Case Number: 2206231/2017

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Mr M Caracota		**Mizuho Bank Ltd**

REASONS FOR THE JUDGMENT
SENT TO THE PARTIES ON 3 APRIL 2019

Introduction

1 The Respondents are the corporate vehicle for the UK operations of Mizuho Bank, which is part of one of the largest financial services organisations in Japan. The company employs about 800 people in the UK.

2 The Claimant, Mr Marius Caracota, was employed by the Respondents as an Associate Director in their European Corporate Finance Department from 1 July 2014 until 17 February 2017, when he was dismissed for gross misconduct, namely the unauthorised appropriation of a bicycle chain wheel guard belonging to another employee. At the time of his dismissal he was earning an annual salary of £80,000 plus sundry benefits.

3 The Claimant's first language is French. He has an excellent command of written and spoken English, although he speaks with a marked accent.

4 By a claim form presented on 4 July 2017 the Claimant brought an Employment Tribunal complaint alleging 'automatically' unfair dismissal on public interest disclosure ('PID') grounds, 'ordinary' unfair dismissal and detrimental treatment on PID grounds. The Respondents denied all claims.

5 In a document dated 29 September 2017 the Claimant set out voluntary further particulars of his claims, to which the Respondents replied with full, amended grounds of resistance dated 17 October 2017.

6 By a judgment dated 25 January 2018 Employment Judge Deol struck out the detrimental treatment claims and declined applications on behalf of the Respondents that the unfair dismissal claims should be the subject of striking-out orders or, in the alternative, deposit orders. That judgment was reconsidered and varied by a further judgment issued by the same judge on 8 August 2018, to the extent that a detriment claim based on the instigation of the disciplinary process in January 2017 was permitted to proceed as a free-standing claim.

7 The case came before us on 27 March this year for final hearing, with five days allowed. The Claimant appeared in person and the Respondents were represented by Ms R Azib, counsel.

8 At the start of the hearing we were required to resolve a disagreement about the scope of the dispute. The result of our adjudication was that the draft list issues included in the trial bundle stood save that the Claimant was not permitted to rely on the PID identified at para 3.7. A copy of the list of issues is appended hereto. The parties were at odds about paras 3.6 and 3.7, which identified two PIDs to which Ms Azib objected on the grounds that neither featured in the pleaded case (meaning the claim form read with the further particulars). As to the former, we were not persuaded that the objection had substance. It seemed to us implicit from the further particulars, paras 6-8 that the Claimant was claiming to have rehearsed on 4 May 2016 the points which had featured in his prior alleged PIDs of 21 April. In any event, the Respondents were able and ready to deal with detriment and unfair dismissal claims based on the alleged PID of 4 May. Accordingly, to the extent that an amendment of his case was required, we granted it in the form proposed in the list of issues, para 3.6. We saw the disagreement about para 3.7 differently. Here the proposed PID was not foreshadowed or even hinted at in the pleaded case and we were satisfied that the Respondents would be prejudiced by a late amendment for which no good reason was shown. We therefore refused permission to amend the claim form and the Claimant was not at liberty to base any claim on the para 3.7 PID. On the other hand, he was, of course, free to give evidence relating to that aspect if he felt that it might assist his claims based on the other, pleaded, PIDs. As will become apparent, our rulings on paras 3.6 and 3.7 ultimately proved to have no bearing on the outcome of the case.

9 Having read into the case and dealt with the preliminary issue just mentioned, we heard evidence and closing argument before adjourning for private deliberations on day four. On the afternoon of day five we delivered an oral judgment dismissing all claims.

10 These reasons are given in writing pursuant to a written request by the Claimant dated 4 April 2019.

The Legal Framework

11 By the Employment Rights Act 1996 ('the 1996 Act'), s43B, it is stipulated that:

> **(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is in the public interest and tends to show one or more of the following –**
>
> **(a) …**
> **(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject …**

12 Qualifying disclosures are protected if made in accordance with ss43C to 43H (see s43A). By s43C, it is provided that:

> **(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –**
>
> **(a) to his employer …**

13 The requirement for a reasonable belief that the disclosure is in the public interest was enacted by means of an amendment introduced by the Enterprise and Regulatory Reform Act 2013. Its effect was examined by the Court of Appeal in *Chesterton Global Ltd v Nurmohamed & Anor* [2017] EWCA Civ 979. Giving the leading judgment, Underhill LJ rejected the argument that a disclosure about a breach of an individual worker's contract of employment (or some other matter personal to him or her) could not fall within the statutory protection. In such a case the Tribunal must have regard to all the circumstances including the number of people whose interests the disclosure served, the nature of the interests affected and the extent to which they are affected by the disclosure, the nature of the alleged wrongdoing and the identity of the alleged wrongdoer.

14 By s47B(1) a worker has the right not to suffer a detriment (which may take the form of an act or a deliberate failure to act) done on the ground that he has made a PID. A 'detriment' arises in the employment law context where, by reason of the act(s) complained of a reasonable worker would or might take the view that he has been disadvantaged in the workplace. An unjustified sense of grievance cannot amount to a detriment: see *Shamoon v Chief Constable of the RUC* [2003] IRLR 285 HL.

15 A dismissal is 'automatically' unfair if the reason or principal reason is that the person dismissed has made a protected disclosure (s103A).

16 The 'ordinary' unfair dismissal claim is governed by the 1996 Act, s98. It is convenient to set out the following subsections:

> **(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –**
>
> **(a) the reason (or, if more than one, the principal reason) for the dismissal, and**
> **(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**
>
> **(2) A reason falls within this subsection if it – …**
>
> **(b) relates to the employee's conduct …**
>
> **(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**
> **(b) shall be determined in accordance with equity and the substantial merits of the case.**

17 Although our central function is simply to apply the clear language of the

legislation, we are mindful of the assistance available, both legislative and judicial. By the Trade Union and Labour Relations (Consolidation) Act 1992, s207(2), any ACAS Code of Practice which appears to be relevant to any question in the proceedings is admissible in evidence and "shall be taken into account in determining that question". We bear in mind the guidance applicable to misconduct cases contained in *British Home Stores Ltd v Burchell* [1978] IRLR 379 EAT (although that authority must be read subject to the caveat that it reflects the law as it stood when the burden was on the employer to prove not only the reason for dismissal but also its reasonableness). The criterion of 'equity' (in s98(4)(b)) dictates that, the more serious the allegation and/or the potential consequences of the disciplinary action, the greater the need for the employer to conduct a careful and thorough investigation (*A v B* [2003] IRLR 405 EAT and *Salford Royal NHS Foundation Trust v Roldan* [2010] IRLR 721 CA). From *Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439 EAT and *Post Office v Foley; HSBC Bank v Madden* [2000] IRLR 827 CA, we derive the cardinal principle that, when considering reasonableness under s98(4), the Tribunal's task is not to substitute its view for that of the employer but rather to determine whether the employer's decision to dismiss fell within a band of reasonable responses open to him in the circumstances. That rule applies as much to the procedural management of the disciplinary exercise as to the substance of the decision to dismiss (*Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23 CA).

Oral Evidence and Documents

18 We heard oral evidence from the Claimant and his supporting witness Mr Bertrand Le Cam, and, on behalf of the Respondents, Mr Christopher Gray, Mr Richard Allen, Mr Ross Marder, Mr Simon Miller and Mr Paul Carman. Of these the last three were the principal witnesses, being the senior officers who, respectively, conducted the investigation, the disciplinary hearing and the appeal.

19 In addition to the testimony of witnesses we read the documents to which we were referred in the substantial bundle of documents.

20 We also had the benefit of the helpful closing submissions produced on both sides.

The Facts

21 The evidence was extensive. We have had regard to all of it. Nonetheless, it is not our function to recite an exhaustive history or to resolve every evidential conflict. The facts essential to our decision, either agreed or proved on a balance of probabilities, we find as follows.

The alleged PIDs

22 For the purposes of identifying the relevant PIDs, we will refer to the paragraph numbers in the list of issues.

23 As to paras 3.1 and 3.2, we find that, on 2 March 2015, orally and by email, the Claimant disclosed to Mr Thomas Kenny, a Compliance Officer who reported to

Mr Miller, that he had a role in investment business and was not FCA registered. He stated or implied that he believed that registration was required and that not being registered constituted a breach of FCA rules.

24 The disclosure at para 3.3 is established to the extent that the Claimant orally repeated to Mr Gray on 2 March 2015 the disclosures at paras 3.1 and 3.2. We are not persuaded that there was any wider disclosure than that.

25 The senior managers aware of the Claimant's concerns were very clear that there was no substance to them because, given the nature of his role, he did not require FCA registration, and reassured him accordingly. He did not press the matter further at that time.

26 The para 3.4 disclosure is also made out to the extent that, by an email of 21 April 2015, the Claimant disclosed to Mr Allen, Chief Operating Officer, and Mrs Kim Cowling, Head of HR, that he had been subjected to what he regarded as bullying and aggressive conduct by Mr Ali Gulfaraz, his line manager. In the same message he stated that he would "keep it informal". He did not raise any formal complaint thereafter.

27 As to para 3.5, the Claimant wrote an email to Mr Allen on 22 April 2016, in which he complained about the performance rating which he had been given by Mr Gulfaraz and alleged that, at a meeting to discuss it, Mr Gulfaraz had shouted at him and threatened to cut his pay and get rid of him. He went on to propose a "solution", namely a change in his reporting line from Mr Gulfaraz to Mr Gray. Under a heading, "Important Note", the message also included other complaints about Mr Gulfaraz, including:

> **ECA and Compliance issue in July 2014 where he asked me to lie.**

'ECA' was a slip for 'FCA', a reference to the concerns raised in March 2015.

28 The disclosure referred to in para 3.6 is not established in fact. We find that there was no fresh disclosure of information by the Claimant on 4 May 2016. There was simply a conversation between him and Mr Allen in the course of which the earlier allegation about being asked by Mr Gulfaraz to lie was mentioned and, after a discussion (in which the latter had explained (again) why the Claimant was mistaken about the issue of FCA registration), explicitly withdrawn by the Claimant. He confirmed that withdrawal in an email sent later the same day to Mr Allen, describing the 'lie' allegation as "inaccurate".

29 As to para 3.8, we are not persuaded that the Claimant made the disclosure relied upon. We prefer the contrary evidence of Mr Gray and Mr Allen.

The disciplinary process

30 On 24 November 2016 a Senior Proprietary Trader employed by the Respondents reported to the security team that the chain wheel guard from his folding bicycle had been taken. During the events which followed he was referred to as 'Mr A'.

31 At a somewhat pedestrian pace, an investigation was put in train. CCTV footage from at least one camera located in the bicycle garage was reviewed. This showed the Claimant entering the garage during the working day, removing the chain wheel guard from a bicycle which was not his and placing it in a corner.

32 Mr Marder, Senior Associate Director in the Human Resources Business Partner Team, was given the task of conducting an investigation.

33 Mr Le Cam (who at all relevant times worked in Paris) told us about a telephone conversation which he had had in the first half of December 2016 with someone who held a senior position in the London office. The exchange concerned or at least touched upon the Claimant's future but progressed very little because Mr Le Cam was told that he was likely to be dismissed. On balance, we accept this evidence. We think it probable that the speaker was one of several senior figures in London who knew that the Claimant was under investigation over an allegation of dishonesty and that there was hard evidence to support the case against him. There is no evidence that the speaker's assessment of the likely outcome was communicated to any decision-maker.

34 On 21 December 2016 Mr Marder interviewed the Claimant. He showed him the CCTV footage. The Claimant agreed that he was the person shown and said that he had taken the item from the colleague's bicycle because it was his, having been removed from his bicycle "a couple of days" earlier. He said that he had recognised it as his by a dent on it, which had been caused in an accident. He also explained that he had tried to attach it to his bicycle but then realised that he needed tools to do so and so had put it in a corner and collected it later in the day. (It was not in dispute before us that he did collect it and remove it from the premises.)

35 In an email of 22 December 2016 the Claimant told Mr Marder that his memory the day before had been inaccurate as a result of work pressure, a cold and sleepless nights looking after his baby daughter. On further reflection, he stood by his account that the chain guard cover was his and easy to recognise because of the "specific small damages" (sic), but said that he could not "blame anyone" because it might have fallen off his bicycle and, being worthless, it was not the sort of thing that anyone would "intentionally [steal]". He added that, to "help solve and close this topic", he would buy a replacement and fit it to the other bicycle on his return to work on 3 January. That solution did not commend itself to the Respondents.

36 The Claimant sent a further email to Mr Marder on 27 December, in which he stated that he had purchased a metal chain guard cover "in October", to replace his "missing one", and that he would produce a receipt and bank statement after the Christmas and New Year holiday. We do not recall that that evidence was ever supplied.

37 In a further email to Mr Marder of 4 January 2017, the Claimant referred to an attached revised copy of a note of the meeting of 21 December, which had earlier been supplied to him by Mr Marder or someone on his behalf. Referring to

quite significant changes which he had made to the note, he explained that he had "updated the facts" to the best of his memory. Three changes in particular should be recorded. In the revised version, he was represented as having: (a) claimed that he had *believed* that the item was his, rather than that it *was* his; (b) said that his chain cover had gone missing "some time before", rather than "a couple of days" before; and (c) explained that he had put it in a corner, apparently because it was muddy; at all events the reference to tools being required to fit it was deleted. We find that, as a record of what was said on 21 December, the original note was substantially accurate and, to the extent that the two differed materially, the revised version was not.

38 Mr Marder interviewed Mr A, who gave an account of events consistent with his original complaint.

39 A decision was taken to proceed to formal disciplinary action. That decision is not documented. We think it likely that Mrs Cowling was involved. She had heard of the para 3.4 PID and may have been made aware of the para 3.1-3.3 PIDs too.

40 Conduct of the disciplinary hearing was entrusted to Mr Miller, Head of Legal and Compliance. By a letter of 12 January 2017 (dated 2016 in error) he invited the Claimant to attend a disciplinary hearing on 25 January 2017 to answer charges that he had "forcefully" removed the chain wheel guard from the bicycle of another employee without proper reason or authority and had hidden and thereafter removed it from the Bank's premises. Supporting evidence was attached in the form of the notes generated by Mr Marder's investigation and the CCTV footage, together with a copy of the Bank's disciplinary procedure. Mr Miller advised the Claimant of his right to submit evidence in his defence, and of his right to be accompanied. He also pointed out that the allegations were very serious and could (if proven) result in summary dismissal.

41 In an email of 23 January 2017, the Claimant advised Mr Marder that he believed that he had lost his chain wheel cover in December 2015. He was interested in seeing CCTV footage from that period (we are not clear what he thought it might show), but this line of inquiry went no further in any event because Mr Marder was told that footage at the Respondents' former premises (where they had been in December 2015) was retained for 30 days only and then destroyed.

42 At the Claimant's request, the disciplinary meeting was put back to 3 February 2017. His first application, for a delay until after his wife had given birth to their second child, due in June, was refused.

43 The Claimant attended the meeting on that date. He was, by choice, unaccompanied. The CCTV footage was reviewed again. Mr Miller probed the Claimant's recollection as to when he had become aware that his chain wheel guard was missing. He gave answers which were inconsistent with one another and with the earlier account given to Mr Marder. He also gave inconsistent accounts as to when he had first recognised his chain wheel guard on Mr A's bicycle. Asked why he had put the item in a corner he said that he had done so in order not to lose it again. This contrasted with the explanation given to Mr Marder

(because it could not be fitted without tools) and the later account in the revised note (because it was muddy).

44 When Mr Miller tested the assertion that the Claimant had been able to recognise his chain wheel guard on Mr A's bicycle, he stood by his earlier contention that the minor scuff marks on it were distinctive. The equipment was produced at the hearing before us and we agree with Mr Miller that it is an everyday piece of moulded plastic and does not appear to bear any distinguishing mark or blemish.

45 At the disciplinary hearing the Claimant reverted to the suggestion that Mr A had stolen the chain wheel guard from him. He also made the point that it would have been absurd for him to put his career at risk for the sake of something of trifling value (he told us without challenge that the retail price of the item was less than £6) and all the more improbable when set against the very substantial expenditure which he claimed to have incurred on cycling equipment in the previous year.

46 After the meeting Mr Miller interviewed Mr A. He stated that he had bought the bicycle new and that the chain wheel guard had come with it. He dismissed as "ridiculous" the notion that it was the property of someone else.

47 The Claimant wrote an email to Mr Miller on 5 February 2017 complaining that his conduct of the disciplinary meeting had been inappropriate and that he had prejudged the outcome. His case before us was to the same effect. We find that Mr Miller did press him for answers and may have displayed a degree of scepticism at times during the meeting. We accept that the meeting would not have been a comfortable experience for the Claimant.

48 Mr Miller concluded that the disciplinary charges were made out and that the proper sanction was summary dismissal. He prepared a letter of dismissal dated 16 February 2017 and passed it to Mr Marder for delivery. At a meeting the same day attended by Mr Marder and Mr Allen, the Claimant was shown the letter, but it was not formally delivered to him and Mr Marder then took it back. He and Mr Allen then raised the possibility of the Claimant resigning as an alternative to being dismissed. They pointed out that in that event the Bank would be able to give him a reference stating that his employment had ended with resignation, and his prospects of securing fresh employment in the financial services sector would be greatly improved. The Claimant asked for time to consider his options and it was agreed that he would be allowed 24 hours. The following afternoon he told Mr Marder that he had decided against resigning and would appeal. Mr Marder gave him a further hour, to five o'clock. Having heard nothing more by then, he sent Mr Miller's letter to him by email.

49 By the letter of 16 February 2017 Mr Miller informed the Claimant that he had found the case against him proved and had decided to dismiss him summarily for gross misconduct. Full reasons were given but in essence they rested on a simple finding that the defence was false and untrue and that the Claimant had knowingly and deliberately misappropriated Mr A's property.

50 The Claimant exercised his right of appeal. Under the Respondents' procedures, appeals take the form of reviews rather than complete re-hearings.

51 The appeal was assigned to Mr Carman, Managing Director and Head of the International Acquisition Finance Department. His status was broadly equivalent to that of Mr Miller.

52 In support of his appeal, the Claimant raised three main points. First, Mr Miller had failed to establish whether or not Mr A was the true owner of the chain wheel guard. Second, Mr Miller had prejudged the case. Third, Mr Miller had been influenced against him by Mr Gulfaraz.

53 The appeal hearing took place on 15 March 2017, having been postponed from an earlier date at the Claimant's request. The Claimant was accompanied by Mr Gray.

54 The Claimant developed the points made in his notice of appeal but also re-argued the entire case at considerable length, contending on numerous grounds that Mr Miller had reached a decision which was inherently improbable and flawed procedurally.

55 After the appeal hearing Mr Carman spoke with Mr Miller and, separately, Mr A. Mr Miller was adamant that Mr Gulfaraz had not attempted to influence the disciplinary process and had had nothing to do with and it. Mr A stood by his original account.

56 By a letter of 21 April 2017 Mr Carman dismissed the appeal. In summary, he found that there had been no flaw in Mr Miller's decision and that there was no reason to overturn it. He added a number of further observations, of which we will mention two. First, given the Claimant's claim in the appeal hearing to have a sentimental attachment to his chain guard cover, it did not seem plausible that he could not state with any precision when he had become aware that it was missing. Second, there was nothing in the theory that Mr Gulfaraz had been behind the disciplinary action.

Secondary Findings and Conclusions

The alleged PIDs

57 In our judgment the disclosures identified in paras 3.1-3.4 of the list of issues attract the protection of the legislation. As to the first three, we accept on balance that the Claimant believed that his role required, or might require, FCA registration and that the absence of registration amounted to, or might amount to, a breach of FCA rules. We proceed on the footing that there was a disclosure of information which in his reasonable belief tended to show a breach or potential breach, of a legal obligation. As to the para 3.4 disclosure, we find that it amounted to a disclosure of information about bullying and oppressive treatment of a subordinate including a threat to cut his remuneration. In our judgment the *Nurmohamed* test is satisfied.

58 The remaining disclosures do not pass the statutory test. The Claimant himself accepted that the 'lie' allegation levelled at Mr Gulfaraz (para 3.5) was unfounded and, as we have recorded, withdrew it. We are satisfied that he did not reasonably believe that the 'disclosure' was made in the public interest or that it tended to show a breach of any legal obligation. As to paras 3.6 and 3.8, there was, we find, no disclosure of information.

Detriment on 'whistle-blowing' grounds

59 As already noted, the only detriment claim permitted to proceed rested on the act of instigating the disciplinary proceedings. In our judgment here were ample grounds for bringing disciplinary charges. The complaint of Mr A was apparently sincere. The CCTV evidence was compelling. The Claimant's evidence to Mr Marder was inconsistent and could reasonably be seen as implausible. On any view, there was a case to answer. To do other than to proceed to disciplinary action would have been a surprising course for any employer faced with such evidence to take. For a bank operating in a closely regulated environment requiring from its workforce the highest standards of probity and honesty, such a decision would have been extraordinary. In these circumstances, it seems to us plain that the Claimant fails to prove any detriment. He certainly feels aggrieved by the fact that he was made the subject of disciplinary action, but his sense of grievance is misplaced and unjustified.

60 In case we are wrong on the subject of detriment, we will complete the analysis. Was the instigation of the disciplinary proceedings materially influenced by the fact that the Claimant had made the PIDs which we have found established, or any of them? We are satisfied that it was not. The FCA registration matter was, as Mr Miller said in evidence, a routine compliance issue which had been raised and addressed over a year and a half before Mr A's complaint. It did not cause the Respondents any vexation or embarrassment – much less any risk. They rightly understood that it had been laid to rest at the very latest in the first half of 2016. As for the para 3.4 PID, again we see no reason to suppose that the disclosure played any part in the decision to proceed to disciplinary charges. The Claimant had made an allegation about Mr Gulfaraz's behaviour but he had declined the opportunity to make a formal complaint. The story had fizzled out. There was no apparent damage to the organisation and, by the time of Mr A's complaint, we have little doubt that it too had faded from the memories of those people (no doubt few in number) who ever knew about it. Generally, the Claimant's action in making the PIDs did not mark him out as a trouble-maker. There was no reason for anyone in authority to regard him as a disruptive force: he was not. In short, the theory that there was *any* link between the instigation of disciplinary charges and the PIDs is, we find, completely misguided.

Unfair dismissal

61 What was the reason or principal reason for the dismissal? It was, we find, the belief of Mr Miller that the Claimant had knowingly and deliberately misappropriated the property of Mr A and the judgment of Mr Carman that that decision was correct, and certainly permissible. That was a reason relating to the Claimant's conduct and, as such, a potentially fair reason for dismissal.

62 This disposes of the claim under the 1996 Act, s103A, which asserts that the PID(s) amounted to the reason or principal reason for dismissal. To be completely clear, we find that the decisions of Mr Miller and Mr Carman were not based on, or to *any* extent influenced by, the fact that the Claimant had made any of the PIDs which we have found proved or made any of the other alleged disclosures relied upon.

63 We turn to the analysis under the 1996 Act, s98. We start by considering the procedure followed. In the first place, there was an adequate investigation. Contrary to the Claimant's view, very little investigation was needed. The CCTV evidence was eloquent. The accounts of Mr A and the Claimant were taken. The only rational conclusion open to Mr Marder was that which he reached, namely that there were arguable grounds for charging the Claimant with dishonest conduct. The decision to proceed to a disciplinary hearing was proper. He was duly and appropriately charged. Relevant evidence was shared with him. He was given the chance to be accompanied at the disciplinary hearing and the date was rearranged at his request. The suggestion of a postponement for many months was reasonably refused. At the disciplinary hearing he was permitted every opportunity to put forward his defence. We acquit Mr Miller of crossing the line into bullying or oppressive conduct. The defence case was inconsistent and could permissibly be seen as implausible. In the circumstances the Claimant cannot reasonably complain that he was subjected to questioning which he found awkward and uncomfortable. We do not understand his complaint about being given the chance to resign rather than being dismissed. In our view that was a compassionate course to take. The decision to dismiss was fully explained. The appeal was unobjectionable: it amounted to a full and considered review of the first-instance decision. It was permissible for the appeal to be heard by Mr Carman, whose status in the Bank was equivalent to that of Mr Miller. The appeal outcome was fully explained.

64 As to substance, we find that the decisions of Mr Miller and Mr Carman were both unimpeachable. Having heard from the Claimant at length, Mr Miller was entitled to find that he was not telling the truth and to conclude that he had knowingly and dishonestly misappropriated Mr A's property. Having reached that conclusion, he was also plainly entitled to judge that the proper sanction was summary dismissal. On any view, that penalty was within the range of permissible options. And, equally clearly, Mr Carman acted reasonably (*ie* permissibly) in dismissing the appeal on the basis that no flaw was shown in the disciplinary decision.

Outcome and Postscript

65 As we explained to the Claimant, our function is not to judge him but the Respondents. For the reasons we have given, we are satisfied that they did not infringe his legal rights in any respect. Accordingly, all claims fail and the proceedings are dismissed.

66 Finally, we repeat two observations made orally at the end of the hearing. First, it is preferable for disciplinary appeals to be heard by someone of discernibly

higher status than the initial decision-maker. Second, it is best practice for employers to document decisions to proceed to disciplinary action, identifying in each case the taker of the decision. Neither of these imperfections came close to rendering the dismissal in this case unfair.

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EMPLOYMENT JUDGE SNELSON
14 May 2019

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Reasons entered in the Register and copies sent to the parties on 16 May 2019

..... for Office of the Tribunals