



EMPLOYMENT TRIBUNALS

Claimant: Mr C Fowler

Respondent: Kent and Medway NHS and Social Care Partnership Trust

Heard at: Ashford

On: 1st and 2nd April 2019

Before: Employment Judge Pritchard

Representation

Claimant: Mr L Harris, counsel

Respondent: Mr T Saroy, solicitor

RESERVED JUDGMENT

- 1 The Claimant's claim that he was unfairly dismissed is not well founded. The Claimant's claim is accordingly dismissed.
- 2 The Claimant's claim that he was wrongfully dismissed is dismissed.

REASONS

1. By way of an ET1 presented on 5 December 2017 the Claimant claimed unfair dismissal, notice pay and unpaid wages. The unpaid wages claim was settled before this hearing. The Respondent resists the remaining claims.
2. The Tribunal heard evidence from the Respondent's witnesses: Sonia Michaels (Mental Health Nurse and Unit Manager and who, together with the Claimant's Line Manager, Heather Penn, carried out the investigation into the relevant matters); Louise Chapman (Assistant Director for Community Services Care Group who chaired the disciplinary panel); and Dr Lona Lockerbie (Forensics and Specialist Care Group Director who chaired the appeal panel). I heard evidence from the Claimant on his own behalf. I was provided with a bundle of documents to which the parties variously referred. At the conclusion of the hearing the parties made oral submissions, Mr Saroy amplifying his written submissions.

Issues

3. The issues were discussed at outset of the hearing and were agreed as follows:

Unfair dismissal

- 3.1. Can the Respondent show the reason for the Claimant's dismissal and that it was for a potentially fair reason. The Respondent relies on conduct; alternatively some other substantial reason, namely a loss of trust and confidence. This will require the Respondent to show a genuine believe in the alleged misconduct or loss of trust and confidence.
- 3.2. If so, did the Respondent hold that belief on reasonable grounds following as much investigation as was reasonable in the circumstances?
- 3.3. Did the Respondent follow a fair procedure?
- 3.4. Did the decision to dismiss fall within a band of reasonable responses?
- 3.5. The Claimant makes the following particular complaints of unfairness on the Respondent's part:
- 3.5.1. Unreasonable and unjustified delay;
- 3.5.2. Failure to investigate the known problems with the Respondent's RIO record keeping system;
- 3.5.3. In particular, a failure to investigate the Claimant's evidence that there were no details on RIO when MM was seen by another mental health professional during a general hospital admission;
- 3.5.4. Dealing with poor record keeping as a conduct issue rather than a capability issue;
- 3.5.5. Treating poor record keeping as a gross misconduct issue; and
- 3.5.6. Failure to take account of the Claimant's long service and clean disciplinary record when deciding to dismiss.

Notice pay

- 3.6. Can the Respondent show that the Claimant actually committed an act of gross misconduct such that it was entitled to dismiss him without notice?
4. The hearing considered liability only. If the Claimant were to be successful in either or both of his claims, a further hearing would take place to consider remedy.
5. The Respondent told the Tribunal that it would not be seeking to adduce

evidence to show that any compensation for unfair dismissal should be reduced under the Polkey principle or on the basis of contributory fault.

Findings of fact

6. The Claimant commenced employment with the Respondent in September 1989 as a student nurse. In 1992 he became a registered mental nurse. At the time of his dismissal referred to below he was a Band 6 Community Mental Health Nurse. From May 2014, he worked within the Thanet Horizons Service based in Ramsgate. The Horizons Service provides intensive community based support and rehabilitation for adults with enduring complex mental health needs. The Claimant's role required him to manage a case load of up to 25 patients living in the community. He would routinely visit two buildings occupied by individuals under supported living projects. The Claimant was largely autonomous with minimal supervision. He held an extremely responsible role.
7. Prior to the disciplinary proceedings leading to the Claimant's dismissal, he had not been subjected to any formal proceedings relating to his conduct or capability.
8. The Claimant was required to work within the framework of the Respondent's Care Programme Approach Policy (CPA) and to comply with the Respondent's other policies and procedures.
9. The Respondent uses an electronic records system known as RIO. Among other things, the system contains patient records, needs assessments, care plans, risk assessments, and patient notes. It also creates statistical data and utilises a business intelligence system which warns of the dates upon which risk assessments and care plans become overdue. RIO also utilises a letter function. The Claimant was provided with a laptop computer so that he could access and input data on the system.
10. The Tribunal accepts Louise Chapman's evidence that the requirement to carry out and record risk assessments, care assessments and care plans was a fundamental aspect of the Claimant's role. At the disciplinary hearing referred to below, the Claimant acknowledged that the requirement to adhere to the CPA is, broadly, speaking a fundamental part of a nurse's role.

Supervision

11. Although the Claimant had minimal day to day supervision, his line manager, Heather Penn, held supervision meetings with him. The supervision notes show that such meetings might take place every other month. These notes suggest that the Claimant was failing in the requirement to make appropriate entries and keep records updated on RIO.
12. The supervision note dated 20 October 2016 records the following, among other things:

... consequences re underperformance

- HP to monitor closely to see if progress
- Cliff to update 2 careplans/risk assessments per week
- HP to discuss [..] at Beacon; Dr input at 6 monthly CPAs
- Cliff to organise time/diary to fulfil essential components of the role
- Cliff aware this will be managed formally from now on if progress not made

Cliff aware performance is important and needs to improve

Patient AB

13. On 1 June 2015, the Claimant became the care coordinator for patient AB following AB's discharge from a rehabilitation unit. AB suffered from paranoid schizophrenia and remained a patient under section 117 of the Mental Health Act 1983.
14. In about July 2015, after the Claimant made a few visits, AB proved difficult to contact. On 1 December 2015, the Claimant was informed that AB had declined the further involvement of support workers. This prompted the Claimant to visit AB together with a member of Aspirations, a specialist care agency. AB made it clear that he no longer wanted contact with mental health services. The Claimant took the view that there were no immediate risk concerns and no apparent grounds for concerns regarding AB's mental capacity. The Claimant discharged AB from the Respondent's services at AB's request. In this way, AB was discharged back into the care of his GP.
15. On 13 April 2016, AB was found dead at his supportive accommodation, his body in decomposed state.
16. A coroner's inquest into the death of AB which took place on 7 September 2016 recorded an open verdict; the cause of his death could not be identified but it was thought that it might have been accidental, for example, because of a fall, or due to natural causes such a heart attack or stroke.
17. In September 2016, a Root Cause Analysis (RCA) was carried out. The RCA was concluded on 27 November 2016. Criticisms of the Claimant contained in its findings included his alleged failure to follow the CPA and the correct discharge policy. The RCA concluded:

The evidence suggests that the care coordinator has not followed correct policies, guidance and procedures as would be expected in the job role. There was little evidence of care being delivered to this client whilst under the care of the Horizons Service and the decision to discharge has been made outside of process and is believed to have been unsafe

Patient MM

18. In about July 2015, the Claimant became the care coordinator for MM following his discharge from a rehabilitation unit. MM had a long history of recurrent drug use and had difficulty managing his medication. During a visit to MM on 22 March 2016, the Claimant noticed that MM appeared by be

drowsy.

19. On 12 April 2016, a Health Care Worker raised concerns with the Claimant that MM had appeared drowsy. A colleague told the Claimant that following a further visit that day, MM seemed better. The Claimant did not visit MM on that occasion.
20. On 1 June 2016 MM was found dead at his accommodation. The cause of death was thought to be an unintentional overdose of codeine.
21. In September 2016, a RCA was carried out and concluded on 31 October 2016. Criticisms of the Claimant contained in its findings included his alleged failure to update MM's risk assessment or change his management. The RCA also noted that the Claimant had not visited MM or arranged for him to be reviewed by a psychiatrist or GP after MM's drowsy state had been reported to him.

Investigation

22. The RCAs were reported to the Care Commissioning Group (CCG) which required reassurance that the Claimant was safe to practice.
23. The Claimant went on sickness absence in November 2016 suffering from stress and depression.
24. Having taken annual leave, the Claimant returned to work on 18 April 2017 whereupon he was suspended by his line manager, Heather Penn.
25. An investigation was carried out by Heather Penn and Sonia Michaels. Investigatory interviews were held with the Claimant, the Health Care Worker referred to above, and an occupational therapist with the rehab service who had involvement with AB and MM. The investigators obtained a number of emails and a log of the reports the Claimant had made to the Respondent's IT department about problems with RIO, and prepared a list of the dates on which the Claimant made entries onto RIO regarding AB and MM. The investigators also had regard to the Claimant's supervision notes and the review of the inquest relating to AB.
26. The investigators prepared a report contained within a Management Statement of Case. The investigators concluded that there was a case for the Claimant to answer in respect of the following three allegations:
 - 26.1. Following a RCA investigation it is alleged that [the Claimant] failed to follow the CPA and Safe Discharge policy and procedure in relation to client AB;
 - 26.2. Following a visit to client MM on 22 March 2016 [the Claimant] failed to update the risk assessment and the care plan regarding MM's medication and implement an appropriate care plan; and
 - 26.3. Following a RCA investigation it is alleged that [the Claimant] failed to follow up on concerns raised by Health Care Worker [name] regarding client MM on 12 April 2016.

27. The Management Statement of Case detailed the relevant provisions of the CPA and other policies said to have been breached.
28. By letter dated 22 June 2017, the Claimant was informed that he was required to attend a disciplinary hearing to consider the allegations. A copy of the Management Statement of Case, together its appendices, was enclosed with the letter. The Management Statement of Case fleshed out in more detail the Claimant's alleged failings in respect of the allegations. The Claimant was informed that the outcome of the disciplinary hearing could include dismissal.

Disciplinary hearing and dismissal

29. Louise Chapman chaired a disciplinary hearing on 20 July 2017. The Claimant was accompanied by his Trade Union Representative. In summary, the Claimant gave the following responses to the allegations:

With regard to AB:

- 29.1. The Claimant acknowledged that the CPA requires the involvement of a psychiatrist but he was generally unable to get an appointment with a psychiatrist and AB would not have agreed to see a psychiatrist in any event.
- 29.2. That AB discharged himself and the Claimant had no power to prevent it.
- 29.3. The policy does not cover the situation where a patient discharges himself.
- 29.4. The Claimant had written to AB's GP to inform him/her that AB had been discharged: the letter to the GP must have been lost on RIO which had known problems of this nature.
- 29.5. The Claimant had discussed AB's discharge with his manager.

With regard to MM

- 29.6. The Claimant was sure he had updated the care plan which should be recorded on RIO; the notes could not have uploaded. RIO had "lost" information before. RIO had not been updated by other health care professionals following MM's hospital visit which suggested that RIO might not be functioning properly.
- 29.7. Cloud connection issues meant that it was not always possible to enter notes onto RIO there and then. Manuscript notes would be made and RIO notes entered later. Although there was a store and forward function in his computer, it did not work. The Health Care Worker gave evidence to the disciplinary panel that RIO had been problematic.
- 29.8. After being informed that MM was no longer drowsy, he decided not to escalate the concern. With hindsight, he would have done.

30. The Claimant's representative made reference to the delay in bringing the disciplinary proceedings.
31. After a period of deliberation, by letter dated 1 August 2017 Louise Chapman informed the Claimant of her decision that the Claimant should be dismissed by reason of gross misconduct. Her letter set out the reasons why. Mrs Chapman's decision was based not only on failures to comply with the CPA and discharge policy, but also breaches of professional conduct set out in the NMC Code of Conduct.
32. The Claimant received that letter on 2 August 2017 and it is common ground that his dismissal took effect on that date.

Appeal

33. The Claimant appealed against his dismissal by letter dated 4 August 2017. The Claimant's appeal was acknowledged by letter dated 14 August 2017. By letter dated 8 November 2017, the Respondent requested the Claimant's grounds of appeal
34. The appeal hearing, chaired by Dr Lona Lockerbie, took place on 3 January 2018. The Claimant attended with his Trade Union Representative.
35. By letter dated 8 January 2018, Dr Lockerbie communicated the decision of the appeal panel that the decision to dismiss should be upheld.
36. In the meantime, the Claimant had presented his ET1 claim to the Tribunal on 5 December 2017.

Applicable law

Unfair dismissal

37. Under section 98(1) of the Employment Rights Act 1996, it is for the employer to show the reason for the dismissal (or if more than one the principal reason) and that it is either a reason falling within section 98(2) or for some other substantial reason of a kind such as to justify the dismissal of the employee holding the position he held. A reason relating to conduct is a potentially fair reason falling within section 98(2).
38. The reason for the dismissal is the set of facts or the beliefs held by the employee which caused the employer to dismiss the employee. In determining the reason for the dismissal, the Tribunal may only take account of those facts or beliefs that were known to the employer at the time of the dismissal; see W Devis and Sons Ltd v Atkins 1977 ICR 662. See also Abernethy v Mott Hay and Anderson 1974 IRLR 213. When assessing the reason for the dismissal, the Tribunal must consider the mental process of the decision maker: see Royal Mail Limited v Jhuti 2017 EWCA Civ 1632.
39. It is open to an employer to put forward alternative reasons for dismissal provided it is pleaded: see Murphy v Epsom College 1983 IRLR 395.
40. Under section 98(4) of the Employment Rights Act 1996, where the employer has shown the reason for the dismissal and that it is a potentially

fair reason, the determination of the question whether the dismissal was fair or unfair depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and must be determined in accordance with equity and substantial merits of the case.

41. When determining the fairness of conduct dismissals, according to the Employment Appeal Tribunal in British Home Stores v Burchell 1980 ICR 303, as explained in Sheffield Health & Social Care NHS Foundation Trust v Crabtree [2009] UKEAT 0331, the Tribunal must consider a threefold test:
 - 41.1. The employer must show that he believed the employee was guilty of misconduct;
 - 41.2. The Tribunal must be satisfied that he had in his mind reasonable grounds upon which to sustain that belief; and
 - 41.3. The Tribunal must be satisfied that at the stage at which the employer formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.
42. The requirement for procedural fairness is an integral part of the fairness test under section 98(4) of the Employment Rights Act 1996. When determining the question of reasonableness, the Tribunal will have regard to the ACAS Code of Practice of 2015 on Disciplinary and Grievance Procedures. That Code sets out the basic requirements of fairness that will be applicable in most cases; it is intended to provide the standard of reasonable behaviour in most cases. Under section 207 of the Trade Union & Labour Relations (Consolidation) Act 1992, in any proceedings before an Employment Tribunal any Code of Practice issued by ACAS shall be admissible in evidence and any provision of the Code which appears to the Tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.
43. In A v B [2003] IRLR 405, the Employment Appeal Tribunal said that the gravity of the charges and the potential effect on the employee will be relevant when considering what is expected of a reasonable investigation. See also: Crawford v Suffolk Mental Health Partnership NHS Trust [2012] IRLR 402. However, it is not for the Tribunal to substitute its own decision as to the reasonableness of the investigation. In Sainsburys Supermarkets v Hitt [2003] IRLR 23 the Court of Appeal ruled that the relevant question is whether the investigation fell within the range of reasonable responses that a reasonable employer might have adopted. In Shrestha v Genesis Housing Association Ltd 2015 IRLR 399 the Court of Appeal held that while an employer must consider any defences advanced by the employee, the extent to which each line of defence must be investigated will depend on the circumstances as a whole: to say that each line of defence must be investigated unless it is manifestly false or unarguable is to adopt too narrow an approach.
44. Nor is it for the Tribunal to substitute its own decision as to the reasonableness of the action taken by the employer. The Tribunal's function is to determine whether, in the particular circumstances of the

case, the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. See: Iceland Frozen Foods v Jones [1982] IRLR 430; Post Office v Foley [2000] IRLR 827.

45. It was said in London Ambulance Service NHS Trust v Small [2009] IRLR 563:

"It is all too easy, even for an experienced Employment Tribunal, to slip into the substitution mindset. In conduct cases the claimant often comes to the Employment Tribunal with more evidence and with an understandable determination to clear his name and to prove to the Employment Tribunal that he is innocent of the charges made against him by his employer. He has lost his job in circumstances that may make it difficult for him to get another job. He may well gain the sympathy of the Employment Tribunal so that it is carried along the acquittal route and away from the real question – whether the employer acted fairly and reasonably in all the circumstances at the time of the dismissal."

46. In Taylor v OCS Group Ltd [2006] IRLR 613, the Court of Appeal stressed that the Tribunal's task under section 98(4) of the Employment Rights Act 1996 is not only to assess the fairness of the disciplinary process as a whole but also to consider the employer's reason for the dismissal as the two impact on each other. It stated that where an employee is dismissed for serious misconduct, a Tribunal might well decide that, notwithstanding some procedural imperfections, the employer acted reasonably in treating the reason as sufficient to dismiss the employee. Conversely, the Court considered that where the misconduct is of a less serious nature, so the decision to dismiss is near the borderline, the Tribunal might well conclude that a procedural deficiency had such impact that the employer did not act reasonably in dismissing the employee.

Wrongful dismissal

47. The Employment Tribunals Extension of Jurisdiction Order 1994 provides that proceedings for breach of contract may be brought before a Tribunal in respect of a claim for damages or any other sum (other than a claim for personal injuries and other excluded claims) where the claim arises or is outstanding on the termination of the employee's employment. A claim for notice pay is a claim for breach of contract; Delaney v Staples 1992 ICR 483 HL.
48. In Neary v Dean of Westminster [1999] IRLR 288, it was held that conduct amounting to gross misconduct justifying summary dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment: a deliberate or wilful contradiction of the contractual terms. Alternatively, it must amount to very considerable negligence; see Sandwell and West Birmingham Hospitals NHS Trust v Westwood UKEAT/0032/09.

In cases of wrongful dismissal, it is necessary for the Respondent to prove that the Claimant had actually committed a repudiatory breach of contract or was grossly negligent: See: Shaw v B & W Group Ltd UKEAT/0583/11.

Conclusion and further findings of fact

Can the Respondent show a genuine belief in the Claimant's misconduct/loss of trust and confidence

49. Part of the CPA process involves CPA reviews of patients' care plans. Most of the work should be done between the care coordinator and the patient before the review meeting. An appendix to the CPA clearly sets out the steps to be taken before, during and after a CPS review. When a discharge is being contemplated, the CPA states that the Transfer and Discharge of Care Service Users Policy (the Discharge Policy) will apply. The guidance to the CPA makes it clear that when discharging a service user from the service, a CPA review must be held. This requirement is repeated in the Discharge Policy as is the requirement for discharge to be planned. Among other things, the Discharge Policy also requires that GPs and other professionals involved should be given adequate notice that a service user is being discharged, with a letter sent to them in advance explaining the proposed discharge arrangements and risk factors. Any details of entitlement to aftercare under section 117 of the Mental Health Act 1983 should state clearly whether the service user needs section 117 aftercare.
50. The Tribunal does not agree with the Claimant's submission that, because the Claimant's shortcomings had been identified and discussed during supervision, this suggested that they were capability issues negating a genuine belief in misconduct. Given the Claimant's long service and seniority the Tribunal finds it likely that this was a case of the Claimant being capable of complying with the requirements but failing to do so. More importantly, the Respondent shows a genuine belief that this was the case.
51. The Tribunal is satisfied that the Respondent has shown that Mrs Chapman and Dr Lockerbie held a genuine belief that the Claimant had failed to comply with the relevant requirements upon discharging AB. The evidence before the decision makers would support such a belief and the Claimant himself recognised some failings on his part. This belief itself led to a genuine belief in a loss of trust and confidence of a senior member of the team to deliver safe services.
52. Based upon the Management Statement of case and what the Claimant himself had to say at the disciplinary hearing, the Tribunal is equally satisfied that the Respondent has shown the decision makers held a genuine belief as to the Claimant's misconduct and a loss of trust and confidence in relation to the second aspect of the first allegation and the second allegation itself which largely related to the failure to make and keep relevant records.
53. The third allegation was partly upheld in that the Claimant had not acted in accordance with best practice and visited MM after his drowsy state had been reported. Again, the Tribunal is satisfied that the decision makers held a genuine belief as to this misconduct the extent that the allegation was upheld.

Was the belief held on reasonable grounds following as much investigation as was reasonable in the circumstances?

54. The Claimant was a long serving mental health professional. Although the Tribunal heard that he had now obtained fresh employment in the private sector, his dismissal would have had a profound effect on his professional standing and his ability to obtain employment within the NHS in the future. The Tribunal concludes that the principle in A v B applies and thus examines the reasonableness of the Respondent's investigation by a standard higher than might be applied in other cases.
55. With regard to the first allegation, the Claimant failed to provide a satisfactory explanation for the way in which he effected AB's discharge and admitted some failings on his part. Although there had been discussion with his manager about the discharge, and this was not investigated further, it is notable that the supervision notes of 7 December 2015 record: "Cliff to discharge. CPA". This entry does not suggest that the Claimant's manager might be approving of a discharge without regard to the CPA procedure.
56. The Tribunal concludes that the Respondent's genuine belief in misconduct relating to the discharge of AB was held on reasonable grounds following as much investigation as was reasonable in the circumstances.
57. With regard to the second aspect of the first allegation, and the second allegation itself, the Tribunal has carefully considered the reasonableness of the Respondent's investigations into RIO. The Respondent's investigation into RIO cannot be described as all-embracing: the Respondent did not make enquiries of its IT support department to discover whether the Claimant's notes and other documents, which he felt sure he had posted, might have been "lost" at relevant times as he suggested. Nor did the Respondent consider whether notes on MM's record might have been "lost" upon assumed entries having been made upon MM's hospital visit.
58. On the other hand, the Respondent did consider the entries that were made on RIO with regard to AB and MM, and also considered the reports of problems with RIO which the Claimant had reported, the nature of the problem, the dates of the reports and resolutions clearly shown. The supervision notes dated 7 December 2015 record an IT update: "Improved and can now access cloud remotely. Includes store and forward training".
59. The Claimant attended the Beacon community mental health team building every day and had access to the Respondent's WiFi system. The Claimant did not produce manuscript notes which might indicate that he had encountered problems contemporaneously entering data onto RIO. He had not checked to see if any such entries he thought he had saved had in fact been saved; it was reasonable to expect the Claimant to do so, especially if he thought there might be a problem with the system. The Claimant's supervision notes showed that he was consistently failing to keep RIO records up to date.
60. On balance, despite the fact that the Tribunal itself might have taken further investigatory steps. the Tribunal is unable to conclude that the Respondent's investigation fell outside the band of reasonableness by reference to the higher A v B standard.

61. The Tribunal finds that the genuine belief as to the Claimant's failure to keep and maintain relevant records and/or make a GP referral was held on reasonable grounds following as much investigation as was reasonable in the circumstances.

Fair procedure

62. The Claimant complains of delay and makes the point that the Respondent did not commence disciplinary proceedings following the deaths of AB. The RCA relating to MM, which highlighted the Claimant's alleged shortcomings, reported at the end of October 2016 and the Claimant went on sick leave shortly thereafter. The RCA relating to MM, also highlighting the Claimant's shortcomings, reported towards the end of November 2016 which was shortly before or shortly after the Claimant went on sick leave. The Claimant was promptly suspended upon his return to work and the investigation was commenced reasonably promptly thereafter. The Tribunal accepts the Respondent's submission that the delay caused by the Claimant's absence from work did not prejudice the Claimant; memories remained fresh given the inquests and the RCAs that had taken place. In the circumstances, the Tribunal concludes that the delay, such as there was, was not so unreasonable as to prejudice the Claimant or render any subsequent dismissal unfair.
63. There was a considerable delay in dealing with the Claimant's appeal. He indicated his intention to appeal on 4 August 2017 but it was not until 3 January 2018 that a disciplinary appeal meeting was held. The Respondent was unable to give a rational reason for this delay. This was a procedural imperfection.

Was dismissal within the band of reasonable responses?

64. The third allegation was only partly upheld. Nevertheless, the first two allegations were particularly serious. Notwithstanding some procedural imperfections, the Tribunal has no hesitation in concluding that the Respondent acted reasonably in reaching a decision to dismiss the Claimant for the misconduct described above which led to a loss of trust and confidence. Notwithstanding his long service and clean disciplinary record, dismissal was within the band of reasonable responses. His role involved the mental health care of vulnerable individuals. Similarly, the Tribunal finds that the Respondent's loss of trust and confidence was a substantial reason of a kind such as to justify the dismissal of the Claimant holding the position he held. It is clear from the letter of dismissal that the Claimant's long service and clean disciplinary record had been taken into account when deciding to dismiss.

Wrongful dismissal

65. The Respondent has shown, on the balance of probabilities, that the Claimant committed acts of gross misconduct by failing to discharge AB in accordance with the required procedures and, in the case of MM, by failing to keep up to date relevant records. The Tribunal is satisfied that the Claimant's failures were serious: in particular, the failure to follow the CPA and discharge procedure in relation to AB; and the failure to make and keep the relevant records in relation to MM. The dismissal letter makes clear the

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seriousness of these failings by reference to NMC Code of Conduct. The Respondent was entitled to dismiss the Claimant summarily.

Employment Judge Pritchard

Date 11 April 2019