, it is important that the dismissing and/or appeals officers who are accused of being inconsistent are actually aware of the comparator cases. It is also essential that the comparators relied upon are in comparable situations to the claimant. Because of the need for respective facts to be truly comparable, arguments of inconsistency are difficult to maintain. That said, inconsistency of treatment in truly comparable situations may give

rise to a finding of unreasonableness and unfairness on the part of the respondent, such as to render the decision to dismiss unfair.

4. Application of law to facts

4.1 The reason for this dismissal was the Claimant's dealings with the said guns and the cheques as described in Ms. Harris's reports. Unacceptable financial accounting was the principal reason for the dismissal; this contributed to and was against the background of the breakdown in the relationship between the claimant and the two active directors, as evidenced by Mr. Noel Jones when he talked of general discontent and clashes with the claimant. The specific issues of health and safety, allegations of breaches of legislation and illegality were not the principal or material reasons. The relationship was damaged by the clash of management styles but ultimately it was destroyed over the respondent's suspicion that the claimant was gaining financially and improperly at the expense of the respondent's directors. There was such a clash of management style, culture and ambition where a traditional family business was faring badly and its directors were uncomfortable with a professional outsider who had different ideas for the business and was trying to manage affairs in a different way. Alleged financial impropriety however, as described in Ms. Harris' report, tipped the balance against the claimant and was the reason for the claimant's dismissal.

4.2 The investigation into that reason was unfair; in saying this I do not criticise Ms. Harris who, I accept, acted conscientiously and diligently upon the instructions that she received from the directors to investigate matters and practices and to produce a report. She produced an impartial, professional, accountancy overview for the respondent to then investigate the claimant's behaviour internally. However, no warning was given to the Claimant that he was being investigated and even after the review by Ms. Harris he was not interviewed as part of the disciplinary process. That led to a lack of time and opportunity for him to prepare his defence and mitigation although there was about a week between the invitation letter and the meeting at which he was dismissed. No-one has produced any evidence to me to suggest that the three witnesses that I heard here at this Tribunal for the Respondent (in addition to Noel and Guy Jones and who gave evidence that the claimant did not follow established practices and that they had not seen him make payments for goods that he acquired), were interviewed prior to the decision to dismiss, or that statements were taken from them save in relation to this hearing, or that they were available to be questioned, including by the claimant, at the disciplinary hearing. I believe that their evidence to the tribunal is somewhat of an after-thought; it was obtained by the respondent to defend these claims rather than to inform the decision on the disciplinary allegations at the time. The investigation at the time ought to have included

interviewing witnesses who could give evidence about the practice and procedures at the time, particularly as the Claimant was saying all he did was follow the procedures that were in place. The investigation was poor and unfair, save in respect of the preparation of Ms. Harris' report itself.

4.3 The disciplinary hearing was unfair. It lacked structure. It concluded with a joint decision of the two active directors which in itself and in principle may not have been a problem except that both Directors had effectively prejudged the eventual outcome (even if there was some movement on the allegations in that two were dropped) and Noel Jones was also the Appeals Officer; the outcome was a foregone conclusion given the poor relationship over management styles and clashes of management culture. Mr. Guy Jones gave clear and unequivocal evidence on the first day of this hearing that the decision to dismiss the claimant was made jointly by him and his father Noel Jones having had the advice and guidance of Mr. Alan Roberts. On the second day of this final hearing Mr. Noel Jones gave evidence and, of his own accord and further guided by some leading questions and suggestions from Mr. Roberts (presumably inadvertently), he sought to persuade me that although he sat on the disciplinary hearing panel throughout the entire hearing, and remained with his son and solicitor during instructions to Mr. Roberts and advice given, and the deliberations, and he was present when Mr. Guy Jones made his decision, he played no part in the decision to dismiss until the appeal. His explanation was unconvincing and implausible; it contradicted Mr. Guy Jones' evidence which I believed as to the decision making process; it was inconsistent with the remainder of the evidence as to his view of the claimant and his general state of mind as to how matters were to be resolved. In short, I did not believe Mr. Noel Jones when he said that he was not involved in the decision to dismiss the claimant; he was. If the two directors had not prejudged the outcome and if Mr. Noel Jones was not the appeal officer then the fact that it was a joint decision would not necessarily render the dismissal unfair. There was after all a third, uninvolved, director and there was the possibility of using external resources.

4.4 The appeal was unfair for the reasons alluded to in paragraph 4.3 above. Mr. Noel Jones was effectively hearing an appeal against his own decision, it was a joint decision made at a meeting, chaired by the same Chairman and comprising the same panel of Mr. Roberts and the same two directors. Their minds had been made up. It was clear that there was no way back for the Claimant; even though two allegations were dropped that was not significant; the outcome was clearly that dismissal was inevitable to the mind of Mr. Noel Jones.

4.5 The Claimant's conduct in dealing with his own cash transactions in a way that he described as being 'grey', where there were high value transactions and he failed to create and retain any evidence of payments, clearly

contributed to his own downfall. The same can be said of the mishandling of the cheques; that could have been an inadvertent mistake, but it was his mistake. The claimant had drawn attention to the 'grey area' over accounting for cash transactions and he ought to have ensured that if he had any financial dealings he did not make use of the 'greyness'. For a person in a position of responsibility dealing with this level of cash payment there is an onus to ensure that over and above any established practice there is evidence, not faded receipts or lost envelopes or lost pieces of paper such as described by Ms. Harris. By his own admission the claimant chose to follow an accounting procedure, when he was due to make substantial payments to his employers for high value goods that he was acquiring, that he knew and acknowledged was poor and open to abuse. Being critical of a system where cash payments could not be traced when he was employed to improve the business systems in use, it ill-behoved the claimant to take advantage of those procedures and so give rise to suspicion and maybe even to commit a dishonest act (which is not proven). Because of the extent to which the Claimant contributed to his own dismissal I consider it appropriate to reduce any basic award and the compensatory award by 50%.

4.6 The other questions that arise are: Was the Claimant at risk of being fairly dismissed? If the Respondent, knowing what it knew, had ensured a fair disciplinary hearing and appeal hearing was the Claimant at such a risk of being dismissed that his compensation ought to be further reduced? I find that the Claimant was at a substantial risk of dismissal, that the Respondent would never have given him the benefit of any doubt on the basis of the background and what Ms. Harris had revealed. Perhaps a fair procedure could have been either of the two working Directors being the Disciplining Officer, the other left out of the discussion and acting as an Appeals Officer. Both the Disciplining and Appeals Officers should have robustly scrutinised the events and the Claimant's mitigating circumstances and that did not happen. If that procedure had been followed, the two Directors taking completely different roles, or if the non-working director (Justin Jones) had been brought in as an impartial unprejudiced Appeals Officer, I find there would have been a substantial risk that the Claimant would have been dismissed on the basis of Ms. Harris's evidence and the Claimant's lack of evidence to support his defence. I assess that there is a 70% chance that he would have been dismissed anyway. That is not a finding that the Claimant has stolen anything, I cannot find that, but he did enough to create suspicion of improper conduct and the Respondent had reasonable grounds to believe that something seriously untoward had happened. Its directors did so believe.

4.7 Based on the way this hearing went, with the claimant acting in person and the respondent represented by Mr. Roberts, I anticipated that a lengthy remedy hearing would be required when evidence and submissions would

be considered on remedy. In the event the parties settled the claims on terms of their own making. I did not hear evidence on remedy nor make an award.

Employment Judge T Vincent Ryan
Dated: 5th April 2019

REASONS SENT TO THE PARTIES ON

.....8 April 2019.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS