EMPLOYMENT TRIBUNALS

Claimant: Mr A Beattie

Respondent: British Airways PLC

Heard at: North Shields On: 17,18,19,20 and 21 June 2019

Before: Employment Judge Shepherd

Appearances

For the Claimant: Mr Mchugh
For the Respondent: Ms Shrivastava

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claim of unfair dismissal is not well founded and is dismissed.

2. The claim of automatic dismissal by reason of trade union activities pursuant to section152(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 is not well founded and is dismissed.

3. The claim of wrongful dismissal is not well founded and is dismissed.

REASONS

1. The claimant was represented by Mr McHugh and the respondent was represented by Ms Shrivastava.

2. I heard evidence from:

Craig Bittle, Operational Support Manager;
Lucy Priestley, Customer Relations Operational Support manager;

Tracy Armstrong, Change Booking Business Manager;
Alison Dalton, Service Integration Manager;
Rachel Iley, Manager Airline Learning Academy;
Sarah Craig, Customer Relations and Social Media Business Manager;
Gurdip Ruprah, Social Media Team Leader;
Alasdair Beattie, The claimant.

3. I had sight of an agreed bundle of documents which was numbered up to page 842. I considered those documents to which I was referred by parties.

4. The issues to be determined by the Tribunal were identified by the parties in a preliminary hearing before Employment Judge Buchanan on 7 January 2019 and the provision of further details of the Trade Union claim. They were as follows:

Ordinary Unfair Dismissal

4.1. Did the respondent dismiss the claimant for a potentially fair reason pursuant to section 98 of the Employment Rights Act 1996?
The respondent contends that the claimant was dismissed for the potentially fair reason of conduct.

4.2. Did the dismissing officer have a genuine belief in the alleged misconduct of the claimant?

4.3. If so, were there reasonable grounds for that belief?

4.4 Did the respondent carry out as much investigation into the matter as was reasonable?

4.5 Did the respondent follow a fair and reasonable procedure?

4.6 Was the decision to categorise the behaviour of the claimant as gross misconduct a reasonable decision?

4.7 Was the penalty of summary dismissal within the band of a reasonable response?

Automatic unfair dismissal

4.8. Was the claimant's dismissal for the reason (or, if more than one, the principal reason) that the claimant had taken part, or propose to take part, in the activities of an independent trade union at an appropriate time as set out in section 152(1) of the Trade Union and Labour Relations (Consolidation) Act 1992?

Wrongful dismissal

4.9. Has the respondent established on the balance of probabilities that the claimant was guilty of gross misconduct and that the respondent was entitled to terminate the contract of employment of the claimant without notice?

Remedy

4.10. The claimant seeks the remedy of compensation having secured alternative employment. Should the claimant be awarded a basic award for unfair dismissal? If so, in what amount? Should any basic award be calculated in accordance with section 156(1) of the 1992 Act?

4.11. Should the claimant be awarded a compensatory award for unfair dismissal in accordance with section 123 of the 1996 Act? If so, in what amount?

4.12. Should any basic award awarded under section 119 of the 1996 Act be reduced because of any conduct of the claimant?

4.13. Should any compensatory award be reduced in accordance with section 123(6) of the 1996 Act?

4.14. If the dismissal of the claimant was unfair, should any compensatory award be reduced pursuant to **Polkey -v- A E Dayton Services Limited 1988 ICR 142** to reflect the possibility that following a fair procedure would have made no difference to the decision to di miss the claimant?

4.15 It was noted and recorded by Employment Judge Buchanan at the preliminary hearing that the claimant does not assert any breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

Findings of fact

5. Having considered all the evidence, both oral and documentary, I make the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that I made from which I drew my conclusions:

5.1. The claimant was employed by the respondent from 1 July 2012. He was employed as a Social Media Executive.

5.2. The claimant was appointed as a Unite Shop Steward representative in 2015.

5.3. An employee was employed by the respondent as an Attendance Manager. This employee was not a witness in this hearing and is referred to as S throughout these reasons.

5.4. On 1 April 2016 there was an incident relating to a “floor briefing” in which the claimant challenged S This incident was reported to Sarah Craig, Customer Relations and Social Media Business Manager, by another employee who indicated that it was “a deliberate attempt to derail the brief and try to make S look stupid” and was said to have been “incredibly awkward”.

The claimant later sent a message to S indicating that he had been told to apologise to her and indicated he was sorry if he was "over the top".

5.5. On or around 30 November 2016 a further incident took place involving the claimant and S in which he was said to have shouted at her and thrown some papers. Craig Bittle, Operational Support Manager, witnessed this incident and explained to the claimant that what he'd seen was totally unacceptable. The claimant apologised to S.

5.5 In August 2017 the claimant raised concerns with Sarah Craig, Customer Relations and Social Media Business Manager, in respect of how his absence had been managed and Sarah Craig said that he felt that mistakes had been maliciously made by the attendance manager and he confirmed that the attendance manager in question was S. Sarah Craig carried out an informal investigation and concluded that it was a genuine mistake on the Operation Support Manager's part and there was no evidence to support any mistake on S's part, let alone any malicious intent. Sarah Craig completed the investigation on 13 September 2017. She also suggested the possibility of mediation with S as the claimant had indicated that he did not feel he could work with S any more. Sarah Craig said that the claimant did not believe that S would engage in the process and he did not wish to go through mediation.

5.6. The claimant indicated to Sarah Craig that he was considering raising a grievance. However, on 13 October 2017 the claimant sent an email to Sarah Craig indicating that he did not see the point in launching a grievance. On 20 October 2017 the claimant sent an email indicating that he was intending to leave his employment with the respondent.

5.7. On 24 October 2017 S provided a grievance to the respondent in which she raised concerns about the claimant's behaviour. This was a detailed five-page document. She referred to having raised concerns earlier in the year. She said she had taken concerns to Craig Bittle, Operational Support Manager and Sarah Craig, Customer Relations and Social Media Business Manager. She said that it was worth them knowing although she didn't want anything to be done at that stage. The grievance referred to the claimant sending messages relentlessly on Skype at work (the respondent's internal instant messaging service), WhatsApp, Facebook and texts outside of work. She stated, among other things:

> "Often, there'd be messages every single day and multiple messages from him before I'd reply. I will say that while the majority of the messages were friendly and nothing particularly out of the ordinary, there were a few that I felt crossed a line between friendly and inappropriate. I try to ignore them for the most part. As well as that, I was always a bit uncomfortable with the number of messages sent and the seeming demand for a response. If I didn't reply within a few hours, there would be another message, and again if there was still no reply. Often, there would be accusations of 'ignoring' him and he did seem to get upset if I didn't reply. To a point, I made a decision to try to keep a positive relationship as I knew I needed to have that in a professional

> capacity and didn't want to offend/upset him either. Having already had a couple of occasions where Al had been confrontational or fractious (one being a floor briefing April 2016 where not only I felt uncomfortable and upset, but there were numerous comments afterwards to both me and Sarah about how inappropriate people felt he was and how concerned they were for me in that situation), I felt it would be best to try to minimise the possibility of those situations happening again in the future. I also know I need to work closely with the TU and, whilst this was happening outside of work, ultimately, we work together and I wanted to make sure there would be no impact on any work situations. So I was polite. I was friendly. I replied when I didn't particularly feel like I wanted to and I tried to keep things positive for the sake of our professional relationship.
>
> In addition, there were occasions where I felt Al would seek my attention on a more emotional level, which I felt difficult to deal with. In early December 2016, Al shouted at me about ARI notes on the floor in front of execs, other TLs and Craig. I felt it was uncalled for and was humiliated. Luckily, I was heading home but I left feeling quite shaken. I had numerous apology messages but was uninterested in those at the time. That night there was a Facebook post that, while I can't ever be hundred percent sure it's about me, fit with the situation. I felt it was a deliberate attempt to get some sort of attention or reaction from me. A response to the messages or an acceptance of his apology. Another occasion was also in December 2016. Al sent me a lot of messages one evening (after a few days of me having not replied) saying he wanted to end his life. I tried to be supportive and professional throughout, feeling I was compromised in the situation. Again, I'll never know whether the situation was happening as it appeared to be presented to me but I felt very uncomfortable that he was reaching out in that way to me. I encouraged him to seek professional help, while feeling anxious about the situation and not knowing, for that whole sleepless night, whether he'd done anything or not. When I went to work the following day, I spoke to Craig as I felt I needed to as a duty of care. I also wanted him to know that it had made me uncomfortable and I'd been affected negatively by the content of the messages."

5.8. The grievance went on to refer to S voicing her displeasure at feeling hounded by the claimant's persistent messaging. She said that she told the claimant that she didn't feel comfortable with the level of contact or the level of questioning. She referred to periods of silence following which the same routine would begin. She stated that she:

> "…realised that this type of persistent messaging, asking numerous and prying into my every movement, had been going on for a lot longer than I even realised. Now think this began around spring/summer 2016, when I was off sick having had a leg operation…"

5.9. She also referred to the claimant bringing presents/gifts for her and providing her with money despite her saying that she didn't feel comfortable with it.

> "…I haven't ever reciprocated the gift giving and haven't ever felt comfortable about receiving them. I've always been honest with Al about this too. I've now lost count of the number of times Al has asked me to go for drinks with him. In the interest of trying not to annoy him, I sometimes said I'd make plans the following week but then didn't..."

5.10. The grievance referred to S attending events with the claimant when there had been spare tickets and then asking a friend to accompany her because she didn't feel 100% comfortable about spending time with the claimant alone the claimant indicating that being coerced into going for a drink as the claimant had mentioned to Sn that something of concern was going to happen the following day.

> "In August this year, I realised I was struggling with my mental health more than I'd let myself recognise previously. Not all because of, but certainly in part due to the stress and anxiety I had been under because of Al's behaviour and the way I'd been dealing with it…."

> "…I received an email from Gurdip one night to give me a heads up that Al had been mentioning how close he was to putting in a grievance about his attendance and how it was being managed. My own reaction told me the whole thing had been affecting me far more than I'd realised. It felt so personal this time and like a direct threat. Having had very little to do with the most recent absence, I couldn't quite understand where it had come from, but felt it must be directed towards me somehow. I thought back and realise I'd been sleeping terribly for months and it had all culminated and come to a head…."

5.11. The grievance went on to refer to having been prescribed antidepressants, having nightmares and dreading coming into work. She referred to having been informally interviewed because the claimant had raised concerns. She had heard that the claimant had declined the option of mediation. She had been told that the claimant had sent a message to another employee telling her that S was one of the most untrustworthy people he'd ever met. She referred to being told that another employee said that Al was having a hard time due to having feelings for her and struggling with it and this echoed a conversation she had with another employee back in February in which she had been told that she knew someone in the Department was in love with her.

> "During this whole time, I've never had a problem with Al. I still always thought his heart was in the right place. While his actions made me feel uncomfortable, I still strived to maintain a professional relationship at the least. Looking back, I've realised how much more significant that has made the problem. I wish I'd realised what was going on a lot sooner. I even wish I'd tried to deal with it sooner when I did realise

there was a problem. I just didn't know how to. I've come to the conclusion I need to do it now as it feels as though it's becoming a lot more personal. It's one thing the effect it's had on me already. It's another knowing this is getting out of hand and he is now bad mouthing me to colleagues. I don't want my professionalism to be questioned or the trust people having me to be compromised. I feel like it's now crossed another line and I need the situation to be resolved so I can carry on with my role knowing I don't have to face bullying and harassment in the workplace. I've been subject to it for upwards of 12 months and it can't continue."

5.12. On 24 October 2017 the claimant was called into a meeting with Craig Bittle. He was asked questions about his relationship with S and general questions about the messages. At the end of the meeting the claimant was handed a letter of precautionary suspension from duty and it was indicated that a preliminary investigation would be opened because of:

"It is alleged that unwarranted and unwanted conduct has occurred over a period of time in relation to an employee and derogatory comments about the individual's performance has been shared with others.

This gives rise to the following allegations:

- Breach of EG101 Dignity at work – Diversity and inclusion
- Breach of EG102: Dignity at work – Harassment and bullying
- Inappropriate behaviour towards a colleague

Additionally, it is alleged that confidential information has been made public prior to an official announcement, which is against the recognised process and gives rise to the following allegation:

- Breach of confidentiality

These allegations are extremely serious and constitutes gross misconduct. If the allegations are found the appropriate sanction may be dismissal…."

5.13. Lucy Priestley, CR Operational Support Manager, carried out a preliminary investigation into the allegations against the claimant. She carried out interviews with 18 employees between 31 October 2017 and 16 November 2017.

5.14. On 13 November 2017 Lucy Priestley wrote to the claimant indicating that she would be extending the timescales of the preliminary investigation in order to enable her to carry out further interviews.

5.15. She carried out second interviews with three of those employees on 6 and 15 November 2017.

5.16. The Preliminary Investigation file was then passed to Kevin Hiscock, Global Operations Manager, to decide whether there was a case to answer.

5.17. On 8 December 2017 Kevin Hiscock wrote to the claimant indicating that he had considered the relevant evidence and believed that there was a case to answer. The file was then passed to Tracy Armstrong, Change Booking Business Manager.

5.18. On 15 December 2017 Tracy Armstrong wrote to the claimant indicating that she would be conducting the disciplinary hearing which was to take place on 20 December 2017. The claimant was informed that the allegations "if found are considered by the Company to amount to gross misconduct for which dismissal may be the appropriate sanction". Two copies of the preliminary investigation report and EG901 Disciplinary procedures were enclosed with that letter.

5.19. The disciplinary hearing was postponed on a number of occasions for various reasons including documents having been sent to an address that had been supplied by the claimant but that he had later said that he could not receive post at that address, the availability of the claimant's Trade Union representative.

5.20. On 8 January 2018 the claimant sent an email to Tracy Armstrong in which he stated:

> "I'm unsure about whether there is any value in me obtaining the file or attending the hearing. It's been clear since the launch what the intention of the investigation and I question the legitimacy of pretty every stage of the investigation, especially, the outcome seeming pre-determined."

5.21. On 15 January 2018 the claimant raised a grievance in relation to the scope of the investigation and the contents of the investigation file. He stated that he believed the file was character assassination. It included information irrelevant to the complaint.:

> "The vast majority of the people who have been interviewed are very close with S and I suspect they may have been briefed on what to say and narrative to follow to maximise the complaint.
> Significant parts of the file associated with the S's health concerns without any link to my alleged behaviour or how this affected her other than the timelines.
> None of the interviews have asked about S and Craig's errors on my attendance file and the impact of that. One of the people who may have interviewed about that conducted the investigation. It is also important to note that Craig gives a damning interview after deciding to launch the investigation.
> The messages included only have one side of the conversation and have been edited to make it look like I was sending additional messages without responses from S.

> This is completely false and I request the full message conversations be released, including the dialogue instigated by S. One such message conversations started by S shows a friendly tone throughout, this was shown to me and Mark Sanderson in the investigation meeting which is now not included in the file…
> I was not given specific information about the nature of the allegations or who had been interviewed prior to the investigation closing which has damaged my ability to defend the allegations or to advise who could be are interviewed. I requested this information when Mark Sanderson was present.
> It is my belief that from my recent experience it appears that S and Craig have decided they would prefer I was not part of the business and their acting in a way to ensure that occurs and this is a continuation of that.…"

The claimant asked that the disciplinary hearing was postponed until the grievance was heard.

5.22. On 16 January 2018 Tracy Armstrong wrote to the claimant indicating that the hearing should take place and stating that it was the claimant's opportunity to provide further evidence for Tracy Armstrong to investigate and that the outcome could be a disciplinary hearing being launched against individuals forming part of the investigation or the launch of a grievance.

5.23. Tracy Armstrong met with the claimant and Mark Sanderson on 22 February 2018 during which discussions took place with regard to resolving the claimant's concerns and issues.

5.24. On 1 March 2018 Tracy Armstrong sent an email to the claimant indicating, amongst other things, that his request to never interact face-to-face with certain named individuals was untenable.

5.25. On 14 March 2018 the claimant sent an email to Tracy Armstrong indicating that the investigation had not been fair and relevant. He suggested that:

> " …the only way of holding a fair hearing would be to scrap the entire file and start again, however, based on the timelines and the mess that has been made of the investigation that isn't remotely feasible.
> The possible outcomes are as I believed any included in my previous email. None of them are in any way acceptable. Any sanction would be entirely unfair, and it has been made clear that this would be the preference of the business, and if no case is found this would involve me returning to an unsafe working environment where I am likely to be subject to further malicious allegations from individuals have made it clear they would prefer if I left the business…
> For the reasons above I don't see any point in attending a meeting where the outcome has been predetermined and I will not receive a fair hearing. I also don't see any point in attending a meeting where every

> possible outcome is equally as horrifying and unacceptable. I would also note the huge amount of anxiety and stress that these meetings cause me and the health difficulties I have had subsequently to the two meetings I have attended thus far."

5.26. On 16 March 2018 Tracy Armstrong sent an email to the claimant indicating that she had reviewed the investigation and was carrying out further interviews. She also stated that she had obtained all the Skype conversations between the claimant and S from Corporate security and would be reviewing those and the claimant's personal file.

5.27. Also on 16 March 2018 the claimant sent an email indicating that he would be willing to either attend an interview or respond by email to any questions Tracy Armstrong may have. He asked these were posed after he had the ability to see the further interviews that were to be conducted.

5.28. On 20 March 2018 Tracy Armstrong carried out further interviews and on 21 March 2018 she sent an email attaching notes from the interviews and further investigations she had carried out. It was indicated that Tracy Armstrong would conduct the hearing the next day, 22 March 2018.

5.29. On 23 March 2018 Tracy Armstrong wrote to the claimant providing the disciplinary hearing outcome. It was stated:

> "I am writing to advise you of the outcome of your disciplinary hearing that took place on 22 March 2018. This was rescheduled from a meeting arranged on 10 January 2018, then on 29 January 2018 and then on 16 March 2018. I rescheduled for 22 March 2018, you advised via email that you would not attend. You declined to attend the hearing, therefore it was held in your absence"

The allegations against the claimant were upheld. The letter set out detailed reasons for the findings and the sanction imposed was summary dismissal.

5.30. On 27 March 2017 the claimant appealed against the decision to dismiss him.

5.31. On 5 April 2018 Alison Dalton, Service Integration Manager, sent an email to the claimant indicating that she was the appeal manager and that she would review the files and then be in touch to arrange a meeting with the claimant.

5.32. Alison Dalton carried out an interview with S and conducted the first stage appeal hearing with the claimant together with his Trade Union representative on 26 April 2018.

5.33. Alison Dalton then carried out a telephone interview with Tracy Armstrong. On 2 May 2018 Alison Dalton sent the claimant notes from the

meeting she had had with S and Tracy Armstrong. She asked for the claimant's comments by the end of 3 May 2018 in order that she could provide the outcome letter on 4 May 2018.

5.34. On 4 May 2018 Alison Dalton wrote to the claimant providing the outcome of the first stage appeal. The breach of confidentiality decision was not upheld but she did uphold the bullying, harassment and inappropriate behaviour decisions. It was confirmed by Alison Dalton that the nature of the breaches was sufficiently serious to warrant dismissal and she upheld the original decision.

5.35 On 9 May 2018 the claimant appealed against the first appeal outcome. Rachel Iley, Head of Global Learning Academy, acknowledged the claimant's appeal on 11 May 2018.

5.36. On 29 May 2018 the final appeal hearing took place before Rachel Iley, the claimant was accompanied by Mark Sanderson and Godwin Pullicino was the note taker.

5.37. Following the final appeal hearing Rachel Iley carried out further investigations. She had further interviews with Sarah Craig, Tracy Armstrong, Maggs Stevenson (Trade Union representative) and S. She also contacted the respondent's IT department and obtained copies of the transcripts of the Skype messages. The notes from the further interviews were sent to the claimant and the transcripts of the Skype messages were also provided to the claimant.

5.38. On 8 August 2018 Rachel Iley wrote to the claimant setting out the outcome of the final stage appeal. I consider that it is appropriate to set out the contents of this letter setting out the findings as follows:

"The appeal grounds

I will cover each appeal point in turn.

a. You believe that the decision to dismiss you was based on a false allegation. You dispute the alleged impact of your behaviour on S. You dispute your behaviour was inappropriate or amounted to harassment, bullying or a breach of S's dignity at work.

i. You have maintained that S did not make you aware that the number of messages she received from you made her feel uncomfortable and that she responded to most of the messages you sent in a friendly way. You said you do not believe that the conversations between you were an issue as she had not reported them to anyone and she only seem to raise concerns at a time where there was no contact between you. This followed time where you had indicated you were considering raising a grievance against her, leading to the conclusion that the allegation was a defensive act rather than a reflection of how she felt.

ii. You dispute that your challenge of S during a floorplate briefing in 2016 was significant enough to have left her "humiliated and shaken" and that had it been the case someone from the management team would have spoken to you about it. You say you were frustrated because of not having been briefed as you felt you should have been as a TU representative, and your frustration was not directed toward S.

iii. You also told me that whilst you regretted posting a "petty" comment about S whilst in Facebook dialogue with a colleague, Emma Elsender, your concern around issues of confidentiality were a matter of fact and based on concerns expressed by other colleagues which you had reported to Maggie Stephenson and Sarah Craig.

iv. With regards to the gifts and money you have given to S, you feel these were not anything out of the ordinary; the gifts were just Christmas presents and you also gave gifts to other friends. You told me that you gave S money that you had won and as she was struggling financially you gave it to her to help, just as you had other people. You agreed that you had sent her flowers to her home address by way of an apology for something that had happened at work. You said you knew where she lived having dropped her off in a taxi following a night out.

In reaching my conclusions, I have had to decide whether I believe your conduct overall amounted to harassment, bullying and failed to respect S's dignity in the workplace**.** I have reviewed the definition of bullying and harassment contained within EG102– Dignity at work which is outlined as follows:

Bullying: The persistent misuse of power and aggression, sometimes subtle in nature, intended to hurt, humiliate and belittle an individual.

Harassment: This is unwanted and unsolicited conduct which is personally offensive to the recipient and therefore fails to respect the rights and dignity of others… Harassment does not refer to behaviour that is of a generally socially acceptable nature although it is acknowledged that this is an area where it is difficult to give precise definition and guidance. The effect of the unwanted behaviour on the person who claims to have been bullied or harassed will be an important factor to be taken into account whether or not the behaviour is intended to be harmful."

To draw conclusions on this point I reviewed all the information available to me including messages on social media between yourself and S. I have read through all the Skype messages between you and S at work which I shared with you and would make the following observations. I believe the volume of messages is high. The commentary, whilst generally casual in nature, reveal some patterns;

many messages are initiated by you, you regularly ask S about her plans and who she is meeting, you regularly ask S to go for a drink with you, you regularly make observations about the way she looks, how she seems etc. I believe that S engages with you in friendly terms and whilst she often evades answering some of your questions she doesn't indicate discomfort.

That said, I would say it was clear that she did not wish to go for a drink with you and persistently declined your offers in a polite way. Despite this you continue to ask her to go for a drink. e.g. Skype message exchange on 19.06.17

Alasdair Beattie [9:14 AM]
haha you just tagging just now?
Come for a drink when I finish!

S [9:15 AM]
Yeah I am!
Noooo drinks I'm up at 0430!!

Alasdair Beattie [9:15 AM}:
Come out! I need a drink!

S [9:16 AM]:
You know you're pestering doesn't work haha
I need to earn cash moneys
Car insurance and road tax due
SNORE

Alasdair Beattie [9:23 AM]:
aww not good! Well I would shout you drinks for the company if you come out! but my pestering never works! I have noticed this before November you said you would come out!!: – P

S [9:24 AM]
Haha I can't deal with drinks when I'm on earlies!
Death
On
Toast

Alasdair Beattie [9:24 AM]:
Always excuses, just excuse after excuse!! Haha come out on Saturday then!

I understand you also messaged S on other social media platforms over 2016/17. Some examples of these message exchanges are contained within the PI file. You expressed a view that S had selected messages that only showed her version of events, but you were unable to provide full transcripts of all the messages having changed devices.

That the volume of messages seems excessive and I have seen examples where S clearly felt uncomfortable with how you were engaging with her. An example of this was in her Facebook message to you 13.12.16 where S has stated: “I don’t like receiving of messages about the fact that I haven’t replied” “I feel like there’s this expectation that because you’ve sent something I have to reply otherwise you’ll get annoyed/upset about something. In reality. I’m either forgetful, want some time to myself or just plain didn’t reply for no reason. I don’t feel like I should have to constantly apologise for not replying or explain why I haven’t. And the majority of the time, I think I do reply”

There are also examples of when S demonstrates evidence of feeling uncomfortable about receiving gifts – for example her Facebook message to you on where she states, “Too many things” “you know it makes me feel uncomfortable!”

I believe the volume and content of messages described by S as “relentless” did amount to harassment and in addition it is my belief that S has tried to place boundaries up against these albeit in subtle and non-robust ways. You point to the fact that S did not report her concerns to management as evidence of the allegation being fabricated and merely a response to you considering a grievance against her. S did with report her concerns to Sarah Craig but asked her not to progress things further despite Sarah encouraging her to do so. From my conversation with S her anxiety during a time when you were no longer in contact was based on her concern on what you “might” do. This response clearly demonstrates to me that your behaviour was having a detrimental effect on S including her performance at work.

(ii) You have disputed that your challenge of S during the floorplate meeting on 1 April 2016 was significant enough to cause her to feel “humiliated and shaken”. Your exchange was described by a colleague as a “deliberate attempt to derail the brief and make S look stupid in front of the full floor it was incredibly awkward”. I don’t accept you weren’t aware that your behaviour was unacceptable, and indeed note you subsequently apologised to her for it. Facebook message from you to S in December 2016 “I’m really sorry, I feel horrendous about it. Totally uncalled for, I totally understand if you don’t want to speak to me anymore I’ll just leave you alone”. I also don’t accept that because the management team didn’t address it means that it wasn’t appropriate or that it was justified by your alleged frustration.

(iii) With regards to your conversation with Emma Elsender on Facebook, I don’t believe your statement was merely a “petty” comment based on fact. I believe that you were deliberately attempting to malign S’s professional reputation amongst colleagues and that you were using your status as a trade union representative in order to do this. Sarah’s investigation into the concerns you had raised regarding how your absence management process was handled concluded another

colleague made an error in calculating which stage of the EG300 process you were in.

I don't believe that it was your intention to harass S. I believe it is more likely that you were interested in fostering a closer and more intimate relationship with S outside of work and your way of trying to achieve that was through close focus on your communications with her. In doing so, I feel that you failed to read the situation properly and recognise the boundaries S put up. The result of that is that she felt harassed.

However, I believe that your conduct over time when you didn't get the desired response from S led you to respond on occasion in an aggressive way towards her for example throwing some EG300 paperwork across the desk (for which you apologised via Facebook message December 2016 "Sorry didn't mean to kick-off but those notes annoyed me have a good evening xx… Sorry that was really unfair I'll leave you be but I do feel bad about that didn't mean to be such a dick…Let me know if there is anything I can do to make it up to you. Night Night", the aforementioned floorplate briefing and your response to how she managed your absence This demonstrates to S that your behaviour was unpredictable, and this caused her anxiety. It was this anxiety that I believe affected her behaviour and confidence and led her to question whether to challenge you over your conduct towards her.

In conclusion, I believe that S did feel harassed and bullied by you and your behaviour had an adverse impact on her. I believe you failed to respect her dignity in the workplace in breach of EG101 and EG102.

I have therefore not found this appeal point.

b. You believe that the decision to dismiss you followed a flawed investigation and was based on a premeditated desire to see you leave the business.

i. Failure to listen to your grievance

You submitted a grievance to Tracy Armstrong on 15 January 2018 and invited her to postpone the EG901 process until conclusion of your EG903. You felt that this should happen because proceeding with the hearing without doing so would be fundamentally unfair. You state your grievance is based on concerns surrounding the preliminary investigation and the collation of the file on which Tracy would be basing her decision. Tracy declined your invitation to postpone the EG901 process following advice from PCS. You have taken this as evidence that Tracy has not and did not take your concern seriously because she wanted you out of the business. You declined to attend the hearing on 22nd March as you felt there was "no point in doing so given you had no confidence in the file or the process or the chance of receiving a fair hearing based upon this.

ii. Predetermined outcome of dismissal

Tracy wrote “The evidence/information you could change the outcome of the hearing” in an email to you 16 January 2018. You have interpreted the words to mean that she had already decided what the outcome would be.

iii. BA sought to get an agreement for you to leave the business

You attended a meeting on 22 February 2018 with Tracy Armstrong, Mark Sanderson and Maggs Stephenson in Unite offices. As part of that conversation there was a discussion about a potential agreement for you to leave the organisation.

(i) I believe that Tracy Armstrong made the right decision not to postpone the EG901 process to hear your grievance. Your complaints were based on issues of investigation and the best place to address those where as part of the EG901 process. In refusing to engage in the hearing you denied yourself the opportunity, at that stage, to explore your concerns with Tracy. It was within the gift of Tracy Armstrong to go back and address any of your concerns as part of the process and I believe Tracy was open to doing so despite your suspicion to the contrary.

Notwithstanding your view, you have since had two levels of appeal to raise your concerns regarding the preliminary investigation and decision made at the hearing stage and I believe you have done so. There has been much debate as to the reason of your non-attendance and delays to the timescales laid down in the EG901 which I believe were adequately addressed by Alison Dalton as part of your first stage appeal. I asked you during our appeal meeting what you felt was the material output of your non-attendance at your hearing; you did not respond other than to indicate surprise that BA were willing to undertake your hearing in your absence.

(ii) I don’t believe there was a predetermined outcome to the hearing. Where Tracy wrote “the evidence/information you could change the outcome of the hearing I believe it to mean that without you engaging with your hearing, she might reach a different conclusion to one if she had your input. I can see from the PI file and my interview with Tracy that she sought to reassure you throughout the process that she had not reached an outcome and encouraged you to engage with the process.

(iii) It appears that the discussion around an agreement to leave the business seems to have come about as a result of you stating that even if the allegations against you were found, you would struggle to return to the organisation given the effect it has had upon you. You actively engaged in these discussions and there is email evidence of this.

You referred to the dismissal letter where Tracy Armstrong wrote that "having reviewed your past history" she determined that the appropriate sanction was dismissal. You felt this was inappropriate as this referred to expired warnings that should not have been considered and in any event the warnings were for entirely different issues. Tracy explained to me during her interview on 22 June 2018 that "the issue he had previous sanctions before and they stopped me from not dismissing him it was more his continued poor behaviour towards others – he never learned from the experience therefore I concluded that I couldn't have confidence he wouldn't repeat the behaviour". I believe that this was a fair conclusion. You have shown little concern to the impact your behaviour has had on S or demonstrated any willingness to consider how you might learn from the experience. I accept this has been a difficult process for you however throughout it I believe you appear to have little regard for any view that is different to your own.

You were not satisfied with the result of these discussions. I cannot now accept that having failed to receive an offer to leave the organisation that met with your expectations they should be considered as evidence that there was a pre-existing desire to ensure you left the organisation. You did not offer any evidence as to why you believed your role as a TU representative form part of that reason except your role has been mentioned numerous times throughout the process.

I have therefore not found this appeal point.

Breach of Confidentiality

I am satisfied that you did not have access to the necessary information to materially breach confidentiality and concur that not finding this allegation was correct. However, your actions during this time I believe have demonstrated you playing on S's fears over the future of the contact centre. I believe you used what information you had by way of your position as a TU representative to manipulate S into going out for a drink with you. She clearly felt that you had shared confidential information with her and I believe that you let her believe that to bolster your position.

Summary
in summary, I have decided to not uphold your appeal. This is the final stage of the EG901 process and there are no further rights of appeal."

5.39. The claimant presented a claim to the Employment Tribunal on 21 August 2018. He brought claims of unfair dismissal, automatic unfair dismissal for taking part in trade union activities and breach of contract in respect of notice pay

The law

6. Where an employee brings an unfair dismissal claim before an Employment tribunal, it is for the employer to demonstrate that its reason for dismissing the employee was one of the potentially fair reasons in section 98(1) and (2) of the Employment Rights Act 1996. If the employer establishes such a reason the Tribunal must then determine the fairness or otherwise of the dismissal by deciding in accordance with section 98(4) of the Employment Rights Act 1996 whether the employer acted reasonably in dismissing the employee. Conduct is a potentially fair reason for dismissal under section 98(2).

7. In determining the reasonableness of the dismissal with regard to section 98(4) a Tribunal should have regard to the three-part test set out by the Employment Appeals Tribunal in **British Home Stores Limited v Burchell [1978] IRLR379**. That provides that an employer, before dismissing an employee, by reason of misconduct, should hold a genuine belief in the employee's guilt, held on reasonable grounds after a reasonable investigation. Further, the Tribunal should take heed of the Employment Appeal Tribunal's guidance in **Iceland Foods Limited v Jones [1982] IRLR439**. In that case the EAT stated that a Tribunal should not substitute its own views as to what should have been done for that of the employer, but should rather consider whether the dismissal had been within "the band of reasonable responses" available to the employer. In the case of **Sainsbury's Supermarkets Limited v Hitt [2003] IRLR23** the Court of Appeal confirmed that the "band of reasonable responses" approach applies to the conduct of investigations as much as to other procedural and substantive decisions to dismiss. Providing an employer carries out an appropriate investigation and gives the employee a fair opportunity to explain his conduct, it would be wrong for the Employment Tribunal to suggest that further investigation should have been carried out. For, by doing so, they are substituting their own standards as to what was an adequate investigation for the standard that could be objectively expected from a reasonable employer. In **Ucatt v Brain [1981] IRLR225** Sir John Donaldson stated:

> "Indeed this approach of Tribunals, putting themselves in the position of the employer, informing themselves of what the employer knew at the moment, imagining themselves in that position and then asking the question, 'Would a reasonable employer in those circumstances dismiss', seems to me a very sensible approach – subject to one qualification alone, that they must not fall into the error of asking themselves the question 'Would we dismiss', because you sometimes have a situation in which one reasonable employer would and one would not. In those circumstances, the employer is entitled to say to the Tribunal, 'Well, you should be satisfied that a reasonable employer would regard these circumstances as a sufficient reason for dismissing', because the statute does not require the employer to satisfy the Tribunal of the rather more difficult consideration that all reasonable employers would dismiss in those circumstances".

Stephenson L J stated in **Weddel v Tepper [1980] IRLR 96**:

> "Employers suspecting an employee of misconduct justifying dismissal cannot justify their dismissal simply by stating an honest belief in his guilt. There must be reasonable grounds, and they must act reasonably in all the circumstances, having regard to equity and the substantial merits of the case. They do not

have regard to equity in particular if they do not give him a fair opportunity of explaining before dismissing him. And they do not have regard to equity or the substantial merits of the case if they jump to conclusions which it would have been reasonable to postpone in all the circumstances until they had, per Burchell, 'carried out as much investigation into the matter as was reasonable in all the circumstances of the case'. That means that they must act reasonably in all the circumstances, and must make reasonable enquiries appropriate to the circumstances. If they form their belief hastily and act hastily upon it, without making the appropriate enquiries or giving the employee a fair opportunity to explain himself, their belief is not based on reasonable grounds and they are not acting reasonably".

8. In **Taylor v OCS Group Limited [2006] IRLR613**. Smith L.J. stated, at paragraph 47:

"The error is avoided if ETs realise that their task is to apply the statutory test. In doing that they should consider the fairness of the whole of the disciplinary process. If they found that an early stage of the process was defective and unfair in some way they will want to examine any subsequent proceedings with particular care. Their purpose in so doing will not be to determine whether it amounted to a re-hearing or a review but to determine whether due to the fairness or unfairness of the procedures adopted the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision maker the overall process was fair, notwithstanding any deficiencies at the early stage".

In the decision of **South West Trains v McDonnell [2003] EAT/0052/03/RN** HHJ Burke at paragraph 36:

"Whilst not only unfair it is incumbent on an employer conducting an investigation followed by a disciplinary hearing both to seek out and take into account information which is exculpatory as well as information which points towards guilt, it does not follow that an investigation is unfair overall because individual components of an investigation might have been dealt with differently, or were arguably unfair. Whilst, of course, an individual component on the facts of a particular case may vitiate the whole process the question which the Tribunal hearing a claim for unfair dismissal has to ask itself is: in all the circumstances was the investigation as a whole fair?"

9. In the employment context" gross misconduct" is used as convenient shorthand for conduct which amounts to a repudiatory breach of the contract of employment entitling the employer to terminate it without notice. In the unfair dismissal context, a finding of gross misconduct does not automatically mean that dismissal is a reasonable response. An employer should consider whether dismissal would be reasonable after considering any mitigating circumstances. Exactly what type of conduct amounts to gross misconduct will depend on the facts of the individual case. Generally, to be gross misconduct, the misconduct should so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in employment. Thus, in the context of section 98(4) of the 1996 Act it is for the Tribunal to consider:

(a) Was the employer acting within the band of reasonable responses in choosing to categorise the misconduct as gross misconduct and

(b) Was the employer acting within the band of reasonable responses in deciding that the appropriate sanction for that gross misconduct was dismissal. In answering that second question, the employee's length of service and disciplinary record are relevant as is his attitude towards his conduct.

10. One of the factors that a Tribunal has to consider when assessing compensation in a case where there is a substantively fair reason for the dismissal but where there had been procedural failings in the dismissal process, is whether the employee would still have been dismissed if a proper procedure had been followed. If the Tribunal concludes that even if a fair procedure had been followed, dismissal would still have occurred then that can sound in the compensation that is awarded. In **Polkey v. AE Dayton Services Limited [1988] ICR 142** the House of Lords approved the remarks of Browne-Wilkinson J in **Siliphant's case [1983] IRLR 91**:

> "There is no need for an 'all or nothing' decision; if the Tribunal thinks there is a doubt whether or not the employee would have been dismissed, this element can be reflected by reducing the nominal amount of compensation by a percentage representing the chance that the employee would still have lost his employment."

11. If the Tribunal finds that the claimant caused or contributed to his dismissal, then the basic award may be, and the compensatory award must be reduced by such proportion as it considers just and equitable. If the employee substantially contributed to his own dismissal then this will mean a substantial percentage reduction in the award, even of 100%, leaving the employee with a finding of unfair dismissal but no compensation. This is usually relevant in respect of misconduct dismissals.

12. Dismissal on Grounds Related to Union Membership or Activities – Section 152 Trade Union and Labour Relations (Consolidation) Act 1992

Section 152 states:

> "152(1) For the purposes of part X of the Employment Rights Act 1996 (Unfair Dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee –
>
> (b) … had taken part or proposed to take part in activities of an independent Trade Union at an appropriate time.
>
> (2) In subsection (1) 'an appropriate time' means –
>
> (a) a time outside the employee's working hours, or
>
> (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a Trade Union … and

for this purpose 'working hours' in relation to an employee means any time when in accordance with his contract of employment he is required to work.

(4) Reference in this section to being, becoming or ceasing to remain a member of a Trade Union include reference to being, becoming or ceasing to remain a member of a particular branch or section of that union or of one of a number of particular branches or sections of that Trade Union …

(5) References in this section –

(a) to taking part in the activities of a Trade Union, and

(b) to services made available by a Trade Union by virtue of membership of the union, shall be construed in accordance with subsection (4)".

13. In relation to section 152(1)(b) it is important to draw a distinction between the activities of union officials and those of ordinary members. The range of activities in which a Shop Steward can claim to be participating on behalf of the union is wider that for an ordinary member.

14. In relation to the burden of proof in this matter I note that given this is a situation in which the claimant has sufficient qualifying service to claim unfair dismissal, it is for the respondent to show the reason for the dismissal and that it was not a Trade Union reason. There is no onus on the claimant to prove the reason for the dismissal. In the case of **Maund v Penwith District Council [1984] ICR143** The Court of Appeal indicated that once a respondent had shown a reason for dismissal, there is an evidential burden on the claimant to raise the issue that the respondent's stated reason is not the real reason. Although this means that the claimant must produce evidence which casts doubt on the respondent's reason, the legal burden of proof remains on the respondent throughout. It is for the respondent to establish the reason for dismissal on the balance of probabilities. The failure by the respondent so to do could mean simply that the reason for dismissal is not proved and so the dismissal is unfair or it could mean that the reason that they failed to establish the reason gives credence to the claimant's allegation that he was dismissed because of Trade Union activities and so the dismissal is unfair under the provisions of section 152 of the 1992 Act. The Tribunal must consider all the elements of the case and look particularly at any procedural errors or shortcomings which might point to the fact that the real reason for dismissal was not as the respondent stated. The Tribunal's function is to look at the evidence in its totality, to consider that evidence and to draw whatever inferences it thinks appropriate from its primary findings of fact.

15. In the case of **Driving Edge Limited v Gietowski UKEAT/0444/07/RN** and in particular the words of Nelson J at paragraph 44, guidance was given as to the function of the Tribunal in looking at cases under what is now section 152(1)(b). The words are:

> "We are satisfied that the majority failed to ask itself the essential liability question namely, what was in the mind of the dismissing officer, Mr Greenland, or the appeal officer, Mr Martin. Instead they found that the claimant had been dismissed by reason of his Trade Union activities without any analysis of what was in the minds of the dismissing officer or the appeal officer. Their thought processes were simply not examined. If the Employment Tribunal had in fact considered these matters but not analysed them or expressed them in their reasoning, the failure in their reasoning process would be so grave that their decision would have to be set aside upon that basis".

16. I had the benefit of oral submissions provided by the representatives of both parties. These were helpful. They are not set out in detail in these reasons but both parties can be assured that I have considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

Conclusions

17. I am satisfied that the reason for the claimant's dismissal in this case was that of conduct. A grievance was raised making clear allegations of bullying and harassment against the claimant. The allegations were serious and the effects on the employee who raised the grievance were substantial.

18. The suspension and preliminary investigation were carried out in accordance with the respondent's policy. Some of the allegations were in respect of the claimant's conduct that had taken place a considerable amount of time before the grievance was raised. The respondent's Dignity at Work – Harassment and Bullying policy does emphasise that an employee who believes that he or she has been subject to harassment or bullying should act promptly. It was submitted on behalf of the claimant that this is relevant in respect of the claimant's case and considering fairness and natural justice. The two incidents which were historic were in respect of the "floorplate briefing" incident on 1 April 2016 and the AR I notes being thrown on a desk on or around 30 November 2016.

19. The floorplate briefing incident had been reported to Sarah Craig by another employee and the claimant had been told to apologise for this. He had so apologised.

20. The incident in or around 30 November 2016 had been witnessed by Craig Bittle who had spoken to the claimant and told him that what he had seen was completely unacceptable. Once again, the claimant had apologised for his behaviour.

21. It was submitted that the respondent had taken action at the time of these incidents and the claimant was entitled to assume that these mistakes had been dealt with and would not be resurrected for separate disciplinary action.

22. This issue had been considered by the respondent and it was determined that this demonstrated a pattern of behaviour. It was not a question of punishing the claimant twice for offences which had already been dealt with. The grievance made it clear that the allegations were in respect of behaviour that had been going on for some time. The employee who raised the grievance indicated that she had wished

that she had realised what was going on a lot sooner. However, she had come to the conclusion that, at the time the grievance was raised, it felt as though it was becoming a lot more personal. She had been told that the claimant was considering raising a grievance against her. She had been told that the claimant had informed other employees that she was one of the most untrustworthy people he had ever met. Matters had been building up for a considerable length of time before the grievance was submitted.

23. The respondent had a duty of care to the employee. These allegations had to be investigated. There was no credible evidence that the outcome of the disciplinary procedure was predetermined There were flaws in the investigation. The claimant was only provided with the extracts from the messages provided by the employee who raised the grievance at the investigation stage, and the allegations against him were on that basis. The respondent did not, at the investigation stage, seek to obtain the complete exchange of messages. The respondent had sight of a number of selected extracts provided by S and did not look into further information with regard to the inception or conclusion of the discussions within the messages. It would have been possible to obtain the hundreds of entries on the Skype internal instant messaging facility. The claimant said that the exchanges were consensual and that further investigation would have revealed exculpatory evidence. However, the respondent did later recover all the Skype messages and the claimant was provided with these before the final appeal decision was made. He received all the messages and had the opportunity to provide a response.

24. The claimant did not attend the disciplinary hearing. He had previously refused to attend as he indicated that he felt the matter was predetermined. It was submitted by Mr McHugh that it was unreasonable for the dismissing officer to provide a hearing date only two days after she had disclosed new information to the claimant. There was some confusion as to why the claimant did not attend. He had indicated shortly before that he would be willing to attend or provide replies to questions sent by email but the hearing went ahead in his absence. There had been over a hundred pages of emails with regard to arranging dates and with regard to informal meetings. However, it would have been reasonable to postpone the disciplinary hearing for a short time and to provide written questions for the claimant to answer.

25. I am satisfied that there were flaws in the procedure. However, taking into account the overall process, including the final appeal, I am satisfied that the procedural flaws were not such as to take the procedure outside the band of reasonable responses.

26. I am satisfied that the respondent held a genuine belief in the claimant's guilt. This was on reasonable grounds. The messages together with the other incidents considered by the respondent did amount to bullying and harassment. They were generally friendly but it was clear that it was found that the claimant's behaviour was inappropriate and led to the other employee feeling anxious and distressed.

27. It was submitted that the fact that, as Rachel Iley concluded that she did not believe it was the claimant's intention to harass the employee, meant that his behaviour did not meet the definition of bullying in the respondent's policy which

referred to “persistent misuse of power and aggression, sometimes subtle in nature, intended to hurt humiliating belittle an individual…”

28. The definition of harassment within the respondent’s policy was “unwanted and unsolicited conduct which is personally offensive to the recipient and, therefore, fails to respect the rights and dignity of others.… The effect of the unwanted behaviour on the person who claims to have been bullied or harassed will be an important factor to be taken into account, whether or not the behaviour was intended to be harmful”

29. It was submitted, on behalf of the claimant, that, as Rachel Iley had found that there was no intention on the part of the claimant to harass, then there was a lack of culpability and the finding of gross misconduct was not that which a reasonable employer acting reasonably would have reached.

30. Rachel Iley went on to find that the claimant had failed to read the situation properly and recognise the boundaries that had been set up. It was concluded that the claimant failed to respect the dignity of the other employee in breach of the respondent’s dignity at work and harassment and bullying policy, and that amounted to gross misconduct. I am satisfied that the conclusion reached was within the band of reasonable responses available to the respondent.

31. With regard to the claim that his dismissal was by reason of trade union activities or membership. There was no credible evidence that any action was taken against him on grounds of his trade union membership or activities. During submissions Mr McHugh indicated that this claim was not pursued although it was not formally withdrawn. I am satisfied that it was established by the respondent that any action against the claimant was not influenced by or related to the claimant’s trade union activities or membership. The reason for his dismissal was shown to be that of conduct.

32. I have found that there were flaws in the procedure. However, I have also found that these were not sufficient to take the procedure outside the band of reasonable responses available to the respondent. If I had found that to be the case I would have gone on to find that the claimant was guilty of contributory fault up to 100% and that, pursuant to the House of Lords guidance in **Polkey,** had a fair procedure been followed, there was a strong probability that the claimant would have been dismissed in any event.

33. With regard to the claim of wrongful dismissal, I am satisfied that the claimant was guilty of gross misconduct. It was submitted that most of the messages were friendly and innocuous. I had sight of numerous messages between the claimant and S in different formats. These included remarks about the claimant’s appearance, many requests for S go for a drink or a walk with the claimant. The giving of gifts, chocolates, flowers and occasionally money. On many occasions S replied in a polite but not unfriendly manner mostly rejecting the invitations and indicating that she was uncomfortable with receiving any gifts.

34.On one occasion, in the early hours of the morning, the claimant referred to having a serious breakdown and being seriously suicidal with nowhere to turn and referring to there being blood everywhere. The messages from the claimant went on

to refer to S as the most amazing beautiful person he had ever known and that he would always love her but probably not see her again. S replied to the effect that he should call an ambulance and not to do anything silly. The claimant denied there being anything of a romantic nature in these messages. He said that he had been drunk on that occasion.

35. I have considered the totality of the messages within the hearing bundle and the claimant's conduct overall. The claimant may not have set out to harass the other employee but I am satisfied that the volume and nature of the messages and the other conduct of the claimant did amount to harassment. The other employee made it clear that she found matters uncomfortable. However, the claimant persisted with messages and conduct which amounted to harassment. In addition, he had deliberately attempted to malign S's reputation in an exchange with another employee in which he described S, among other things, as one of the two least trustworthy people in the building.

36. In the circumstances, I am satisfied that the claimant's behaviour amounted to a repudiatory breach of the contract of employment and the respondent was entitled to dismiss him without notice.

37. In the circumstances, these claims are not well-founded and are dismissed.

Employment Judge Shepherd
4 July 2019