EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms Sareet Sidhu	**v**	**Dr Sangeeta Rathor, t/a Allenby Clinic/Northolt Family Practice**

Heard at: Watford

On: 17, 18, 19 & 20 December 2018 and 25 & 26 April 2019

Before: Employment Judge Alliott
Members: Mrs S Boot
Mrs I Sood

Appearances
For the Claimant: Mr R Singh
For the Respondent: Mr G Khan

JUDGMENT

The judgment of the tribunal is that:

1. The Claimant was unfairly dismissed.

2. The respondent has made unauthorised deductions of wages and the respondent is ordered to pay her the gross sum of £2,668.34 (subject to tax & national insurance).

REASONS

Introduction

1. It is agreed that, at all material times, the claimant was employed by Dr Sangeeta Rathor, trading as Allenby Clinic/Northolt Family Practice and that is how the respondent should be recorded. It is agreed that the claimant was employed full time by Northolt Family Practice from 1 February 2013. Further, that she was employed by the respondent from 1 September 2014 when the respondent took over the Northolt Family Practice and it amalgamated with her existing Allenby practice. The claimant was summarily dismissed for gross misconduct in a letter dated 28 November 2017, received by the claimant on 4 December 2017. It is agreed therefore that the effective date of termination of the claimant's employment was 4 December 2017.

2. The claimant presents claims of automatically unfair dismissal on the basis of making a protected disclosure (sections 43(d) and 103(a) Employment Rights Act 1996), unfair dismissal (sections 94 and 98 Employment Rights Act 1996), a claim for a shortfall in wages paid from the date of suspension to the date of dismissal and a claim for notice pay (Unauthorised deduction of wages section 13 ERA 1996 / Breach of Contract).

The Issues

The agreed list of issues is as follows:

3. Whether the claimant was at all material times employed by Allenby Clinic/Northolt Family Practice or Natio Healthcare UK Limited?

4. What was the date of the claimant's commencement of work with the respondent?

5. What was the claimant's authorised salary and hours during her period of work with the respondent?

6. Whether the facts and matters pleaded in paragraph 90-93 of the claimant's statement of case amounted to protected disclosures?

7. Whether the claimant's dismissal is automatically unfair pursuant to section 103(A) of the Employment Rights Act 1996?

8. What were the reasons for the claimant's dismissal?

    8.1 Does the respondent satisfy the Tribunal that she genuinely and reasonably believed that the claimant was guilty of the allegations of gross misconduct and, in particular, in relation to the following allegations:

        8.1.1 that the claimant had failed to follow reasonable management instruction and failed to return Sangeeta Rathor's bank card when requested;

        8.1.2 that the claimant failed to follow the correct processes for requesting holidays;

        8.1.3 that the claimant inappropriately left the practice without a manager;

        8.1.4 that the claimant had committed theft of money from the practice;

        8.1.5 that the claimant had purchased an airline ticket without authority;

        8.1.6 that the claimant removed cash from the practice;

8.1.7 that the claimant purchased items for her own use out of Dr Rathor's funds;

8.1.8 that the claimant had taken money intended for the practice;

8.1.9 that the claimant had awarded herself pay rises without authorisation or justification;

8.1.10 that the claimant had mismanaged the practice in relation to the ordering of immunisations;

8.1.11 that the claimant forged Dr Rathor's signature?

8.2 Whether the respondent was motivated by her desire to dismiss the claimant for reasons which were unconnected with the performance of the claimant's duties at work?

9. Were the reasons for her dismissal potentially fair reasons in accordance with section 98 (1) ERA?

10. In accordance with section 98 (4) ERA, did the respondent act reasonably or unreasonably determining that there was sufficient reason for dismissing the claimant for gross misconduct.

10.1 Did the decision to dismiss the claimant fall within the band of reasonable responses which a reasonably employer might have adopted?

11. Did the respondent follow a fair procedure? In particular:

11.1 Was the decision to carry out an investigation meeting on 10 October 2017, despite the claimant asking for the meeting to be postponed because of lack of notice and lack of clarity of the matters being investigated, fair?

11.2 Was the investigation hearing and the disciplinary procedure as a whole carried out fairly?

11.3 Was the claimant provided with all appropriate and necessary documentation during the course of the disciplinary procedure?

11.4 The claimant avers that the documents set out in paragraphs 37, 38 and 39 of the statement of case were all necessary for the disciplinary procedure to be fair.

12. If unfair, what loss has the claimant sustained that is attributable to the respondent's actions?

13. Does the respondent prove that, if it had adopted a fair procedure, the claimant would have been fairly dismissed in any event? And/or to what extent and when?

14. Has the claimant caused or contributed to her dismissal and if so what reduction of the award is just and equitable (if any)?

15. Did the respondent fail to pay her wages due to the claimant during the period of her suspension?

    15.1 What payments were in fact made?

    15.2 How were these payments calculated?

    15.3 On what date did the dismissal take effect?

    15.4 Is the claimant entitled to loss of wages for benefits in kind that she alleges she was entitled to (mobile phone and healthcare)?

16. Should the tribunal award an uplift on damages as a result of any breach of the ACAS code?

17. In addition, the list of issues was supplemented by further and better particulars relating to the protected disclosures. These are not recited here but are to be found at page 49 of the hearing bundle.

The Law

Public Interest Disclosure

18. Section 43B (1) of the ERA 1996 provides as follows:

> "In this part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:
>
> …. (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.
>
> …..(d) that the health or safety of any individual has been, is being, or is likely to be endangered"

19. Section 103A ERA 1996 provides as follows:

> "Protected disclosure …
> An employee who is dismissed shall be regarded for the purposes of this part as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal, is that the employee made a protected disclosure."

20. Mr Khan drew our attention to the case of Babula -v- Waltham Forest College 2007, IRLR 346 in support of the proposition that the question of reasonable belief involves; firstly, whether the employee subjectively believes the disclosure is in the public interest and tends to show that one of the six relevant failures has occurred, is occurring or is likely to occur; and, secondly, that that belief should be objectively reasonable. Mr Singh in his written closing submissions cited extracts from Kilraine -v- London Borough of Wandsworth (2018), EWCA 1436, Dr Kuzel -v- Roche Products Limited (2008) EWCA Civ 380 and El Megrisi –v- Azad University (2009)

UKEAT/0448/08/MAA and we have taken those into consideration. In addition, we note that in order to constitute a qualifying disclosure, the information must have sufficient factual content and specificity such as tending to show one of the section 1 matters. Further, that whilst a verbal communication is capable of being a disclosure of information, tribunals may be reluctant to accept informal or generalised statements as being sufficient to amount to a disclosure of information.

Unfair Dismissal

21. It is for the respondent to show the reason for the dismissal. The burden of proof does not shift onto the claimant for the purposes of section 103A ERA 1996. Both parties cited to us BHS -v- Burchell and it is for the respondent to show that she had an honest belief in the reason for the dismissal based on reasonable grounds following a reasonable investigation. Fairness is to be determined in accordance with section 98 of the ERA which we have taken into account. Further, the decision to dismiss must be within the reasonable band of responses of a reasonable employer. We record here that Mr Singh also cited extracts from the following cases in his written closing submissions and we record that we have taken those into account.

    21.1 Spink -v- Express Foods Limited [1990] IRLR 320

    21.2 Strathos -v- London Underground Limited [2004] EWCA Civ 402

    21.3 A -v- B EAT/1167/01

    21.4 Crawford -v- Suffolk Mental Health Partnership Trust [2012] IRLR 402

    21.5 Stuart -v- London City Airport 2012 UK EAT/0273/12/BA

    21.6 William Hill -v- Steele [2008] UK EAT/0154/08/MAA

    21.7 Royal Mail -v- Jahuti [2017] EWC Civ 1632

22. In addition, we have taken into account 'Polkey', issues of contribution and the relevant ACAS codes.

The Evidence

23. We were provided with a hearing bundle 1,007 pages long. We allowed the late admission of a CQC Report into the respondent's practice dated 26 February 2019. We record here we place no weight on this as we regarded it as being of minimal relevance.

24. By agreement, the claimant presented her case first.

25. We heard oral evidence from:

    25.1 Mr Nimalasari Fonseka, an accountant

    25.2 The claimant, Ms Sureet Sidhu

25.3 Mrs Jaswant Sidhu, the claimant's mother
Her status is disputed: she was either an employee or a partner.

25.4 Geta Sukul, a receptionist

25.5 Mrs Jasvin Sidhu, a sister of the claimant

25.6 Mrs Jasbinder Sidhu, married to the claimant's brother

25.7 Dr Rathor, the respondent

25.8 Meera Grewal, a receptionist and administrative assistant who took the position of acting practice manager after the claimant was suspended.

The Facts

Overview

26. The respondent is a General Practitioner. Until 2014, she was a sole practice GP at the Allenby Clinic. Following a period working as a locum for Dr Ali at his Northolt Family Practice, the respondent took over that practice in September 2014. The claimant and her mother had worked at the Northolt Family Practice as assistant practice manager and practice manager respectively. As the respondent puts it, "she inherited the claimant and her mother as employees". The respondent's existing practice manager left and the claimant and her mother continued in their former roles working for the combined practices.

27. By 2017 the claimant was the practice manager and the claimant's mother was the business manager.

28. We have been provided with a large number of text message exchanges between the claimant, her mother and the respondent. It is clear to us that until at least June 2017 all three got on very well, both at work and socially. The tone of the texts is informal and pleasant and demonstrates that they all socialised together both in their homes and at a local pub/restaurant called the Blue Orchid. For example, a text exchange on 24/6/17 went:

> C to R: "Hi doc. Thank you very much for tonight. It was a lovely evening I really enjoyed myself. Was a lovely thought XX"
>
> R to C: "I am glad you enjoyed … It was good to see you happy My pleasure Xx"

29. The claimant was suspended by the respondent on 4 October 2017. Her mother was also suspended then.

30. It is quite clear to us that there was a significant falling out, for whatever reason, between the claimant and her mother and the respondent at some point between July 2017 and 4 October 2017. This case has been

characterised by the seriousness and number of allegations made by each of the parties against the other in great detail. For example, the respondent has accused the claimant and her mother of making veiled death threats, intimidating conduct and bullying behaviour, forgery and misappropriation / theft of over £100,000 from the business. On the other hand, the claimant and her mother have made accusations against the respondent that she consumed alcohol during working hours, treated patients whilst under the influence of alcohol, that she pre-signed blank prescription forms, allowed non-qualified individuals to prescribe drugs using her electronic card and PIN, that she incorrectly prescribed medication for the practice's benefit and the benefit of family members, that she paid family expenses out of the practice funds, that the practice was left unattended and that she had her husband on the payroll.

31. The allegations, if true, have potentially serious ramifications for both parties that go beyond these proceedings in terms of criminal conduct, professional regulation and tax evasion. Whilst the standard of proof remains the civil standard for all matters, we record that the more serious the allegation the more cogent the evidence should be.

32. In the hearing bundle there is, at page 93, a partnership detail form, apparently dated 24 July 2015, purporting to be signed by the respondent. The claimant's mother asserts that she was, as of that date, a partner in the practice with the respondent. The respondent denies this. We understand her case to be that her signature is either a forgery or was procured by deceiving her into signing the document on the basis that she was told that it was merely to record a change of address. The respondent's case is that the claimant's mother was never a partner and was always merely an employee. We are aware that separate proceedings between the claimant's mother and the respondent are currently being conducted in a different jurisdiction. For obvious reasons, we express no findings of fact in relation to that dispute. We do not have all the evidence relating to that dispute and would not want potentially to prejudice either side in anyway by making any such findings. However, it is not an issue that we can entirely ignore as, in our judgment, it is of relevance to this case.

33. Having heard all the oral evidence and considered the documentation in this case, we have very considerable doubts that we have been told the full story of what actually went on between the claimant, her mother and the respondent between July 2017 and 4 October 2017 by either faction.

34. We came to the clear conclusion that the claimant, her mother and the respondent did not tell us the whole truth if that truth would go against their respective cases. We obviously make due allowance for people's recollection of events some time ago fading and make due allowance for minor discrepancies in their evidence. However, we give two examples of very significant discrepancies in the claimant's and the respondent's evidence respectively.

    34.1 The respondent gave evidence that she had a meeting on 2 October 2017 with the claimant and her mother, during which the respondent confronted the claimant and her mother and asked them why £2,900 per month cash was being taken out of the practice account and why

they were each drawing a salary equal to an employed NHS doctor. Both the claimant and her mother denied that that issue had been raised prior to 4 October 2017. The claimant's evidence was that when she was handed the suspension letter on 4 October 2017, she was shocked and had no idea what was going on and why. However, in a letter dated 4 October 2017, sent to the respondent by CLP Solicitors, acting on behalf of the claimant and her mother, the following is stated:-

> "The suspension letter is generic and, as we stated above, exactly the same for both of our clients. Our clients had a formal meeting with you two days ago in which no issue was raised by you, other than you stipulating that Mrs Jaswant Sidhu was "paid like a doctor".
>
> Your concerns about the level of Mrs Jaswant Sidhu's salary have been inappropriately voiced by you in front of other members of staff over many months now."

That confirms to us that the claimant and her mother knew perfectly well that the issue of remuneration of the claimant's mother at least had been raised by Dr Rathor at the meeting on 2 October 2017. Further, that it had been festering for some months. The reference to being paid a comparable salary to a doctor appears in both accounts. We do not consider that the claimant and her mother can have been confused or mistaken on this point.

34.2 It has suited the respondent to claim that she was kept in the dark as to the amounts of money being paid to the claimant and her mother and the various cash withdrawals until shortly before October 2017. In her witness statement she states that in late August 2017, whilst they were both on holiday, she decided enough was enough and went into the bank. She states in her witness statement:

> "As I did not have a bank card for the Natio account, I arranged to meet the manager I knew and he arranged to give me access. Bank staff also assisted me to download and obtain access to the Barclays mobile banking app on my phone so that, finally (from the very end of August/early September 2017 onwards) I could see what had been going on with the Natio account. It was also only from that point that I started getting text messages to notify me of bank transactions (whereas previously banking texts had gone to Sareet's phone). I was extremely shocked by what I found. I discovered that Jaswant had, for a long time, been making cash withdrawals of £2,900 each month that I had not known about".

In actual fact it was demonstrated during the course of the hearing, that the respondent had been making monthly withdrawals of £10,000 as far back as June 2017 using the Barclays mobile banking app. Again, we find that that was not an oversight or mis-recollection on a minor matter.

35. Accordingly, we found that the evidence from the claimant, her mother and the respondent had to be treated with the utmost caution concerning its credibility and reliability. Further, the lack of contemporaneous documentary

evidence has not helped us in our task of determining what probably took place. We have placed reliance on such contemporaneous documentation as there is. It is against this background that we have gone on to make our findings.

The running of the practice

36. The respondent ran a sole practitioner practice with in excess of 6,000 patients. Whilst she had the assistance of locums from time to time, it is quite clear to us that she was extremely busy and concentrated almost exclusively on the clinical side of the practice. We find that the claimant and her mother as practice and business managers were left to do the administrative work with a good deal of autonomy. All parties gave evidence that the practice was run casually. We find that it was. Whilst there was an employee handbook, we doubt that it was applied in practice, certainly not to the claimant and her mother as senior employees. (We make no finding that the claimant's mother was an employee as she maintains she was a partner). Neither the claimant, nor her mother, had written contracts of employment. Financial records appear to have been minimal and we have several examples of requests to transfer monies being made by text message. On one occasion, £80,000 was transferred to the respondent's son and we have seen evidence of practice accounts being used to buy items for the claimant's son and husband. We find that at all material times up to October 2017, the financial controls within the practice were lax in the extreme and, if they were documented, none has been provided to us. Given that the central feature of the case is whether or not the money the claimant and her mother were being paid from the practice was paid with the knowledge and agreement of the respondent, the absence of financial documentation has essentially reduced it to one person's word against the other two.

The claimant's remuneration

37. When the claimant worked for Dr Ali in 2013, her salary was £24,008.40, based on an hourly rate of £12.15 and 38 hours per week. In the investigation report prepared by Mr Paul Baker of HR Face 2 Face, it appears that, by reference to a payroll report (which has not been provided to us), Mr Baker was able to set out how the claimant's pay had risen between September 2014 and May 2017. Those figures are very exact and consequently unlikely to have been invented. These show that the claimant's pay rose as follows:-

    37.1 September 2014: £45,883.20 p.a.

    37.2 March 2015: £56,311.20 p.a.

    37.3 March 2016: £56,669.88 p.a.

    37.4 August 2016: £62,568.00 p.a.

    37.5 November 2016: £70,910.40 p.a.

    37.6 May 2017: £94,910.40 p.a. (based on an extra £2,000 per month for 12 months)

38. An e-mail from AMS (accountants to the practice) to the respondent dated 27 October 2017 (page 467A of the bundle) that was available for the disciplinary hearing states that the claimant had had a pay rise of £24,000 in April 2017, bringing her annual salary up to £94,910, a 33% pay rise. That figure tallies with the final figure taken from the payroll figures in the investigation report.

39. The £24,000 pay rise is based on the claimant being paid an extra £2,000 per month from May 2017. The claimant and her mother dispute that their salaries rose by £24,000 p.a. They agree that they were paid an extra £2,000 per month from May 2017 but that this was only to last 5 months to pay them each a bonus of £10,000. This was for work involved in qualifying for Quality Outcome Framework (QOF) and Local Incentive Scheme (LIS) payments to the practice of £86,000.

40. It is not for us to determine what the correct level of remuneration was for the claimant taking into account her responsibilities. All we do observe is that her income rose significantly and quickly. The issue for us to determine is the extent to which, if any, it was agreed with the respondent. We note that the claimant's mother was on a similar or greater level of remuneration but, given the nature of the partnership dispute, we do not go into that factual nexus in any detail.

41. The impression the respondent wished to give to us was that she only discovered the true extent of the amount of money being paid to the claimant and her mother shortly before she suspended the claimant and her mother on 4 October 2017. In that context, we have the evidence of Mr Fonseka, the practice accountant until about April 2016. He prepared the practice accounts for the period ending 31 July 2015. These accounts were signed by the respondent on 12 January 2016. The accounts demonstrate that wages and salaries were costing the practice £183,645 (this excludes locum fees), hence the respondent must have been aware of that figure. Mr Fonseka told us that the P32 for 30 June 2015 showed that the claimant's pensionable pay was £4,692.60 gross for the month, which translates into an annual salary of £56,311.20 (£27 per hour based on a 40 hour week). Mr Fonseka told us, and we accept, that he raised those figures with the respondent and that she was therefore aware of that salary level at that time. That salary was clearly sanctioned by the respondent. We therefore find that the claimant's authorised salary was £56,311.20 based on 40 hours per week.

42. In or about April 2016, the respondent changed accountants to AMS and it is not entirely clear to us why accounts for the practice were not drawn up for the period ending 31 July 2016 and the period ending 31 July 2017. Draft accounts were apparently only produced by AMS on 13 November 2017. There is a suggestion from the respondent that obstruction by the claimant and her mother prevented AMS from producing the accounts earlier. However, the least we would have expected would have been some form of evidence from the accountants of them requesting information and being denied it. Absolutely no evidence has been provided to us of this nature.

43. The claimant has sought to explain the rises in her pay after March 2016. The March 2016 rise was to take account of inflation (£27.24 per hour), the August

2016 rise (£30 per hour) was a reward for achieving a good rating in a CQC report and the November 2016 rise (£34 per hour) was because her mother was doing less work.

44. A significant increase in the claimant's salary took place in May 2017 when it rose by some £2,000 a month. The respondent's evidence is that she did not know about or sanction such a pay rise / bonus. The claimant's evidence is that a bonus of £10,000 was agreed in the Blue Orchid bar / restaurant in late April 2017.

45. Alongside the claimant's remuneration, the claimant's mother was being paid a similar amount and was also withdrawing cash amounts of about £2,900 a month "as part of my drawings from the practice as a partner". The claimant was aware of her mother's pay and cash withdrawals. As practice manager the claimant was responsible for the payroll and she had access to the practice bank accounts.

46. Apart from a contract of employment from when she worked for Dr. Ali, not a single document evidencing what the claimant's (or her mother's) pay was agreed at has been put before us. We observe that responsibility for creating such documentation would have been the claimant's as practice manager.

47. In our judgment the issue of how much was paid to the claimant and her mother is central to the case.

48. We have found that the respondent was aware in January 2016 that the claimant's salary was £56,311 as from March 2015. A small rise to take account of inflation in March 2016 is unremarkable.

49. As regards the salary rises thereafter there is a straightforward conflict of evidence with each side asserting that it was expressly agreed or not agreed.

50. On this core issue, we find that it is unlikely that the claimant's salary rises were expressly agreed by the respondent after March 2016. The reasons we have come to this conclusion are as follows:

    50.1 We find that a salary rise from £56,669 to £80,910 (on the claimant's case) or £94,910 (on the respondents case) in 14 months is unlikely to have been agreed being increases of 42.7% and 67.5% respectively. The claimant's salary had already risen sharply to the £56,669 level to reflect her increased responsibilities. The increase is large, unlikely to have been justified for the reasons given by the claimant and took her to a salary level that probably is well in excess of the going rate for the job. We note that the surgery nurse was paid less at £30 per hour and the current practice manager is paid £16.50 an hour or £34,320 p.a.

    50.2 If the salary increases and bonus payments had been agreed, we find that it is more likely than not that they would have been recorded in writing. The absence of such documentation points to the rises not having been agreed.

50.3 The CLP solicitors letter dated 4 October 2017 referred to in paragraph 34.1 above refers to the respondent expressing concerns over the claimant's mother's salary for some months.

(i) It is unlikely the respondent would have been doing this had the salary level been agreed.

(ii) Had the respondent been aware of the claimant's similar salary level then we would have expected the respondent to have been voicing concerns about that salary level as well. The fact that she wasn't reported as having done so suggests that she was unaware.

50.4 The claimant photographed the respondent sitting in her car with her eyes shut at 19.20 hours on 30 June 2017. This has been produced by the claimant in support of an allegation that the respondent was drunk and had to be driven home. Similarly, on the 3 October 2017, the day after the claimant's mother had been challenged by the respondent over her salary level, the claimant photographed numerous blank but signed prescriptions. These acts suggest to us that the claimant and her mother were preparing for conflict with the respondent and that they wanted to get compromising evidence on her to defend themselves or influence any investigation. We find that such pre-emptive actions are more consistent with having something to hide, namely that they had awarded themselves salary increases without the agreement of the respondent.

50.5 This is further supported by the fact that the claimant put in a detailed grievance on 6 October 2017. This is 5 pages long and alleges that the respondent had consulted patients whilst inebriated and had an alcohol problem, signed blank prescriptions, prescribed for herself medication under patient's names, payed her families expenses out of practice funds, left the practice unattended, had her husband on the payroll and self-medicated controlled drugs obtained in patient's names. The claimant was suspended at the time and the level of detail with dates and times suggests that the events complained about had been carefully recorded, again with a view to ensuring they had something over the respondent.

50.6 Having been suspended on the morning of the 4 October 2017, the claimant and her mother consulted CLP solicitors immediately and the letter dated 4 October 2017 was delivered that evening. The speed of response suggests that they had been preparing for a challenge to their salary levels knowing that they had not been agreed. Put another way, we doubt that individuals genuinely shocked and surprised by the matters raised at the meeting on the morning of 4 October 2017 would have acted so swiftly.

50.7 None of the above factors and inferences drawn are individually conclusive but the cumulative effect has led us to find that the claimant's salary being drawn in September 2017 was not authorised by the respondent.

51. We have already found that the respondent is incorrect when she says that she only discovered the extent of the claimant's drawings on the budget account at the end of August / beginning of September 2017. We find that she had access to that information via her mobile banking app prior to June 2017.

52. We find both the claimant's and the respondent's accounts to be unlikely to be completely true. We find that there may well have been general informal discussions in the Blue Orchid about remuneration and bonuses but that the hourly rate rise and bonus were probably not agreed by the respondent. We find also that in all probability the claimant and her mother took advantage of the lax financial controls and casual management to raise the claimant's hourly rate and pay her an extra £2,000 per month beginning in May 2017. The claimant's mother did the same and withdrew substantial amounts in cash monthly. The claimant must have been aware of what her mother was doing.

53. However, we find that from about June it is probable that the respondent became increasingly aware of the high levels of remuneration being paid to the claimant and that it was this that was increasingly souring the relationship between the parties. That ties in with the letter from CLP Solicitors which refers to the respondent having concerns over the claimant's mother's salary over many months. The first statement by the respondent prepared for the disciplinary process contains a number of remarks concerning the claimant's lifestyle – referring to her 'luxury lifestyle (exotic holidays, sports cars, branded clothing and accessories and diamond necklaces …'. This is carried on in her witness statement for these proceedings where she refers to the claimant owning two houses, having a diamond necklace and driving a new Mercedes car. Such observations, whilst not perhaps that relevant to the case, do suggest that the respondent was unaware of exactly how much was being paid to the claimant and demonstrate why the relationship was souring.

<u>The claimant's dismissal</u>

54. On 2 October 2017 there was a meeting between the respondent and the claimant and her mother. Curiously neither the claimant nor her mother refer to this meeting in their witness statements but it clearly happened as confirmed by the CLP letter. We accept the respondent's evidence that this is when she challenged them as to the level of their remuneration. Thereafter both sides quickly geared up for confrontation.

55. On 3 October the respondent consulted Peninsular, her employment Law advisers, who advised her to suspend the claimant and her mother and begin an investigation.

56. On 4 October, in the morning, the claimant and her mother went to see the respondent at work. The respondent suspended them, handing them both a letter. This states:

> "I write to confirm that you have been suspended on contractual pay to allow an investigation to take place following the allegations of gross

> mismanagement, bullying behaviour and failure to follow reasonable management (sic)."

57. At 17.17 on 4 October CLP solicitors emailed letters dated 4 October on behalf of the claimant and her mother making general complaints.

58. On 6 October the claimant was sent a letter inviting her to an investigation meeting on 10 October. This letter states:

> "The purpose of the investigation meeting is to allow you the opportunity to provide an explanation for the following matter of concern:
> 1. We have concerns regarding your conduct"

The letter goes on to explain that the respondent had engaged outside consultants, namely HRFace2Face from Peninsular, to conduct the investigation meeting.

59. Also on 6 October the claimant put in her grievance.

60. On 9 October CLP sent a number of letters to the respondent. The one in relation to the claimant states:

> "You have not set out properly the terms of the investigation. It is ridiculous to frame the interview as an investigation because "we have concerns regards your conduct".
> You are well aware that if this procedure is intended to be fair, then you should set out the specific concerns about our client's conduct upon which the investigation is being conducted."

The letter states that the claimant will not attend the investigation interview for, inter alia, this reason pending the provision of the information requested.

61. Nevertheless, on 10 October the investigation went ahead. It was conducted by Mr Baker of HRFace2Face. The claimant did not attend. The report is dated 16 October. Based on the information provided to him, Mr. Baker recommended that the claimant face 7 allegations.

62. The claimant was invited to a disciplinary hearing, eventually heard after postponements on 30 October. The invitation letter sets out allegations in four paragraphs which echo the recommended allegations but with two additions. The letter included 7 documents to be used at the hearing, namely four anonymous statements and 3 other documents. That letter with enclosures was received by the claimant on 21 October and the investigation report and the disciplinary procedure were eventually received by the claimant on 26 October.

63. The claimant attended the disciplinary hearing on 30 October. She was interviewed by Mr. Pegg of HRFace2Face from 15.00 – 16.15. The report is dated 22 November. It makes clear that Mr. Pegg had far more documents than had been provided to the claimant in advance of the meeting. Some 41 documents are referred to. We have not seen all these documents. Some have clearly been supplied by the claimant and some are the documents sent to her in advance. But some are clearly the respondent's documents that do not appear to have been sent to the claimant in advance. For example, an

email from accountants AMS dated 27/10/2017 asserting that the claimant's salary was £94,910 and that the industry average for practice managers was £45,000 – a highly material assertion. It also identified unexplained payments to the claimant's mother. Other documents appear to relate to the allegation of forging the respondent's signature via 'cut and paste'. The full list of documents that the claimant says she did not have in advance appears in paragraphs 37 and 38 of the particulars of claim.

64. Having concluded the interview with the claimant, Mr Pegg then re-interviewed the respondent on 2 November between 12.41 and 13.16. The respondent also sent Mr. Pegg a further email on 10 November. We have not seen the full email though the report contains extracts. The claimant had no knowledge of or opportunity to respond to the points that arose.

65. In the findings section of the disciplinary report at para 34 there is a reference to "the forensic investigation report prepared by AMS accountants which demonstrates financial loss to the Practice of £138,460 as a result of financial transactions engaged in by JS and SS". This report was directly relied upon for the finding of gross misconduct. It is dated 13 November 2017 – so must have been supplied to Mr. Pegg nearly two weeks after the disciplinary hearing. The other finding of gross misconduct was in relation to the forging of the respondent's signature. Hence the two findings of gross misconduct that gave rise to the decision summarily to dismiss the claimant were reliant, at least to a large extent, on documents that had not been supplied to the claimant in advance.

66. The claimant was dismissed with immediate effect in a letter dated 28 November received by her on 4 December.

67. The ACAS Guide to discipline and grievances at work states that the employer should "allow the employee time to prepare his or her case. Copies of any relevant papers and witness statements should be made available to the employee in advance". Further, "If new facts emerge, it may be necessary to adjourn the meeting to investigate them and reconvene the meeting when this has been done." We find that the respondent, and her consultants, acted in breach of the ACAS code in failing to provide relevant papers in advance and failing to reconvene the meeting after extra investigation.

68. On 5 December 2017 the claimant appealed against the decision to dismiss her.

69. The appeal was heard on 12 December 2017, again conducted by an independent consultant from HRFace2Face. The appeal was not a rehearing but a review of the original decision. The claimant made clear in an email dated 8 December that she had not seen a number of documents or the results of investigations conducted after the disciplinary hearing. The claimant submitted a detailed appeal document but did not attend the appeal hearing.

70. The claimant's grounds of appeal were somewhat arbitrarily selected by, presumably HRFace2Face, from her initial appeal letter and do not really reflect the complaint about procedure in the 8 December email or in her detailed appeal document. We find that the appeal failed to address or correct the procedural shortcomings and so was unfair. The outcome report goes so

far as to assert "the clinic confirms that it had supplied SS with all the necessary documents for the disciplinary hearing". In our judgment that is incorrect.

The reason(s) for the claimant's dismissal

71. I paragraph 47 above we have found that the issue of the claimant's rate of pay is central to the case. This is because money tends to be highly important and all the respondent's written and oral evidence demonstrates to us how money was the catalyst for the confrontation on 2 October 2017 and the suspension of the claimant and her mother. In the list of issues this is item 8.1.9 above – awarding herself pay rises without authorisation or justification. We have found on balance that this is what the claimant had done.

72. We find that the respondent genuinely believed that the claimant had done this and that this was capable of constituting gross misconduct. We have concluded that the decision to dismiss cannot be characterised as outside the range of reasonable responses of the reasonable employer.

73. The disciplinary process included a range of other allegations against the claimant as set out in the list of issues 8.1.1 to 8.1.8 and 8.1.10 and 8.1.11. We find that these allegations represent the respondent throwing everything she could think off into the equation to justify disciplining the claimant. The vagueness of the way the initial misconduct was notified to the claimant supports our inference that these were matters thought up later. In so far as we need to, we make the following findings:

    73.1 The issue about the return of the bank card is muddled to this day. We do not have a clear date when such a request was made or refused. We find that this allegation is not made out and that the respondent cannot have genuinely believed it.

    73.2 The issues concerning holiday requests, leaving the practice without a manager, and purchasing items for her own use we find arose out of common practice that was generally known about and tolerated. As such we find that the respondent cannot have had a genuine belief that this constituted misconduct.

    73.3 The airline ticket issue was muddled at the time. Initially it related to a suspicious purchase of a ticket relating to Romania (to which the respondent's son was linked) whilst the claimant was on holiday in the far east. It later became elided with a trip the claimant had taken to Kenya which the respondent suspected was a secret business trip on the claimant's own behalf. This muddle is reflected in paragraph 36 of the disciplinary report. We find that this ground was not based on a reasonable belief following a reasonable investigation. As such we find that the respondent cannot have had a genuine belief that this constituted misconduct.

    73.4 The removal of cash from the practice has, on the evidence we have seen, only ever been an allegation against the claimant's mother. Whilst the pay rise issue was put as a conspiracy with her mother, the

cash issue was not couched in the same terms. We find that this ground was not based on a reasonable belief following a reasonable investigation. As such we find that the respondent cannot have had a genuine belief that this constituted misconduct.

73.5 The issue relating to immunisations is again muddled in our judgment. The texts we have seen suggest that the claimant was endeavouring to assist remotely whilst away and not refusing password access. We find that this ground was not based on a reasonable belief following a reasonable investigation. As such we find that the respondent cannot have had a genuine belief that this constituted misconduct.

73.6 The allegation of theft is subsidiary to the unauthorised pay rises issue and in light of the seriousness of the allegation and our findings on the pay issue, we have decided that we do not need to make findings on this specific matter.

73.7 The allegations of the misappropriation of practice money by signing benefit letters and keeping the money and forgery of the respondent's signatures are serious allegations based on simple assertions that we are not prepared to accept.

Protected disclosures

74. We find that the facts and matters set out in paragraph 91 a – e tend to show that a person has failed, is failing or is likely to fail with any legal obligation to which she is subject and, as regards, a – d that the health or safety of any individual has been or is likely to be endangered.

75. These allegations were all made in writing in the grievance which the claimant made on 6 October 2017. However, the pleaded case is reliant upon disclosures "in the period leading up to 4 October 2017". It is assumed that this is in order to attempt to make good on the alleged connection with the dismissal, that is to say, that any disclosure post suspension is unlikely to be causally connected with the dismissal. There is no written disclosure before 4 October so once again we basically have the rival assertions.

76. The first allegation relates to the respondent attending and treating patient's whilst inebriated and that the respondent had an alcohol problem. This principally relates to a lunch at the Blue Orchid on 30 June 2017 when both the respondent and the claimant had been drinking wine. The respondent later went to the surgery and consulted with patients. We find that the evidence falls well short of establishing that the allegation is made out.

77. The second and third allegations relate to the signing of blank prescriptions and the inappropriate use of the respondent's smart card and PIN allowing nurses in effect to prescribe drugs. There is evidence of two complaints from members of the public in June/July 2017 and September 2017. Further we note that the grievance outcome report upheld these allegations. We find that these practices were going on at the material times.

78. The fourth and fifth allegations relate to prescribing medication and appliances for herself in patient's names and paying private expenses from

the practice's funds. Again, the grievance outcome report upheld these allegations and we find that these practices were probably going on at the material time.

79. We find that it was not unusual for both the claimant and the respondent to drink alcohol at lunchtime and return to work. Whilst perhaps not ideal, that is a far cry from finding that any party was adversely affected by alcohol. We find that the issue was probably not raised by the claimant with the respondent in the terms alleged.

80. As regards the second to the fifth matters, whist we find that these probably took place, we also find that they had been going on probably for years and were examples of the lax, and indeed improper, administration of the practice. The claimant would have known about them for some time. It may well be that the claimant from time to time raised them with the respondent but we find that that this would have been in the context of not being found out, ie to pass the CQC inspection or not generate complaints. It is for this reason that we find that such disclosures as may have been made were not made in the public interest. We find they were made for mutual protection and, latterly, in order to provide potential leverage over the respondent.

81. Accordingly, we find that the disclosures relied upon were not qualifying disclosures and thus not capable of being protected disclosures.

82. Further, we find that the reason for the claimant's dismissal was not for making any such disclosures and so the dismissal was not automatically unfair.

Unauthorised deduction of wages

83. The claimant was suspended on full pay from 4 October 2017 until dismissed with effect 4 December 2017.

84. At her salary of £56,669.88, she would be entitled to 2 months gross pay of £9,444.98.

85. The claimant was paid £1,317.68 gross for October and £5,458.96 for November 2017, total £6,776.64.

86. The shortfall between what we have determined to be her agreed salary and what she was actually paid is accounted for by the respondent applying an hourly rate of £23.53 and no payment for the period 11 – 17 October 2017. We have determined that her hourly rate should have been £27.24. We find that the claimant was available for work but suspended in October. Non-attendance at the investigation meeting did not entitle the respondent to refuse to pay her wages.

87. The claimant is entitled to £2,668.34 gross.

88. The claimant's claims for loss of benefits in kind, namely for a mobile phone and healthcare insurance have not been set out in or quantified in her schedule of loss. Accordingly, we find these have not been proved and we make no award in relation to this claim.

Conclusions

89. We find that the claimant was employed by Dr. Sangetta Rathor, trading as Allenby Clinic / Northolt Family Practice.

90. We find that her employment began 1 February 2013.

91. We find that the claimant's authorised salary by 2017 was £56,669.88 pa based on an hourly rate of £27.24 and a 40 hour week.

92. We find that the principal reason for the claimant's dismissal was gross misconduct for awarding herself pay rises without authorisation. That is a potentially fair reason. We find that the respondent genuinely believed in the reason.

93. We find that the respondent was not motivated to dismiss the claimant for reasons unconnected to her work duties.

94. We find that the dismissal was not automatically unfair due to making a protected disclosure

95. We find that the claimant's dismissal was procedurally unfair. The claimant was deprived of the opportunity to participate in the investigation due to the total lack of information as to what charges she faced. Further, we find that the disciplinary hearing was unfair in that the claimant was not provided with significant documentation and further information that was relied upon to a significant extent to come to the decision to dismiss her. The appeal failed to remedy this.

96. We find that had a fair procedure been adopted, and given our findings that the claimant had awarded herself very large pay rises without authorisation, it is inevitable that she would have been dismissed in any event.

97. Further, we find that the claimant's conduct before the dismissal in awarding herself pay rises without authorisation was such that it would be just and equitable to reduce the amount of the basic award to nil.

98. Further, we find that the dismissal was 100 % caused by the action of the claimant in awarding herself pay rises without authorisation and it would be just and equitable for the compensatory award to be reduced to nil.

99. The respondent has made unauthorised deductions from the claimant's wages and she is entitled to the gross sum of £2,668.34.

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Employment Judge Alliott
Date: …16.09.19……..

Sent to the parties on: ...18.09.19.....

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For the Tribunal Office