Appeal No. UKEAT/0203/18/RN

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 21 January 2019

Before

HIS HONOUR DAVID RICHARDSON

(SITTING ALONE)

MR MARK FRANK ARTHUR — APPELLANT

GHANA INTERNATIONAL BANK PLC — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR ANDREW HOGARTH QC (of Counsel) Instructed by: Rosenblatt 9-13 St Andrew Street London EC4A 3AF
For the Respondent	MR DANIEL TATTON-BROWN QC (of Counsel) Instructed by: Shulmans LLP 10 Wellington Place Leeds LS1 4AP

SUMMARY

CONTRACT OF EMPLOYMENT – Wrongful dismissal

UNFAIR DISMISSAL – Reasonableness of Dismissal

The Employment Tribunal did not err in law in its determination of the Claimant's complaints of unfair dismissal and wrongful dismissal.

HIS HONOUR DAVID RICHARDSON

1. This is an appeal by Mr Mark Arthur ("the Claimant") against a Judgment of the Employment Tribunal ("ET") sitting in London Central (Employment Judge Glennie, Ms Church and Mrs Webber) dated 11 December 2017. By its Judgment the ET dismissed complaints of unfair dismissal and wrongful dismissal which he brought against his former employers the Ghana International Bank Plc ("the Respondent").

2. In monetary terms the significant complaint was the complaint of unfair dismissal. However, Mr Andrew Hogarth QC, who appears for the Claimant, says the complaint wrongful dismissal is important because it will be difficult or impossible for the Claimant to work in finance again unless it is resolved in his favour.

The background facts

3. The Respondent is a Ghanaian-owned retail and commercial bank based in the City of London and subject to UK banking and money laundering regulation. It has approximately 65 employees. Its Chief Executive Officer was at all material times Mr Joseph Mensah.

4. The Claimant has dual Ghanaian and UK citizenship. He is a member of the Ashanti people, a distinct ethnic group within Ghana. He began work for the Respondent in 1988 as a trainee. By August 2016 he was an Executive Director of the Bank and a member of the Board of Directors. He was the Respondent's second most senior officer. He had an unblemished disciplinary and performance record.

5. The King of the Ashanti people is His Majesty Otumfuo Osei Tutu II ("the King"). By virtue of his position he was classified as a "politically exposed person" for the purpose of UK money laundering legislation. The Respondent's duty was to exercise enhanced due diligence and monitoring in respect of his accounts. Some large cash payments/deposits had been made in the past: three payments of £15,000 each in May 2013, followed by another of £39,500 and then a cash payment of £100,000 in August 2014 which followed a reception for the King at the Ghanaian embassy.

6. On 8 August 2016 the Claimant walked into the Respondent's premises in the City carrying $200,000 and £196,960 in bank notes in a holdall. What follows is a summary of his account as to how he came to do so. The account involves the King; but it is important to keep in mind that the King was not a witness in the ET proceedings.

7. The Claimant says he was summoned by the King's wife to attend him, arriving on the morning of 8 August. He saw the King alone; this was unusual because the King was generally attended by a retinue and conversations were conducted through an official known as a linguist. The King produced a holdall containing the bank notes. He said he wanted the cash to be deposited in his accounts with the Respondent and the sum of $200,000 then transferred to another account with a different bank in Jersey.

8. According to the Claimant, he asked the King for permission to address some questions to him. In answer the King told the Claimant the cash had come from the National Investment Bank and the Societe Generale Bank in Ghana. The King could not remember the name of the person at the National Investment Bank who dealt with his requests. The Claimant told him that withdrawing cash in this way was unnecessary; the Respondent could assist him to transfer the

money electronically. The King seemed unaware that electronic transfers were possible in these circumstances.

9. Ghanaian regulations imposed a restriction on taking local or foreign currencies out of Ghana if they amounted to more than $10,000. The Claimant did not ask the King how these regulations had been complied with; he said he was not aware of them. EU Regulations required a cash declaration in order to bring a sum of more than €10,000 into the EU; the Claimant was aware of this but did not ask the King if he had complied, although the background is that the King did have diplomatic status. The Respondent's insurance policy for cash was limited to £250,000 and required the cash to be carried in an armoured vehicle.

10. The Claimant took the money from the King and drove to London without making any further enquiries. He parked his car near his home and took a private cab to work. He gave the cash to cashiers to count and asked the Deputy Head of Retail to supervise this. The money was input into the Respondent's core banking system by 14.27 and into the King's accounts at 15.44. The sum of $200,000 was transferred to the Jersey bank. Mr Hogarth tells me that even without the inputting of the sums of cash, there would have been sufficient money in the accounts to make the transfer. By this time the Claimant had taken no further steps to identify the source of any of the cash.

11. In the morning on 8 August the Claimant had emailed Mr Mensah to say that he would be running late; but he had not said he was visiting the King in Henley. It is common ground that the Claimant did not inform Mr Mensah of his visit to the King until after he had arrived at the Respondent's premises and asked for the money to be counted.

12. It is also common ground that a meeting took place between the Claimant and Mr Mensah during the afternoon on 8 August. What took place between the Claimant and Mr Mensah at this meeting was not common ground. I will return to it in a moment.

13. Following the meeting the Claimant sent the following email to Mr Mensah at 15.28; see paragraph 30:

> **"This is to inform you that at the request of his Majesty Otumfuo Osei Tutu II, I this morning collected from his UK residence £199,960 and $200,000 dollars cash to be credited to his accounts with us. I understand that the cash was withdrawn from National Investment Bank and SG-SSB. The bands on the cash received confirm this. His Majesty and I discussed how we can avoid such large cash deposits; he has agreed to arrange for a senior officer at both Banks to contact me to discuss wire transfers in the future. He has also requested that the $200,000 be transferred to his account at [the Jersey Bank], he has also informed me to expect [the payment from the third party]. I am orchestrating these requests."**

14. Mr Mensah did nothing else of significance on that day: he was to say that he had been out for coffee, saw the email on his return after 5pm, and reflected on the matter overnight.

15. The following morning Mr Mensah did take action. He had spoken to the Respondent's Acting Head of Compliance. At 8.49 he emailed that Acting Head recommending that a suspicious transaction report be filed. At 8.53 he sent the following email to the Claimant; see paragraph 33:

> **"I have reviewed this transaction and my views are: -**
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> **1. We should not accept such huge amounts over the counter as it is a clear breach of our policy.**
>
> **2. We should encourage his Majesty to use electronic transfers.**
>
> **3. I suggest you contact NIB and SG for confirmation of the source of funds and make a note for the file before we effect the transfer to [Jersey]."**

16. I return to the disputed meeting the previous day. The Claimant's account was that Mr Mensah was relaxed and told him to go ahead and process the cash deposits and the transfer; he assumed that he was expected to carry out due diligence for the file thereafter. Mr Mensah's account, however, was that he was alarmed at what had happened but was told by the Claimant

that the cash deposits had already been processed and that he could not stop them. He reflected on the matter overnight and took action the following day.

17. Following the lodging of the suspicious activity report outside agencies became involved. After a gap of two months on 10 October 2016 the Claimant was suspended on full pay. The Respondent commissioned an investigation by Grant Thornton UK LLP. It reported on 10 November 2016. On 14 November 2016 a letter to the Claimant set out charges and invited him to a disciplinary hearing before Mr Haines, the Chairman of the Respondent's Board of Audit, Risk and Compliance. The hearing took place on 22 November. The Claimant attended with his solicitor. He asked Mr Haines to stand down because of his previous involvement in the matter. Mr Haines refused. The Claimant and his solicitor withdrew. By letter dated 23 November Mr Haines told the Claimant that he has concluded that he was guilty of gross misconduct and/or gross negligence. The Claimant was summarily dismissed.

18. The Claimant appealed; and the Respondent authorised Mr Colin Millar, who was independent of the Respondent and had long experience of financial matters, then Chairman of the Furness Building Society, to deal with the appeal. The ET found that he approached the matter with an independent mind without being influenced by any consideration of the outcome the Respondent might or might not have wanted. Mr Millar held a hearing on 14 February 2017 attended by the Claimant. He made enquiries of his own and interviewed Mr Mensah. Eventually he wrote a letter dated 31 March 2017 dismissing the appeal.

19. The most important charges against the Claimant which Mr Millar upheld were the first two. They related to the acceptance of the cash and the transporting of the cash. Mr Millar's dismissal letter is detailed. It is sufficient to quote the ETs summary; see paragraphs 70 and 71:

> **"70. Mr Millar upheld the allegation of accepting the cash. He pointed out that the facts were not disputed, but said that at the appeal hearing the Claimant had asserted that his action was reasonable. Mr Millar said that the King was a PEP and that the Claimant knew or should have known that he had to complete enhanced due diligence before accepting the cash, which he did not do. He said that the Claimant should not have accepted the cash if he was not able to satisfactorily establish the source of funds and that he had not obtained a credible explanation for why the deposit was being processed in cash and not by bank transfer. Mr Millar said that the proposed deposit was not consistent with the King's normal use of his account and he referred to the four transactions adding up to nearly £100,000 and the single transaction for $100,000 referred to above. Mr Millar continued that after the event the Claimant failed to carry out adequate due diligence because he did not obtain independent confirmation from the National Investment Bank in Ghana of the source of the funds, but only sent an email in which he recorded a telephone conversation with an officer there.**
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> **71. Mr Millar upheld the second allegation in relation to transporting the cash from Henley on Thames to the Bank, saying that the Claimant knew or should have known that the cash was not covered by insurance in those circumstances, that he could have ordered an armoured motor vehicle, and that he had not adequately considered whether the cash was insured at the time that he transported it."**

20. It is important to note that Mr Millar did not uphold two charges. These related to crediting the cash deposits at the bank and making the transfer to Jersey. These charges related to events which were after the disputed meeting between the Claimant and Mr Mensah. Mr Millar said that it was impossible to reconcile the two accounts and he gave the Claimant the benefit of the doubt i.e, it may have been reasonable for him to conclude that he had Mr Mensah's approval, explicitly or implied, to process the transactions.

21. Mr Millar concluded that the charges he did accept would normally amount to gross misconduct. He noted there was no contrition on the part of the Claimant. He pointed to the difficulty of the Claimant resuming a senior role; it would be necessary for the Respondent to assure the regulator that he was a fit and proper person to do so. Mr Millar did not consider that the Respondent would have trust and confidence in the Claimant as a senior employee. He upheld the dismissal but recommended that the Claimant be given a payment in lieu of notice in recognition of his long service. The payment in lieu of notice was duly made.

22. In his evidence to the ET, which is consistent with his approach at dismissal, Mr Millar said that as far as he was concerned the damage was done by the Claimant's conduct at Henley. The ET summarised his evidence on this point as follows; see paragraph 77.4:

> **"77.4 Mr Millar expressed the view that "the damage was done when the Claimant took the holdall with the money without checking where it had come from, whether it was in the country legally, and then drove it to London uninsured." He agreed that the Claimant was faced with a very significant diplomatic challenge, but said that he should have ensured that UK law was enforced. He said that the control framework at the Bank was deficient, but that taking a holdall full of money was a different matter. He said that the Claimant would have known the money laundering regulations and that if anyone had the standing to explain the position to the King, the Claimant did."**

The ET's reasons

23. The ET hearing took place in October 2017. The parties were represented as they are today: the Claimant by Mr Andrew Hogarth QC, the Respondent by Mr Daniel Tatton-Brown QC. Mr Mensah and Mr Haines were not called as witnesses for the Respondent. Mr Millar was one of the Respondent's witnesses and spoke to the reasons for dismissal. The Claimant gave evidence on his own behalf.

24. In its reserved Judgment and Reasons, the ETs summarised the issues briefly and recounted from whom it heard evidence. It then set out findings of fact on which I have already drawn. It turned to the applicable law and its conclusions. In paragraphs 78 to 98 it considered and rejected a complaint that the dismissal was automatically unfair by virtue of section 103A of the **Employment Rights Act 1996** ("the ERA"), i.e. the "whistleblowing" automatic unfair dismissal provision. That complaint plainly occupied a substantial amount of the argument before the ET as reflected by the detail in its Reasons. There is, however, no appeal against that part of its reasoning and I need to say no more about it.

25. The ET turned to the ordinary unfair dismissal claim in paragraphs 99 to 114. It found that Mr Millar had a genuine belief that the Claimant had committed the conduct concerned and

A that he had reasonable grounds for doing so on the information before him: see paragraph 105. It had some criticisms of the investigation but accepted that overall it was reasonable: see paragraphs 106 to 109.

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26. The ET turned in paragraphs 110 to 112 to consider the question whether the sanction of dismissal was reasonable. I should quote these paragraphs in full. The ET said:

> **"110. Finally, the Tribunal considered whether dismissal was within the range of reasonable responses. The Tribunal could understand that the decision to dismiss the Claimant seemed harsh to him as he had effectively lost his career, whereas Mr Mensah had escaped without challenge over his part in the matter (in respect of which Mr Millar had preferred the Claimant's account). It is also the case that, as Mr Millar found, there was a more widespread problem with compliance in the Respondent's organisation and there had been earlier occasions when transactions had been undertaken for the King where the compliance aspect was unsatisfactory.**
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> **111. That said, however, the Tribunal concluded that whatever had gone before did not mean that the Claimant was justified in doing what he did or had any reason to believe that what he was doing was acceptable. For the reasons outlined above, this was a serious breach of several aspects of the due diligence that should be carried out in respect of transaction of this nature. We have already set out above the problems that there were in relation to the source of the funds, accepting such a large sum in cash, checking whether the relevant exchange controls had been complied with, and the security of the funds while they were being transferred to the Bank. The Claimant stated in his own evidence that he was placed in a dilemma. This arose because he knew that what the King was asking him to do was something that he should not do, but because of the King's status he felt unable to challenge him over it.**
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> **112. The Tribunal repeats that it is possible to have some sympathy with the Claimant's position, given the King's status. However, there is no escaping the point that the Claimant knew that he should not accept the money when he did. As Mr Millar explained, simply accepting the money in the holdall without counting it and then taking it to London by car and taxi was breaking the rules and put the Respondent's reputation and ability to conduct business at stake, as shown by the restriction on business that was applied."**

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27. The ET turned finally to the complaint of wrongful dismissal. In paragraph 7 of the Reasons the issue had been defined in simple terms as being whether the Claimant had committed a breach of contract that entitled the Respondent to dismiss him summarily. Mr Hogarth and Mr Tatton-Brown have both told me that there was no specific submission at the ET as to the contractual term. In paragraphs 115 to 116 the ET rejected the complaint for the following Reasons:

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> **"115. There remained the complaint of wrongful dismissal. This had no impact in terms of compensation because, in accordance with Mr Millar's recommendation, the Claimant was in fact paid in lieu of his notice. It would nonetheless remain open to the Tribunal, if appropriate, to make a finding that the Claimant was wrongfully dismissed as payment in lieu of notice is not the same as the giving of notice.**

> **116. However, for all the reasons given above in relation to the reasonableness of the decision to dismiss the Claimant, the Tribunal was satisfied that in doing what he did the Claimant had committed misconduct of sufficient seriousness as to amount to a fundamental breach of the employment contract entitling the Respondent to terminate that contract without notice. In this connection, the Tribunal noted that Ms Manful and Mr Sambou had both expressed surprise at what the Claimant had done, the latter expressing this in his email of 11 August 2016, quoted above."**

The appeal

28. At a hearing under rule 3(10) of the **Employment Appeal Tribunal Rules 1993** this appeal was allowed to proceed to a Full Hearing on three amended grounds. Mr Hogarth has developed each of these grounds today and Mr Tatton-Brown has opposed them.

29. Mr Hogarth's first ground concerns the Respondent's lack of compliance as a bank. He says it was a significant part of the Claimant's case that what he did was acceptable to the Respondent in general and Mr Mensah in particular; and that the ET failed to make findings about this issue or consider the effect any findings may have on the unfair and wrongful dismissal claims. If the Claimant's conduct was acceptable this was relevant to the question whether it amounted to gross misconduct for the purposes of the complaint of wrongful dismissal and whether it was fair and reasonable to dismiss for the purposes of the complaint of unfair dismissal.

30. Mr Hogarth emphasised the importance of the meeting between Mr Mensah and the Claimant. He argued that Mr Mensah's explanation for inaction on 8 August was not credible and pointed to the fact that Mr Mensah was not called to give evidence and had, as he would say, told untruths in aspects of his account about that matter prior to the ET Hearing. Mr Hogarth emphasised what he described as widespread lack of compliance by the Respondent, in particular as to the handling of due diligence in respect of earlier cash deposits in 2013 and 2014.

31. Mr Tatton-Brown submitted that the ET had given itself a correct direction in law and addressed all the issues it was required to address in order to determine the complaints. It had accepted that there had been non-compliance but nevertheless found that what the Claimant did was both unacceptable and known to him to be unacceptable and a serious breach of due diligence requirements: see paragraphs 110 and 111 of the Reasons. In these circumstances the ET was not required to make any more detailed findings about non-compliance or Mr Mensah's alleged approval.

32. Mr Hogarth second ground relates to the question of breach of contract. He points out correctly that the ET did not at any point identify the term of the contract which was in issue. He submits that if it had done so it would have appreciated all the more clearly the importance of making findings on the question whether the Respondent found the Claimant's conduct to be acceptable in order to decide whether the term in question had been breached and whether the breach was sufficiently serious to justify dismissal.

33. Mr Tatton-Brown accepts that the ET did not identify the precise term of the contract in issue. In the circumstances of this case what was critical was that the Claimant was guilty of misconduct, which was at the very least certainly a breach of the implied duty of trust and confidence. Once granted, as Mr Millar found and the ET accepted, that the Claimant was guilty of misconduct, the real question was whether his conduct was sufficiently serious to amount to a fundamental breach of contract. This was the question which the ET asked and answered: see paragraph 116.

34. Mr Hogarth's third ground relates to the question of disparity. He points to the very different treatment of the Claimant and Mr Mensah, the two senior employees of the Respondent.

A He draws attention to the ACAS Code and (concerning the complaint of unfair dismissal) to the three categories of potential relevance set out in **Hadjioannou v Coral Casinos Ltd** [1981] IRLR 352 at paragraph 24. He submits that the first and third of these categories of relevance were in play. The disparity tended to show that the Claimant was being made a scapegoat.

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35. Mr Tatton-Brown submits that the Claimant's case was very different to that of Mr Mensah. It was the Claimant who accepted and transported the money; he presented the Respondent with a problem which it ought not to have had. The ET found that he knew what he was doing was wrong. In those circumstances whether and to what extent Mr Mensah and any others were open to criticism was not relevant to the issues.

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Discussion and conclusions

36. As I turn to consider the grounds for appeal, I emphasise that the Employment Appeal Tribunal ("EAT") is empowered to hear an appeal only on a question of law: see section 21(1) of the **Employment Tribunals Act 1996**. The EAT does not re-investigate the facts or reach factual conclusions of its own. It is concerned only to see whether the ET applied the law correctly in reaching its conclusions.

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37. Although two of the grounds of appeal are relevant to both unfair and wrongful dismissal, I find it helpful to separate out these complaints since they are subject to different criteria. I will consider the complaint of unfair dismissal first.

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38. Once the Respondent has established the reason for dismissal, which in this case related to conduct, the task for the ET was to apply section 98(4) of the **ERA**. This provides as follows:

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> **"(4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—**

> **(a) 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**
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> **(b) shall be determined in accordance with equity and the substantial merits of the case."**

39. It is well established that section 98(4) requires an ET to consider every aspect of the decision to dismiss - investigation, disciplinary process, factual conclusions and sanction - to see whether the decision was reasonable. There can be a range of ways in which a dismissal process will be handled and a range of conclusions which may be reached for it. The question will be whether the employer's processes and conclusions will be within that reasonable range.

40. The ET quoted section 98(4) and leading cases on its application. It reviewed the Respondent's decision in accordance with that provision. The starting point must be that the ET had the correct legal test in mind.

41. Mr Hogarth's first submission relates to the question whether the Claimant's conduct was acceptable to the Respondent. He says it was a significant part of the Claimant's case that what he did was acceptable to the Respondent in general and Mr Mensah in particular; and that the ET was required to make findings about that issue and consider the effect of any findings on the unfair dismissal claim.

42. Given the issues in this case I reject that submission. It is important to bear in mind that Mr Millar had not accepted the third and fourth charges which relate to the period after the Claimant reported to Mr Mensah: he gave the Claimant the benefit of the doubt about those matters. His reasons for dismissal related to the period prior to the report to Mr Mensah. As he put it, the damage was done when the Claimant took the holdall. If, as the Claimant suggests, Mr

Mensah initially approved of what the Claimant did that was some time after the Claimant took the holdall or brought the money to the bank.

43. It does not, of course, follow that whether Mr Mensah initially approved of the Claimant's conduct is necessarily irrelevant: it may, in some cases, be a strong pointer to the question whether the Claimant has committed misconduct and whether the misconduct is sufficiently serious to justify dismissal. Mr Hogarth gave the example of a worker on the shop floor where management condoned smoking: it might be unreasonable to dismiss a shop floor worker or even conclude that there was misconduct where the manager condoned the action.

44. Here, however, the ET was entitled to conclude that there was a serious breach of several aspects of the due diligence that should be carried out in respect of a transaction such as the King put before the Claimant: see paragraph 111 of its Reasons. The Claimant was not a shop floor worker; he was the second most senior employee of the Bank with many years' experience. It was his duty to obey the regulations, and if a culture of lax compliance existed or was approved of, it remained his duty to ensure that the Respondent complied with banking and money laundering requirements. Against this background, I see no error of law in the ETs approach. It was not required to decide whether Mr Mensah approved of the transaction on 8 August and it did not commit an error of law by failing to consider that aspect further.

45. As we have seen the ET did not ignore the fact that there might have been a widespread problem with compliance. It expressly allowed for that factor. However, it nevertheless found that it was reasonable to dismiss the Claimant who knew perfectly well that what he was doing was wrong. That is to my mind a proper application of section 98(4), free from any error of law.

46. I turn to Mr Hogarth's argument on the question of disparity. He correctly quotes the leading case on this question, **Hadjioannou v Coral Casinos Ltd**, where the EAT expressly accepted the following analysis of the potential relevance of arguments on disparity:

> **"24. … Firstly, it may be relevant if there is evidence that employees have been led by an employer to believe that certain categories of conduct will be either overlooked, or at least will be not dealt with by the sanction of dismissal. Secondly, there may be cases in which evidence about decisions made in relation to other cases supports an inference that the purported reason stated by the employers is not the real or genuine reason for a dismissal. … Thirdly … evidence as to decisions made by an employer in truly parallel circumstances may be sufficient to support an argument, in a particular case, that it was not reasonable on the part of the employer to visit the particular employee's conduct with the penalty of dismissal and that some lesser penalty would have been appropriate in the circumstances."**

47. The ET, in paragraph 110 of its Reasons, expressly referred to the fact that the outcome for the Claimant might seem harsh to him measured against the fact that Mr Mensah had escaped challenge. It found, however, that given the gravity of the Claimant's conduct and his knowledge that what he was doing was wrong, dismissal was nevertheless reasonable. I do not think the ET erred in law approaching the matter in this way. It was not reasonable for the Claimant to think that the Respondent would overlook his conduct or treat it leniently; even if there was a background of lax due diligence the Claimant, as a senior manager with requisite knowledge would be responsible to his employer for what he did. It would not be an excuse for him if Mr Mensah was also lax. Nor was the position of the Claimant and Mr Mensah truly comparable. It was, Mr Millar found, when the money was taken that the damage was done.

48. I turn to the question of wrongful dismissal. Here the issue is one of contract law: was the Respondent is justified in summarily dismissing the Claimant? It was for the Respondent to establish that the Claimant was in fact guilty of a breach of contract so serious as to justify termination without notice. It was not sufficient for the Respondent to show that it was reasonable in reaching this conclusion. It was required to show that it was right.

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49. The difference between a complaint of unfair dismissal and wrongful dismissal therefore requires an ET to make findings of a different nature. Sometimes an ET may also be required to engage in separate fact-finding. Take an example far removed from this case; an employee stealing from an employee. For the purpose of unfair dismissal, the employer must show the reason for dismissal and it will then be a matter for the ET whether the dismissal was reasonable. For the purpose of wrongful dismissal the employer must prove that the employee stole from the employer. For this reason, separate fact-finding and reasoning and will be required; see **Small v London Ambulance Service NHS Trust** [2009] IRLR 563 at paragraphs 44 to 46, where it is suggested by Mummery LJ that in some cases sequential and separate findings may be helpful.

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50. In this case, however, the essential facts as to what happened prior to the meeting between the Claimant and Mr Mensah were not in dispute. These were the facts on which the ET relied for its conclusion. It was not necessary to repeat all its findings again and given that no monetary compensation flowed from the complaint, it is not surprising and certainly not an error of law that it did not repeat its findings. It is plain that the ET, like Mr Millar, found the Claimant to be in breach of contract by virtue of what happened at Henley. I see no error of law in that approach. The ET was entitled to find that, even if Mr Mensah subsequently may have approved of what happened it was nevertheless a serious breach of contract. The ET was not required to make a specific finding as to whether Mr Mensah did approve.

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51. Nor do I find it surprising that the ET did not identify precisely the contractual term at issue: given its findings in paragraphs 111 and 112 about the Claimant's conduct, the real question was whether the breach was so serious as to justify dismissal. That is precisely the question which was answered in paragraph 116 of its Reasons. I do not find it surprising that a precise term of the contract had not been identified and discussed at the ET Hearing. On any view there

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would have been a potential and actual breach of the relationship of trust and confidence between employer and employee on the findings of the ET. The real issue was indeed how serious the conduct of the Claimant was.

52. Nor do I consider that the ET was entitled to consider disparity any further in its Reasons in order to deal with the wrongful dismissal complained. It was entitled to and plainly did proceed on the basis that what the Claimant did at Henley was a serious breach of contract regardless of what occurred when Mr Mensah knew of the matter. For these reasons I uphold the Judgment of the ET and the appeal will be dismissed.