EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr N Welling	**v**	**Safestore Limited**

Heard at: Watford **On**: 18 and 19 March 2019

Before: Employment Judge Smail

Appearances

For the Claimant: In person
For the Respondent: Miss D Masters (Counsel)

JUDGMENT

1. The claimant's claim of unfair dismissal is dismissed.

REASONS

1. The claim of unfair dismissal only falls for consideration. The claims of disability discrimination and age discrimination had been dismissed at a preliminary hearing on 14 August 2018 before Employment Judge Jack.

2. The claimant was employed by the respondent between 20 August 2001 and 22 January 2018 when he was dismissed ostensibly for gross misconduct. He was the retail services co-ordinator at the time of his dismissal. A large part of that role was facilities management. There was a significant procurement role also. He could influence the placing of contracts for packaging, purchasing of forklifts, purchasing energy supply, entering contracts with facilities maintenance contractors and placing insurance. The respondent is a well-known company that provide storage for hire.

3. The claimant's dismissal was confirmed following an appeal hearing before Mr Wynand Viljoen on 14 December 2017. The claimant was originally dismissed by Mr Andy Thomas following a disciplinary hearing on 27 October 2017. The claimant did not attend the disciplinary hearing, claiming to be unwell. He did attend the appeal hearing. He attended an investigation meeting on 28 September 2017. The meeting was conducted by David McGlennon, Head of HR. Katy Alfred attended as a notetaker and has given

evidence before me, together with Mr Thomas and Mr Viljoen on behalf of the respondent. The claimant and Mr Jonas Witt gave evidence on the claimant's side. The appeal took the form of a full rehearing.

4. The claimant was ultimately dismissed for the following matters, said to be individually and cumulatively gross misconduct: deliberately providing misleading information to a contractor, Lorne Stewart plc, during the recent tender process for a facilities contract with a view to influencing the outcome of the tender. That had been numbered (b) on the original list of internal charges. Secondly, (d): accepting gifts, tickets and hospitality, including attending golf hospitality, during normal working hours from suppliers to the company without disclosing the details and having the prior consent from the line manager. Further (e), serious breach of trust and confidence … arising from your responses during the investigatory meeting on 28 September 2017, as regards deliberately seeking to mislead the investigation officer in connection with your dealings with Lorne Stewart plc and BBIU.

5. Before Mr Thomas, the claimant had been found to have committed gross misconduct in respect of four other matters: a) serious negligence resulting in loss to the company arising from non-compliance with requisition process, resulting in the company entering into a commercial arrangement with Barlows on or around May 2017 for LED replacement emergency lighting for the sum of £50,787.50 plus VAT; c)the unauthorised sale of company property at an undervalue, namely a Vauxhall Insignia BG 62 BXE to a third party Khalid Boulia via Malgrozata Boulia-Czochara for £3,030 on or around 12 December 2016, resulting in loss to the company. Then two further elements of a serious breach of trust and confidence - (i) arising from your deliberate failure to disclose to your line manager the fact that of the capital expenditure payment of £50,787.50 plus VAT, referred to in paragraph (a) above; and (ii) relating to your claim of mileage expenses for a journey to the Birmingham store on 15 November 2016, and an intention to claim overnight accommodation in Eastbourne on Friday 18 August 2017.

6. Mr Viljoen had cleared the claimant of all those last-mentioned matters. It has not been demonstrated on the balance of probability that Mr Thomas was acting in bad faith when finding those matters against the claimant.

The issues and the Law

Unfair dismissal

7. The Tribunal has had regard to section 98 of the Employment Rights Act 1996. By section 98, subsection 1, it is for the employer to show the reason, or if more than one, the principal reason for the dismissal. A reason relating to the conduct of an employee is a potentially fair reason. By section 98, subsection 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 reasons 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 b) shall be determined in accordance with equity and the substantial merits of the case. This has been interpreted by the seminal case of BHS -v- Burchell [1977] IRLR 379, EAT, as involving the following questions:

(a) Was there a genuine belief in misconduct?
(b) Were there reasonable grounds for that belief?
(c) Was there fair investigation and procedure?
(d) Was dismissal a reasonable sanction open to a reasonable employer?

8. I have reminded myself of the guidance in Sainsbury's Supermarkets -v- Hit [2003] IRLR 23, Court of Appeal, that at all stages of the enquiry, the Tribunal is not to substitute its own view for what should have happened; but judge the employer as against the standards of a reasonable employer, bearing in mind there may be a band of reasonable responses. This develops the guidance given in Iceland Frozen Foods -v- Jones [1982] IRLR, 439, EAT, to the effect that the starting point should always be the words of section 98, subsection 4 themselves. In applying this section an Employment Tribunal must consider the reasonableness of the employer's conduct not simply whether it, the Employment Tribunal, consider the dismissal to be fair. In judging the reasonableness of the employer's conduct an Employment Tribunal must not substitute its decision as to what was the right course for that employer. In many, but not all cases, there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view whilst another may quite reasonably take another. The function of the Employment Tribunal is to determine whether in the circumstances of each case, the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair, if the dismissal is outside the band it is unfair. So, the important point to appreciate is that the Employment Tribunal does not decide afresh as to what it would have done, had it been the relevant manager or managers. It essentially reviews the decision making of the company as against those standards when applying that test.

Findings of Fact on the Issues

9. It is clear that the respondents believed that misconduct was the reason for dismissal. There was no ulterior belief for which misconduct was invoked as a cloak. Both Mr Thomas and Mr Viljoen, believed that there had been misconduct.

Reasonable Grounds?

10. The respondent's policies are clear. There is a policy document, document 37, "Receipt of gifts and corporate hospitality", that puts in these terms disclosure requirements.

The company also promotes a culture of honesty and transparency in the practice of receiving gifts. All employees are under an obligation to report the receipt of gifts, including the nature of the gift and the identity of the sender to their regional manager or head office line manager as soon as they are received. Failure to report receipt of any gift from any party constitutes a disciplinary offence and will be dealt with accordance with the company's disciplinary procedure. Depending on the gravity of the offence, it may be treated as gross misconduct and could render the employee liable to summary dismissal. If the gift is anything other than a small token of appreciation, having no substantial value, the employee will be required to return the gift to the sender with a polite letter, thanking them and explaining that is the company's policy that employees should not receive gifts. If, in the opinion of the employee's regional manager or head office line manager, the gift might constitute a bribe or other inducement, the employee will be asked to pass the gift to a director of the company who will return it to the sender with a suitable letter explaining the company's policy and asking the sender to comply with the policy in the future.

Further on the policy provides the receipt of all gifts will be closely monitored by the company. All gifts or hospitality of £200 or more must be reported to and approved by the CEO.

11. Following 2013 or 2014, a new handbook was issued it supplemented the policy I have just read out. It had a section "gifts, benefits & hospitality" and that provided –

You may not accept gifts from suppliers or contractors to the company without disclosing the details and having the prior written permission of a Safestore director. Failure to do so could be construed as gross misconduct and may be dealt with under our disciplinary policy which could lead to dismissal.

You may not remove any items of company property from any of the company's premises without prior permission and the completion of appropriate documentation.

12. There is also the disciplinary code of conduct which provides as an example of a matter which might constitute gross misconduct, the following-

Accepting a gift or merchandise from a customer, visitor, supplier, contractor or any third party in connection with your employment without prior consent from a regional manager.

That would have to be read in the position of someone such as the claimant as requiring the prior consent of a line manager or director.

13. The claimant had specific experience of seeking approval for golf hospitality and having it turned down. This was unknown to Mr Thomas at the time of his decision. It was known Mr Viljoen at the time of his and the respondent places significant reliance upon it. It was on 24 February 2014 that the CEO who remains the respondent's CEO turned down a request forwarded on behalf of the claimant to enjoy golfing hospitality at Balmoral Castle. The CEO said this to the claimant's line manager, Stewart Beavers.

"Andy [a reference to the chief finance officer] and I have declined 6 Nations invitations from the banks and will turn down any future invite. The group policy shall be to never accept any invitation from a supplier or a customer in order not to take the risk to have a cosy relationship with them, so unfortunately Nigel cannot accept the invitation."

That was 24 February 2014. The hospitality was offered by BIU, the company's energy broker, to provide the hospitality. A significant feature of the request is that BIU offered the golf day alone, without the accommodation when hearing that the request had been turned down, so the original request was for golf and the accommodation. The amended offer from BIU was the golf without the accommodation and the claimant replied to that on 25 February saying "thanks but the chief executive has made it quite clear that we shouldn't attend any corporate invites and he is adamant he will lead by example, it hurts but I wont be coming". So that was a clear precedent if you like as to the implementation of the policy in respect of a request for golf hospitality, and as I say it applied initially to golf + accommodation and transport to Balmoral Castle, then a slightly watered-down offer was interpreted by the claimant as also falling within the terms of his refusal. The respondent's case is that the claimant did not stick to his position in 2014 and there is a body of documentation in the bundle, showing the following:

(a) A golf day on 8 September 2017 provided by Marsh which are the respondents insurance brokers. The golf hospitality was offered at the Welcombe Hotel, Spa & Golf in Stratford on Avon.

(b) There was then a golf day with Diamond, a facilities maintenance firm, on 20 October 2016 at the Warwickshire Golf Club in Leek Wootten with a tee off time at more or less mid-day. Dinner and accommodation was offered but the claimant was unable to accept that because of work obligations, he did accept the offer of the golf game.

(c) Again with Diamond, on 11 May 2017, which was a time during a tender process, which we will return to. There was a golf round offered at the Forest of Arden Golf Club with a tee off time of 12:42.

(d) There was a round of golf offered and accepted with BIU, the energy broker, on 7 March 2017; a tee off time at Fairhaven Golf Course near Lytham, followed by a meeting.

(e) There was an offer of attending the British Open on 21 July 2017 at Lytham St Anne's, with the offer of accommodation, not just for the claimant but his wife as well. The claimant tells me now that his wife would have no interest in attending but there was a clear offer for his wife to attend, and there is a detailed itinerary in the offer which the claimant accepted. The itinerary was as follows: taxis would pick the guests up at the Preston Marriott at 11am, arrive at the course at midday, walk around the course 12-12:30, lunch 12:30-2, walk around the course 2-4:30. 4:30-7 activities and dinner. 7pm taxis arrive to take back to the hotel, arriving at the hotel at 7:30pm. If anything, that is a very full corporate hospitality

which the claimant accepted, whether on behalf of himself or his wife as well.

(f) He accepted on 23 June 2017, a round of golf with Mercedes. Evidence which was not produced to the internal enquiry but now is produced to the Tribunal suggests that he was in fact on holiday in Bulgaria and had booked off holiday. Be that as it may, whether this example does not fit exactly in line with the others, there is no similar explanation for the others.

14. So there is a considerable body of gold hospitality, and the respondent submits there is a marked change in behaviour following the conversation in 2014 when there was an intervention from the CEO.

15. Hiremech are a company that provide fork lift trucks. The respondent uses fork lift trucks in its facilities up and down the country. One of the managers of Hiremech had a Chelsea season ticket to Chelsea football matches and when he was not watching the matches he would lend out the season tickets. There are examples of the claimant, whether with or without his daughter, using the season tickets on 19 March 2016, 16 September 2016, 25 February 2017 and 17 September 2017. There is an example of the claimant asking for the season tickets to be made available to him in respect of particular matches.

16. So, there is a strong body of evidence indicating behaviour in breach of the policy. One of the arguments put forward by the claimant before me is that his line manager, Stewart Beavers, knew about this behaviour. There is no evidence, however, that in respect of each of these occasions that the claimant sought and obtained permission for those events. The respondent submits that there is no reference in his personal business calendar which would indicate to any manager who would have a look at it, that he was accepting the hospitality. Their position is that he in fact concealed the extent of his acceptance of these matters from the managers.

17. There is one passage in the evidence before the appeal which provides some support to the claimant that Mr Beavers knew about these matters and Mr Viljeon's response to this is important. Mr Beavers was asked by Mr Viljeon several relevant questions:

(a) Were you aware that Nigel went to many golf days over the years as he claims. The answer was I am only aware of the March golf day and one other instance of playing golf with a supplier.

(b) Have you ever instructed Nigel not to accept invitations and gifts from suppliers? The answer was not specifically.

(c) Nigel states that if he could not attend, he would offer gifts to other staff, are you aware of this? Mr Beaver said he was aware that he had offered Chelsea tickets to other staff.

18. So there is some force in the claimant's submission that the respondent was on notice of some of this. Mr Viljoen analysed this evidence and he came to the conclusion that whilst Mr Beavers knew of some matters, he did not know of the full scale of the connections between the claimant and accepting hospitality or favours from contractors or customers and the like. My judgment on that was it was a fair assessment by Mr Viljoen. Mr Viljoen impressed me and as a witness he was balanced and who would recognise when there were points made in favour of the claimant and would think about them. His conclusion that Mr Beavers did not know the full extent of it is supported by the complete absence of email trails from the claimant, seeking permission for these matters. In stark contrast, in Mr Viljoen's eyes, is the position in 2014, when the CEO gave a particular steer and Mr Viljoen is also right that it less relevant that Mr Beavers may not have specifically instructed the claimant not to accept invitations and gifts when there was a crystal-clear instruction to that effect from the CEO.

19. The third matter that the claimant got dismissed for was evasive answers in the investigation about the Open Golf in Lytham St Anne's. He was asked whether he attended and his response was "I did not play golf at Lytham St Anne's". No one ever suggested he did. He did not accept that he had attended, whether with his wife or not. It is not clear to me whether he attended with his wife or whether he attended alone. His answer was "well he wasn't playing golf", that was not a full and frank response to that enquiry and Mr Viljoen was entitled to find that trust and confidence was severely breached by that response.

20. The first matter listed as the reason for the dismissal was the giving of, or persuading a potential tenderer, not to tender by giving false information. It is not an express finding in the dismissal or appeal letters to the effect that there is linkage between the acceptance of gifts and this matter but there was an assumption, Mr Viljoen told me in evidence, that they may be linked.

21. Lorne Stewart plc is a potential bidder for a facilities maintenance contract. The maintenance contract is on a three-yearly basis and the three years was due to end and so new tenders were required for maintenance contracts for the facilities. Ultimately, Lorne Stewart was one of up to no more than six companies that were short listed for an interview. The contention is that at a stage when Lorne Stewart was looking round some of the respondent's facilities, three in Bristol, the claimant put them off by giving them inaccurate information and in any event by breaching an instruction not to give tenderers any information which might influence their tender over and above that which was shared across all. The relevance of this is that Diamond were also ultimately short-listed and Diamond are one of the claimant's golf associates who provide the claimant with golf hospitality. Whilst there is not an express allegation that the claimant put Lorne Stewart off on behalf of Diamond, the claimant certainly exposed himself by this behaviour to that kind of thought occurring. Mr Viljoen accepted before me that he made an assumption that Lorne Stewart was put off for a reason. There was evidence before both the

dismissal and appeal officer of incorrect information being given to Lorne Stewart and furthermore, information being given in breach of instruction. Lorne Stewart did not tender and this was chased up by the respondent in or around 22 August. Mr Lishman, one of the claimant's managers had a discussion with Mr Dicker of Lorne Stewart who was shown around the Bristol sites by the claimant in which it came to light that various information had been given to Mr Dicker and Mr Dicker confirmed what that information was on 12 September 2017 in an e-mail. There are four elements to the information which at that point put Lorne Stewart off from bidding.

22. First of all, they were told that about 151 companies were bidding in total; secondly, that 40 companies were offering a complete facilities proposal; thirdly, the handyman function would be staying as an in-house option; and fourthly, that Safestores spent very little in repair of the assets and some examples of gates were given being out of action for over 2 years and the quotations to repair were high. Based on that set of information Lorne Stewart did not tender. The respondent makes various points. First, the handyman function was not staying as an in-house option but was to be part of the tender, that was said to be inaccurate information given by the claimant so as to put off the tenderer. As was the suggestion that the respondent spent very little on the repair of their assets, suggesting that there would be a greater onus on repairers to make repairs of the premises. In respect of the number of companies bidding in total, and that 40 companies were offering a complete facilities proposal, that was said to be information that the claimant had been expressly instructed not to give. He and his colleague, Eva, had been told not to provide tenderers any supplementary information over and above that which went out on the tender documentation. There was to be an e-mail inbox for dealing with any queries so that what was being said could be monitored by management and the contention was that the claimant had deliberately put off Lorne Stewart from tendering. The claimant says he cannot remember precisely what was said. In any event, the internal handyman went around with them in Bristol and he is unlikely to have said matters to have embarrassed the handyman.

23. What I have got to look at is whether there was evidence before the dismissing officer and the appeal officer indicating misconduct and the conclusion that there was it seems to me was, on the balance of probability, open to them to take based upon this information from Mr Dicker. Even if, and as I say there was no express finding, that he was as it were batting for Diamond, even if that were not the case, the fact that he put one tenderer off, and was going to play golf at that tenderer's hospitality with another, plainly generates a conflict of interest about which the respondent was rightly concerned.

24. It does seem that there has been a change of culture since 2013. That may have coincided with the arrival of the new CEO and the CFO around about the same time. Miss Alfred told me that this is now a FTSE 250 company and there has to be ethical corporate behaviour consistent with that kind of status. I explored with Mr Viljoen whether the claimant might be said to have just been caught up by a change in culture and that the respondent should have

acknowledged that he might be excused for responding slower to it than others. Mr Viljoen's response was that the direction from the CEO in February 2014 should have made it crystal clear as to what was expected, and unfortunately for the claimant, that clear instruction is documented in the case.

25. So, in respect of all three matters that were said to amount to gross misconduct, there was a body of evidence in support. In terms of process, there was a thorough investigation and there were interview notes with all relevant protagonists at the first stage. Mr Thomas conducted a full disciplinary hearing himself but of course it was undermined by the fact, well it was a feature of it, that the claimant was not there in person and it was because of that that Mr Viljoen, on appeal, decided to hold a complete rehearing. After the appeal hearing, Mr Viljoen went off to make further evidential enquiries of the important protagonists to make sure that nothing had been missed.

Mr Thomas' decision to proceed in the absence of the claimant

26. The disciplinary hearing had been arranged on three occasions. Firstly, 12 October 2017, then 20 October 2017 and ultimately 27 October 2017.

27. The claimant was signed off sick from work throughout this process and furthermore, the claimant was saying in correspondence, whether written by himself or by his wife, that he was not fit to attend. Mr Thomas, he accepts it was his decision but he also took into account what HR told him, relied upon the occupational health report, dated 16 October 2017. Occupational health was specifically consulted on the question as to whether the claimant was fit to work. In respect of specific questions, it was said as at 16 October 2017, that the claimant was not yet fit for normal duties. Margaret Murray, an occupational health nurse, said that she would hope that this may change in the next week or two. She had earlier said that the investigation should take place, the sooner the better, when the claimant feels he can. There would need to be adjustments for the disciplinary hearing. She suggested that the investigation meeting should be on neutral ground, owing to the acute embarrassment and resultant emotional stress the claimant would be under coming into the office with this still hanging over him. For what it is worth he was not, at that point, likely to be disabled under the Equality Act, was her view. But he was signed off from work and there was a decision from Mr Thomas to make. He decided he could rely upon the assessment as at 16 October 2017 that the claimant should be fit in the next week or 2. That would mean by 27 October 2017 he should be fit. He also inferred that the correspondence had come from the claimant and the correspondence was lucid and suggesting that the claimant would be able to participate in a disciplinary hearing.

28. The decision that Mr Thomas came to was, in my judgment, a reasonable one within the range of reasonable responses, given that the occupational health report had given a fortnight before the claimant should be fit to attend normal duties. Of course, another employer might have made another decision and decided to wait until the claimant was no longer signed off. Mr Thomas made

the decision that he did. In my judgment, it was a reasonable one in the light of occupational health's contribution. However, insofar as there was any prejudice to the claimant in this respect, in my judgment, it was reversed by Mr Viljoen's decision to hold a complete rehearing and there can be little doubt, it seems to me, about the bona fides of Mr Viljoen's rehearing, given that he cleared the claimant where there was a doubt or where there was positive evidence that he was not guilty. Mr Viljoen had grounds where he did uphold the misconduct for so finding on the evidence before him.

29. So, whilst it was a bold decision by Mr Thomas to proceed, it was not an unreasonable one and, in any event, any prejudice is reversed by Mr Viljoen's position on appeal, involving a rehearing.

The evidence of Mr Witt

30. Mr Witt gave evidence on behalf of the claimant, and that evidence was not available before the disciplinary or appeal process. It was new for the Tribunal process. There was some corroboration from him for the view that there had been a change in practice in terms of hospitality since 2013, in that he himself had seemed to receive less hospitality and gifts since then. However, he was adamant that his managers in the marketing department regularly accepted hospitality in breach of the guidance that I have read out above. If he is right, and I am not saying he is right or wrong, but if he is right, those managers would be exposing themselves to the same challenge that the claimant has been subject to in this case. There was no positive case put forward by the claimant in the disciplinary process that other managers were up to the same thing with permission from senior management. So, on one view it is too late to raise that today by calling Mr Witt, on another if Mr Witt is right those managers are exposing themselves to the same challenge down the line. Whilst I am grateful to Mr Witt for attending, I am not sure his evidence takes matters much further.

Christmas: an inconsistency?

31. We have looked at the practice at Christmas. There is a practice of raffling the gifts that come in from contractors and sharing them across the workforce. Indeed, it was the claimant who administered this practice and it was signed off by the Chief Executive at least informally. I agree with the claimant that there is an element of inconsistency about the way in which the respondent is happy to accept Christmas gifts, if a big gift comes in, for example a case of champagne, it was Mr Welling's practice to raffle each bottle off in the raffle and no criticism is made by the respondent of what happens at Christmas. To an extent as I say, I recognise the claimant's point that there is to an extent an inconsistency here. However, the difference, of course, is that this practice was signed off and was known about. That is very different to the examples that the respondent has of the claimant's conduct, at least the extent of it, all not disclosed. So whilst I note the claimant's point, and no doubt the respondent will consider afresh its practice on Christmas gifts, it is different from accepting substantial gifts and not disclosing them, as to which the

respondent has a substantial body of evidence against the claimant in that regard.

Dismissal v warning

32. The decision to dismiss rather than to warn: again, some employers might have warned; in this case the respondent chose to dismiss. Mr Viljoen in his appeal letter expressly dealt with this point in the following way:

> "I believe your actions in relation to offences b, d and e, individually each amount to separate acts of gross misconduct. In looking at all of the options available to me, I have taken into account your significant time with Safestore and prior clean record and the points which you make to me that had Safestore imposed a lesser sanction, then this would have given you an opportunity to change. But I also need to consider your general disregard for the rules, guidelines, policies and company instructions and the re-occurring themes of concealment and dishonesty running through these offences. The fact that you enjoyed a position of trust within the business, and within that were the gatekeeper and account manager for a number of very important day to day supplier relationships, budgets and contracts on behalf of Safestore, makes this even more serious. I have no doubt that you enjoyed an excellent relationship with Safestore's preferred suppliers but equally I cannot ignore the way in which you leveraged those relationships with impunity for your own private enjoyment, kept your managers at arms-length and flagrantly disregarded Safestore's policy and even a clear and unequivocal steer from the CEO. There were a number of instances during the process where I believe you had ample opportunity to be open and forthcoming about certain matters and to volunteer information but instead you deliberately chose to withhold certain information unless until prompted or until you felt you needed to. Indeed, even on the matter of the company car which I chose to reverse, I came across evidence to infer an intention on your part to blag and use your influence to abuse your position and had you been more forthcoming during the investigation when you had the chance and demonstrated accountability for your actions and declared all, then I might possibly have thought differently about your sincerity. However, I believe that you are an individual who became complacent over time in their role, exploited the freedom and independence which they enjoyed when out of the office and used their influence to manipulate colleagues, suppliers and the business alike for private gain. Your actions, sadly, have seriously damaged, for me, any trust which might have existed between the parties. I therefore believe that the original decision summarily to dismiss you should stand as the right and proper sanction".

33. It is clear from listening to the claimant that he a gregarious sort of individual who will have had excellent relationships with some of these contractors on the golf course, on the football terraces and elsewhere. But it is a fair comment from Mr Viljoen that there is in fact very little insight from the claimant that any of this was wrong or controversial or that he was placing himself closer to some contractors than he ought, and it is that lack of insight which led to him not admitting anything, not apologising and defending his position.

34. Before me he has defended his position in respect of all these matters. Of course, he is entitled to do that but if it goes against him, he cannot be surprised if the respondent comes to a conclusion that it has lost trust and confidence.

Conclusions

35. In summary, the Respondent did believe in misconduct; there was a reasonable body of evidence supporting their belief; there was a full investigation. The one controversial decision was to proceed with the disciplinary hearing without the claimant's attendance. To my mind, given the report from occupational health, that was a decision open to the respondent. Even if that were wrong, the appeal being a comprehensive re-hearing removed any prejudice that the claimant might otherwise have suffered. There were reasonable grounds for the belief in misconduct there is a clear body of evidence of abusing golf hospitality and abusing football tickets, the extent of it was not known about by management and had not been disclosed. Although it is clear that Mr Beavers knew something, Mr Viljoen's conclusion but did not know the full extent of it, was fair.

36. So, there was evidence misconduct, there had been a reasonable investigation which was fair; was dismissal within the range of reasonable sanctions. Given the policies, given the clear instruction from the CEO, and given the claimant's stance to challenge rather than to admit and apologise and have insight, in my judgment Mr Viljoen's decision to confirm the dismissal Mr Thomas had originally arrived at was within the reasonable range of responses. Accordingly, there is basis for me to find that the respondent had acted outside the range of reasonable responses. I do not, as I have said earlier, decide myself what I would have done; I have to assess the decisions of the employer against the standards of a reasonable employer. It is my conclusion that this dismissal was not unfair.

_____
Employment Judge Smail

Date: 09/05/2019

Sent to the parties on: 14/05/2019

.....
For the Tribunal Office