EMPLOYMENT TRIBUNALS

Claimant: **Ms Bharti Gajjar**

Respondent: **British Gas Services Limited**

Heard at: **Leicester** **On: 8 and 9 April 2019**

Before: **Employment Judge Dyal (sitting alone)**

Representation

Claimant: **In Person**
Respondent: **Mr Ridley, Solicitor**

JUDGMENT having been sent to the parties on 13 April 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. By a claim form presented on 14 February 2018 the Claimant complained of unfair dismissal and disability discrimination. The issues were identified by me at a Preliminary Hearing on 12 July 2018. At a further Preliminary Hearing on 21 August 2018 Employment Judge Ahmed struck out all disability discrimination complaints. Accordingly, the sole claim for me to resolve at trial is unfair dismissal.

2. The issues for me to determine then are:-

   2.1. What was the reason for the dismissal? The Respondent relies upon conduct.
   2.2. If there was a potentially fair reason, was the dismissal fair in all the circumstances in accordance with Section 98(4) of the Employment Rights Act 1996?
   2.3. If the dismissal was unfair, should a ***Polkey*** reduction be made? And if the dismissal was unfair, should the Claimant's basic and/or compensatory award be reduced on account of her conduct?

The Hearing

Claimant's attendance and adjustments

3. The Claimant has a number of underlying health issues including some of an orthopaedic nature. On Friday 5 April 2019 there was an exchange of correspondence with the Tribunal in which the Claimant indicated that particular health problems had arisen and she was unsure whether she would be able to attend the trial or not. She asked for the trial to proceed on paper if she was not able to attend. The Regional Employment Judge agreed though it was made clear that if the Claimant was able to attend, she could do so.

4. Happily, the Claimant was able to attend and she has taken full part in this trial. At the outset of the trial I raised the issue of reasonable adjustments with the Claimant and canvassed what adjustments she may need the tribunal to make to assist at the hearing. We agreed that the Claimant could sit or stand or walk around the room as required and I gave her permission to manage that as she wished. We agreed that we would take regular breaks (both scheduled breaks and as required breaks). We also agreed that the Claimant would be given time to compose herself if she became upset.

5. In the course of the hearing we did take regular breaks, both scheduled and as required. The Claimant did sit and stand and walk around as required. And when, as occasionally happened, she was upset we did take time for her to compose herself which she quickly did.

Documents and evidence

6. The Respondent produced a chronology, a cast list and a reading list. These were shared with the Claimant in hard copy on the first day of the hearing. The Tribunal was presented with an agreed bundle running to 328 pages. The Claimant confirmed at the outset of the hearing that the bundle contained all the documents she wanted it to.

7. I heard witness evidence from the Claimant, from Mr Lee Beyer and from Mr Alex Burford. All those witnesses gave oral evidence and were cross examined.

8. At the conclusion of the evidence I heard closing submissions. At that stage the Claimant indicated that she wanted to rely upon the vulnerable worker policy which was not in the agreed bundle. She offered to go and get a copy. I declined on the basis that the evidential section of the hearing had closed and that the Claimant had had a fair opportunity to adduce the policy in evidence but had not done so. I was also conscious that it would have caused substantial delay if I had given the Claimant permission to adduce the document. It would have meant risking going part-heard since once the document had been obtained from home (which would have taken time), the Respondent would have needed time to consider it, it might have been necessary to hear further some evidence about it, and submissions certainly would have been needed. I was very doubtful that all of the foregoing, together with deliberation and judgment, could have happened in the available time. I therefore considered that, on balance, I should decide the case based upon the evidence I had heard and seen in the agreed bundle.

Findings of Fact

9. The following findings of fact are made on the balance of probabilities.

10. The Respondent is a well-known company. It is a large employer. The Claimant's continuous employment began in September 2000 in a Customer Service Adviser role. Her hours of work have varied over the years. She began as a full-time employee. Her hours dropped to 25 hours a week in March 2010 due to childcare and further dropped to 16 hours a week in February 2015. By this point in time she was working on the engineers' help desk.

11. In around December 2016 the Claimant moved to the Parts Team in the Contact Centre because her previous team had been moved to India. She was still working 16 hours per week and she had tried unsuccessfully for voluntary redundancy.

12. It was well known that the Claimant was actively looking for additional hours of work both internally and externally at this point in time.

Carer's Leave

13. By January 2016 the Claimant's normal working pattern was 9:15 to 2:45 on Wednesdays and Thursdays and 9:30 to 2:45 on Fridays. On 10 January 2016 one of the Claimant's sons had an accident and broke his collar bone. It was a serious injury and he was unable to go to school and required intensive care from the Claimant during the course of the week. At the weekend there was an older brother who was able to assist with the care.

14. On this basis the Claimant approached her Line Manager Maria Sweeney and her second Manager Ms Preety Gill and initially sought time off work. A meeting was arranged to discuss. At the meeting Ms Gill was critical of the Claimant's performance in certain respects and that upset the Claimant. She felt ambushed by the criticism of her performance as she had not understood that to be on the agenda at the meeting. The meeting did move on to discuss leave in light of the Claimant's son's injury and it was agreed that the Claimant would take a period of carer's leave. The Claimant represented that she was unable to unable to work Monday – Friday during normal working hours.

15. The Respondent has a carer's leave policy to assist in situations of this sort. It was agreed that the Claimant would be granted 12 weeks of carer's leave. During those 12 weeks she would continue to be paid for 16 hours per week but would only actually work 10 hours per week. The remaining 6 hours were accounted for by taking 3 as annual leave and 3 as paid leave for time that was not actually worked.

16. In order to facilitate childcare a further change was made pursuant to the carer's leave policy. The Claimant's working hours were moved from Wednesday to Friday to the weekend. It was initially planned that the Claimant would work all 10 hours on Saturdays. On Saturday 21 January 2018 the Claimant did a 10-hour shift. She reported that this had been difficult and had wiped her out until the following Tuesday. A further agreement was then reached to split those 10 hours in the future over a Saturday and Sunday.

17. The Claimant received her first payment for carer's leave on 25 January 2017.

18. The carer's leave arrangements were not formalised in writing and the Claimant did not look at the carer's leave policy although it was available on the intranet. However, there was no misunderstanding about what was agreed. The Claimant knew what her new hours were. She knew why she had asked for them and why they had been granted. She also knew that as a result of being on carer's leave she would be paid for 3 hours per week that she did not actually have to work (in addition to taking 3 hours per week as holiday).

19. The Claimant was not specifically told that she could not work for another employer during this period. However since a bespoke working arrangement was put in place for her, because of the representations she made about her childcare needs from Monday to Friday, it was obvious that it would be improper to work for a second employer during that part of the week that the Claimant had represented to her existing employer that she was unable to work. It was particularly obvious that it would be improper to work for a second employer during those parts of the week that comprised her normal working pattern from which she had been temporarily excused on account of childcare needs.

Second Job

20. During the period of carer's leave the Claimant obtained a second job at the University of Warwick Library as a Facilities Supervisor. The job description for this role appears at page 265 and following of the bundle. According to the job description at least this was a job that had some physicality and required some manual handling. In practice the Claimant's experience was that it did not require manual handling beyond moving the occasional chair.

21. In the course of investigation, which is referred to below, the Respondent obtained the dates on which the Claimant had in fact worked for the second employer and they appear at page 263 of the bundle.

22. The Claimant's normal shift pattern for the second employer was Friday evenings from 8:00 pm through to 00:15 am and Saturday and Sunday afternoons from 1:45 pm until 7:00 pm. However, she had also worked a number of additional shifts. Those shifts included Friday, 10 February from 10:00 am to 12:00 pm, that was an induction. Monday 3 February 8:00 pm until 00:15 am, Tuesday 14 February 8:45 am until 12:45 pm, Wednesday 15 February 4:45 pm until 8:15 pm, Friday 24 February 3:00 pm to 7:00 pm, Monday 27 February 10:00 am to 11:00 am, Friday 3 March 7:00 am until 3:30 pm and Sunday 5 March 7:00 pm until 00:15 am.

23. The Claimant's evidence is that in fact the induction on 10 February took place at 2:30 to 4:30 pm rather than 10:00 am until 12:00 am and I accept that evidence. However, what is clear is that a good deal of those shifts that the Claimant worked were during the course of the ordinary working week, that is a period of time when the Claimant has represented to the Respondent that she was unable to work. And that at least 2 of those shifts, the one on 10 February and the one on 3 March actually overlapped with her normal working hours, had she not been on carer's leave.

When did the Claimant tell the Respondent that she had a second job?

24. I will break from the chronology now to resolve an important dispute of fact. The Claimant says that she told the Respondent at an early stage that she had another job and no issue was taken with that.

25. The Respondent accepts that it knew that the Claimant had been looking for additional hours of work in the period before she asked for carer's leave. Of itself that concession is not significant. There would have been no difficult in the Claimant working a second job either before or after her period of carer's leave. What the Respondent does not accept is that it was contemporaneously aware that the Claimant was working a second job during the period of carers leave. There lies the difference of position. The Claimant says that she told Ms Sweeney in a one to one meeting not later than March 2017 about her second job. The Respondent's case is that it first found out in the course of the interview referred to below on 11 August 2018 that the Claimant was actually working a second job during the period of carer's leave.

26. On balance, I prefer the Respondent's account. The invitation first to the investigation meeting does not refer to the second job issue (it was convened for another purpose, see below). However, at that first investigation meeting on 11 August there was a discussion about another issue, in the course of which the Claimant said that she had a second job. There was no suggestion at that time (11 August) that this was something that the Claimant had previously told Ms Sweeney about.

27. A second investigation meeting was then arranged on notice and the invitation to that meeting records that as a result of the information given at the first investigation meeting there was a further disciplinary issue namely the second job issue.

28. At the second investigation meeting itself, which was on 13 August 2017, the Claimant said in terms that she had never made the Respondent aware of the second job because she had been in a 12-week probationary period.

29. Further, in preparation for the disciplinary hearing that then followed, the Claimant produced a very detailed written statement that is generally of a high quality and comprised some 8 typed pages, over 36 well written paragraphs. At paragraph 27 of that statement the Claimant gave a fairly detailed account in essence explaining that she had not told the Respondent that she had a second job and that she had not done that because she didn't think that she needed to because she had been on a 12 week probation period. The Claimant went on to explain that she had not intended to deceive. The important point for the current purposes is that she was clearly representing that she had not told the Respondent that she had a second job at an early stage (i.e., March 2017).

30. The Claimant recanted that position in her grounds of appeal against dismissal and claimed that she had told Ms Sweeney in March 2017 that she had a second job. Her explanation for the change of position is that she had been unwell and did not recall things correctly until the appeal stage. I do not doubt that she was unwell but I do not accept the explanation. It is deeply inconsistent with high quality if, and detail in, the statement prepared for the disciplinary hearing.

31. Overall, on the balance of the evidence, it far more likely that the truth of the matter is that the Claimant first told the Respondent that she had the second job in the investigation meeting on 11 August 2017.

The Car Accident and Sick Leave

32. Returning to the chronology, on 8 April 2017 the Claimant was travelling home from work at the University of Warwick in the early hours. She was involved in a car accident. This was at some time after midnight. A call was made at about 2:00 am from the Claimant's mobile to Ms Sweeney's personal mobile. Ms Sweeney did not answer but a message was left, purportedly from the Police, saying that the Claimant had been in an accident and that she would not be in work on 12 April, which was a Wednesday. That was some 4 days away. A similar message was left on the Respondent's formal absence reporting line, again purportedly by the Police. It struck Ms Sweeney and indeed it strikes me, as odd that the Police would leave a message of this kind because it seems surprising the Police would get involved in reporting an employee's prospective sickness absence from work 4 days hence.

33. The Claimant began a period of sickness absence from work and that is a period of absence from which she never returned. During that period of absence, it seems clear from the correspondence and the Claimant's evidence that friction developed between her and Ms Sweeney and Ms Gill.

34. On the Respondent's side there was a concern that the Claimant was not providing candid and full information about the reasons and circumstances of her absence from work which was attributed to the road traffic accident. This concern arose out of the curious telephone messages on the night of the accident. I should note that there was a degree of disagreement (between the Claimant and Ms Sweeney) about the detail of what the messages had said, but it is unnecessary for me to resolve that dispute. This all culminated in a letter of 31 July which is at page 169 and following of the bundle. On the Claimant's side she felt that she was not being properly supported in her period of absence and time of need by Ms Sweeney or Ms Gill.

35. Ultimately, the Claimant was invited to an investigation meeting to take place on 11 August 2017 to consider absence related issues. An investigation meeting took place on 11 August and another on 30 August and it was at the first of those meetings as set out above that the Claimant told Ms Sweeney that she had a second job: she said the accident had happened on her way home from work with Warwick.

36. I accept that the notes in the bundle are broadly accurate accounts of what was said at each of those investigation meetings and I won't set out further what was said there.

37. At the second meeting, the Claimant was pressed about working a second job whilst on carer's leave. She did ultimately apologise and offer to pay back her carer's leave. But at the same time, she did not really think that she had done anything wrong and indeed she still does not really think that she did anything wrong.

The Disciplinary Stage

38. By a letter dated 11 September 2017 the Claimant was invited to a disciplinary meeting. The invitation enclosed the investigation report that Ms Sweeney produced and an investigation pack, including notes of the investigation meetings and the various enquiries that Ms Sweeney had made. It made clear that Ms Sweeney's position was that she first learnt of the Claimant's second job at the meeting of 11 August 2017. The letter set out the disciplinary charges as follows:

    38.1. Firstly, false information given in relation to a road traffic incident which subsequently has driven a long-term absence from work;
    38.2. Secondly working reduced hours and claiming carer's leave whilst working another job without advising your employer of this.

39. The disciplinary hearing took place before Mr Lee Beyer on 15 September 2017. There was a sensible discussion of the issues and I am satisfied that the issues were properly ventilated. The Claimant was represented by a trade union representative. Suffice it to say she was not content with the representative's abilities or performance at that meeting. The Claimant admitted to working a second job during her period of carer's leave.

40. The disciplinary hearing was adjourned for further investigations. A number of additional documents were obtained, probably the most important one is the e-mail at page 263 setting out the dates of the Claimant's work. The Claimant was copied into that e-mail which was sent in the morning of 20 September 2017. A copy of the Claimant's job description at the University of Warwick was also obtained. Indeed, the Claimant supplied it.

41. There was a second disciplinary meeting on 21 September 2017. There was a brief discussion of the information in the e-mail now at page 263 and the Claimant did not dispute it. Charge one in relation to the road traffic accident was dropped. Charge two was found to be proven and the decision was made to dismiss the Claimant. I set out below rather than here my findings in relation to Mr Beyer's thought process.

42. The letter of dismissal was then sent which now appears at page 78 and following of the bundle. Curiously, it contains a reference to deliberate falsification of records which is something I comment further on below. However, it also identifies in its narrative that the reason for the dismissal related to the Claimant working a second job in a way that was fundamentally inconsistent with the carer's leave that she had obtained on the basis of particular representations she had made about her son's care requirements during the ordinary course of the working week.

43. The Claimant appealed. She set out her grounds of appeal in e-mails dated 27 September and 3 October 2017. She asked that there be an independent appeal officer because she was convinced that Ms Gill would simply dismiss her appeal. Thus, the matter was passed to Mr Alex Burford who was not familiar with the Claimant save in passing.

44. The Claimant raised a number of grounds of appeal. She suggested that she had told Ms Sweeney at an early stage that she had another job - in March 2017. She said that she had not been dishonest because she had given the Respondent as a referee. She said that the timing of the induction on 10 February was wrong, it was not at 11:50, it was at 2:30 to 4:30. She said that the real reason that she had been dismissed was because she had been on sick leave and that she is disabled.

45. The appeal hearing took place on 10 November 2017. Mr Burford dismissed the appeal and sent a reasoned letter for the basis of his decision on 24 November 2017.

The Law

46. By section 94 Employment Rights Act 1996, there is a right not to be unfairly dismissed. It's for the employer to show the reason for the dismissal and that the reason was a potentially fair one. If a potentially fair reason is shown fairness of dismissal turns on the test identified at Section 98(4) in relation to which the burden of proof is neutral.

47. In ***BHS v Burchell*** [1980] ICR 303 the EAT gave well known guidance as to the principle considerations of fairness in a conduct dismissal. In ***Iceland Frozen Foods v Jones*** [1982] IRLR 439 the EAT made clear that the range of reasonable responses test applies. In ***Sainsburys v Hitt*** [2003] IRLR 23 the Court of Appeal emphasised that that test applies to all aspects of the dismissal including the procedure adopted.

48. In ***Taylor v OCS Group*** [2006] IRLR 213, the Court of Appeal held that not every breach of a policy makes the dismissal unfair overall and made clear that the fairness of a dismissal must be judged at the end of the internal process.

49. In ***Ivy v Genting Casinos*** [2017] 3WLR 1212 the Supreme Court disapproved the ***Ghosh*** test of dishonesty. When dishonesty is in question what matters is firstly the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence, often in practice determinative going to whether he held the belief but it is not an additional requirement that his belief must be reasonable. The question is whether it is genuinely held. Once that state of mind as to knowledge or belief as to the facts is established the question of whether his conduct was honest or dishonest is to be determined by applying the objective standards of ordinary decent people. There is no requirement that the individual must appreciate that what he has done is by those standards dishonest. The ***Ghosh*** test cannot survive this and no longer has any place in employment law.

50. The basic and compensatory award can each be reduced on account of the Claimant's conduct according to the different statutory tests at Section 122(2) and Section 123(6) of the Employment Rights Act 1996. The impugned conduct need not be unlawful so as to justify reduction but it must be blameworthy. In the case of Section 123(6) the blameworthy conduct must also cause or partly cause the dismissal, see further ***Nelson v British Broadcasting Corporation (2)*** [1980] ICR 110.

51. Guidance as to the ***Polkey*** exercise was given in ***Software 2000 v Andrews*** (which must of course be read subject to the repeal of s.98A(2) ERA).

52. The Tribunal has had regard to the ACAS Code of Practice No.1 which it considered in full.

Discussion and Conclusions

The Reason for the Dismissal

53. The Claimant was dismissed because she had taken and worked a second job during a period of carer's leave. It was not the mere fact of having a second job but the circumstances of it that mattered. In particular, she had taken and worked the second job in circumstances that were wholly inconsistent with the representations she made to obtain and maintain carer's leave.

54. The Claimant's work in the second job included work during business hours in the normal Monday to Friday working week – a period of time she had told the Respondent she was unable to work because of caring responsibilities. Further, there were at least two occasions when those shifts directly overlapped with the normal working hours she would have been working had she not been on carer's leave.

55. The Respondent considered that to be dishonest and to involve an illicit financial gain in that carer's leave included an element of pay for hours not actually worked.

56. I am satisfied on the basis on the evidence I have heard including Mr Beyer's oral evidence that although the dismissal letter refers to deliberate falsification of records, he did not think the Claimant had falsified records nor did he dismiss her for that reason. That was a stray reference in the letter of dismissal.

57. I accept that Mr Beyer and Mr Burford were the decision makers. I accept the evidence that they took the task seriously and accept that they dismissed the Claimant for the above reasons in relation to the second job and not for any ulterior reason.

58. I do accept that the Claimant had an uneasy and difficult relationship with Preety Gill and Maria Sweeney but I do not accept that any pressure from them was the reason for the dismissal.

59. In my judgment it is inherently far more probable that the reason for the dismissal was the manifest conduct issue identified rather than the Claimant's sickness absence or disability. I reject the suggestion that there was an ulterior reason for the dismissal.

Reasonable Belief

60. The Respondent undoubtedly had a reasonable belief that the Claimant was guilty of the misconduct alleged. She essentially admitted over the course of the internal investigation that she had been working a second job and accepted the dates on which she had worked as set out at page 263 with the caveat that there was a minor correction to the timing of her induction on

10 February 2017. However, that was not a material correction because whether the induction was at 10:00 until 12:00 or 2:30 until 4:30 it overlapped with what would have been the Claimant's normal working hours had she not been on carer's leave.

Reasonable Investigation

61. The investigation had several high-quality features. The issues were put to the Claimant in writing and on notice. She was given a reasonable opportunity to respond to the allegations across two investigation meetings, two disciplinary meetings and an appeal hearing. Enquiries were made of Warwick and those turned up useful documents and they were documents that were shared with the Claimant she had a fair opportunity to comment and contribute to the investigation and disciplinary process. However, there were a couple respects in which the internal process was in my view outside the band of reasonable responses.

62. Ms Sweeney was not really a suitable investigator because she was also a primary witness in relation to the first disciplinary allegation. She was the person who witnesses the content of the telephone messages on 8 April 2017 about which there was a degree of factual dispute. Given that the Respondent was a large employer a different investigator should have been appointed.

63. However I would not have found the dismissal to be unfair for that reason alone because in my judgment that piece of unfairness did not taint the overall process; for one thing charge one was later dropped and for another more independent people dealt with the process from the disciplinary stage onwards.

64. More significantly however, at the appeal stage the Claimant represented in her grounds of appeal that she had told Ms Sweeney at an early stage around March 2017 that she had a second job and was working a second job. However implausible that ground of appeal may have been it did require consideration because if it had been found to be true it would have put a very different complexion on the Claimant's conduct and it would have been debatable whether there was serious or any misconduct at all.

65. Also, at the appeal stage the Claimant said that there had been an ulterior reason for her dismissal namely her disability and period of sick leave and again, however implausible, that ground of appeal required some consideration.

66. Neither of those important matters received any consideration at the appeal stage, they were overlooked. That was a failure of investigation/consideration that fell outside the band of reasonable responses.

The Sanction

67. Had the appeal considered the above matters that it failed to, and had it properly reached the conclusion that they were not well founded I would have had no difficulty at all in considering that the sanction was in the band.

68. What the Claimant did was an act of very serious misconduct (it was gross misconduct). She obtained the pecuniary and none pecuniary benefits of carer's leave and then worked a second job during the period of time that she

was representing to the Respondent that she could not work because of her carer's responsibilities. That was a very serious matter and one which struck at the root of the relationship of trust and confidence. The decision makers considered that to be dishonest and I not only consider that their conclusion about that was open to them, I agree that it was simply correct.

69. In terms of the Claimant's knowledge she knew that she had attained carer's leave on the basis of particular childcare needs that she had represented that she had. She knew that there were pecuniary benefits to carer's leave (i.e. 3 hours a week paid without having to work the hours) and non-pecuniary benefits (i.e. changing her shift pattern to the weekend). She knew that she was working for another employer including during the parts of the week she had said she could not work because she had childcare needs. She did not personally appreciate that that was a dishonest thing to do but by the standards of ordinary decent people that was a dishonest thing to do.

70. I am satisfied that the decision makers did have regard to the Claimant's mitigation. The chief mitigation was that the Claimant had financial problems including a court summons for a debt that she urgently needed to pay and that's why she wanted to work more hours. They also had regard to the fact that she had long and distinguished service, that she had no track record of dishonesty and that the carer's leave policy had not been spelt out to her. However, they were also (and permissibly) concerned that the Claimant showed very little if any contrition or insight. She certainly was deeply deeply upset and sorry to lose her job and everything that went with that. And she was prepared to say the word 'sorry.' However, was not a meaningful apology because it was clear that she did not think she had done anything wrong.

71. I am also satisfied that the decision makers considered alternative sanctions but reasonably came to the view that they would be inadequate to deal with the matter at hand. Trust had gone and dismissal was an appropriate response.

Polkey

72. I have no doubt at all that had due enquiries been made at the appeal stage the Claimant could have and would have been dismissed and dismissed on same date she was in fact dismissed.

73. I consider that there was overwhelming evidence that the Claimant had not told Ms Sweeney or anyone at the Respondent that she had a second job until 11 August 2017. That is clear from the way the investigation unfolded, the representations made at the investigation meetings, Ms Sweeney's documented reaction at the investigation meetings and most of all the Claimant's statement produced for the disciplinary hearing (see findings of fact above for more detail). Likewise, in terms of there being an ulterior motive for the dismissal I am sure that had Mr Burford considered that matter he would have rejected that possibility. There was an overwhelming case for dismissal based on the Claimant's conduct and Mr Burford would have found that to be the reason rather than any ulterior reason had he turned his mind to that issue. The case for an ulterior reason for dismissal was weak.

74. So, on that basis, I am sure that the Claimant would have been dismissed in any event and 100% ***Polkey*** reduction is appropriate.

Contribution

75. I also consider that it would be appropriate, that is just and equitable to reduce the compensatory and basic awards to nil in light of the Claimant's conduct.

76. On the balance of probabilities, I am satisfied that the Claimant obtained carer's leave on the basis that she was unable to work in ordinary business hours, Monday to Friday because of caring responsibilities. She obtained significant pecuniary and non-pecuniary benefits as set out above. She knew all of this. She then obtained a second job and worked it during hours which included some of the normal working hours with the Respondent from which she had been excused. She knew all of these facts too. She did not think she was doing anything wrong (as evidenced by the fact she put the Respondent down as a referee), but in my judgment, this was grossly blameworthy conduct. It was also conduct that by the ordinary standards of decent people was dishonest. The conduct was plainly causative of the dismissal.

77. In my judgment the blameworthy conduct was so serious that it would be just and equitable to award nil by way of compensatory and basic awards. While I have found an element of unfairness in the dismissal, this was procedural only, was in the way of an oversight and is vastly outweighed by the Claimant's conduct.

78. All in all, I consider that 100% reductions to the compensatory and basic awards are just and equitable.

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Employment Judge Dyal

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Date 14.05.2019

SENT TO THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS