



EMPLOYMENT TRIBUNALS

Claimant: Mr A Sirin

Respondent: Pizza Express Restaurants Limited

Heard at: London South Tribunals

On: 01 July 2018

Before: Employment Judge Freer

Representation

Claimant: Mr B Greenhalgh, Citizens Advice

Respondent: Mr P Bownes, Solicitor

RESERVED JUDGMENT

It is the judgment of the Tribunal that the Claimant's claims of unfair dismissal and wrongful dismissal are unsuccessful.

REASONS

1. By a claim presented to the employment tribunals on 25 June 2018 the Claimant claimed unfair dismissal, wrongful dismissal and other payments.
2. The Respondent resists the claims.
3. The Claimant gave evidence on his own behalf.
4. The Respondent gave evidence through Ms Kate Dawson, Operations Manager and Mr Christopher Coxhead, Head of Brand Format Operations.
5. The Tribunal was presented with a bundle of documents comprising 141 pages and additional documents during the course of the hearing as agreed by the Tribunal.

The Issues

6. The list of issues was agreed between the parties at the outset of the hearing.
7. The Claimant confirmed that he was not pursuing any claim for 'other payments'. The claims are of unfair dismissal and wrongful dismissal only.
8. It was agreed that in the first instance the Tribunal will address liability and general unfair dismissal remedy issues where appropriate.
9. Therefore the issues to be determined by the Tribunal in the unfair dismissal claim are:
 - Whether the Respondent genuinely believed the Claimant's conduct;
 - If so, whether the dismissal was fair in all the circumstances having particular regard to whether the Respondent adopted a fair procedure, whether there were reasonable grounds for dismissal and whether dismissal was a fair sanction;
 - If the dismissal was unfair, the Tribunal will consider general remedy issues of:
 - Whether, had the Respondent adopted a fair procedure, the Claimant would have been fairly dismissed in any event, or the Claimant would have been dismissed fairly at a later date (the *Polkey* principle);
 - Whether any conduct by the Claimant contributed to the dismissal;
 - Whether there had been any non-compliance by either party with the ACAS Code on Disciplinary and Grievance Procedures.
10. With regard to the wrongful dismissal claim the Tribunal will consider whether the Claimant committed a repudiatory breach of contract entitling the Respondent to dismiss without notice. If not, to assess the amount of notice pay owed.

A brief statement of the relevant law

Unfair dismissal

11. The legal provisions relating to unfair dismissal are contained in Part X of the Employment Rights Act 1996.
12. Section 98 provides that, where dismissal is not controversial, the Respondent must show that the reason for dismissal is one of a number of permissible reasons. The Respondent in this case contends that the reason for dismissal is related to the Claimant's conduct.
13. The Employment Tribunal will consider whether or not the dismissal was fair in all the circumstances in accordance with the provisions in section 98(4):

“The determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case”

14. The standard of fairness is achieved by applying the range of reasonable responses test. This test applies to procedural as well substantive aspects of the decision to dismiss. A Tribunal must adopt an objective standard and must not substitute its own view for that of the employer. (**Iceland Frozen Foods –v- Jones** [1982] IRLR 439, EAT as confirmed in **Post Office –v- Foley** [2000] IRLR 234, CA; and **Sainsbury’s Supermarkets Ltd –v- Hitt** [2003] IRLR 23, CA).
15. It is established law that the guidelines contained in **British Home Stores Ltd –v- Burchell** [1980] ICR 303 apply to conduct dismissals, such as in the instant case. An employer must (i) establish the fact of its belief in the employee’s misconduct, that the employer did believe it. There must also (ii) be reasonable grounds to sustain that belief, (iii) after a reasonable investigation. A conclusion reached by the employer on a balance of probabilities is enough. Point (i) goes to the employer’s reason for dismissal (where the burden of proof is on the Respondent) and points (ii) and (iii) go to the general test of fairness at section 98(4) (where there is a neutral burden of proof).
16. It is also established law that the **Burchell** guidelines are not necessarily determinative of the issues posed by section 98(4) and also that the guidelines can be supplemented by the additional criteria that dismissal as a sanction must also be within the range of reasonable responses (also a neutral burden of proof) (see **Boys and Girls Welfare Society –v- McDonald** [1997] ICR 693, EAT).
17. The Court of Appeal in **Taylor –v- OCS Group Ltd** [2006] IRLR 613 emphasised that tribunals should consider procedural issues together with the reason for the dismissal. The two impact upon each other. The tribunal’s task is to decide whether, in all the circumstances of the case, the employer acted reasonably in treating the reason as a sufficient reason to dismiss.
18. This decision was echoed in **A –v- B** [2003] IRLR 405, EAT and the Court of Appeal in **Salford Royal NHS Foundation Trust –v- Roldan** [2010] ICR 1457 with regard to assessing reasonableness of the process and the decision to dismiss with the seriousness of the alleged conduct: “the relevant circumstances include the gravity of the charge and their potential effect upon the employee. So it is particularly important that employers take seriously their responsibilities to conduct a fair investigation where, as on the facts of that case, the employee’s reputation or ability to work in his or her chosen field of employment is potentially apposite”.
19. In **Burdett -v- Aviva Employment Services Ltd** [2014] UKEAT/0439/13 the EAT, confirming Supreme Court authority, held:

“What is meant by "*gross misconduct*" – has been considered in a number of cases. Most recently, the Supreme Court *Chhabra v West London Mental Health NHS Trust* [2014] ICR 194 reiterated that it should be conduct which would involve a repudiatory breach of contract (that is, conduct undermining the trust and confidence which is inherent in the particular contract of employment such that the employer should no longer be required to retain the employee in his employment. . . In *Chhabra*, it was found that the conduct would need to be so serious as to potentially make any further relationship and trust between the employer and employee impossible. . . The characterisation of an act as "gross misconduct" is thus not simply a matter of choice for the employer. Without falling into the substitution mindset . . . it will be for the Employment Tribunal to assess whether the conduct in question was such as to be capable of amounting to gross misconduct”.

Wrongful dismissal

20. The issues to be determined by the Tribunal are based in common law: whether or not the Claimant committed a repudiatory breach of contract, which was accepted by the Respondent and entitled it to dismiss the Claimant without payment of notice pay.
21. A repudiatory breach of contract is a deliberate flouting of the essential contractual conditions (see **Laws -v- London Chronicle (Indicator Newspapers) Ltd** [1959] 1 WLR 698): Gross misconduct must be a deliberate and wilful contradiction of the contractual terms (see **Sandwell & West Birmingham Hospitals NHS Trust -v- Westwood** UKEAT/0032/09).
22. Conduct amounting to gross misconduct justifying dismissal must 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 its employment (see **Briscoe -v- Lubrizol Ltd (No 2)** [2002] IRLR 607 approving **Neary -v- Dean of Westminster** [1999] IRLR 288).
23. In more recent times there has been the decision of the Court of Appeal in **Adesoken -v- Sainsbury's Supermarkets Ltd** [2017] IRLR 346 which cited with approval the decision in **Neary** (above). The nature of the employer's business and the position of the employee are clearly relevant circumstances to the assessment.

Facts and associated conclusions

24. The Claimant was employed by the Respondent on 10 April 2010 as a Pizzaiolo (Chef) at the Respondent's Uckfield Restaurant.
25. The relevant chronology is as follows:
26. On 14 July 2016 the Claimant was invited to a capability hearing regarding concerns over his general attitude of negativity towards his work environment, speaking to fellow team members and management disrespectfully, and an

expectation of food delivered within a timely manner. No formal disciplinary matters arose from that circumstance.

27. By a letter dated 10 August 2017 the Claimant wrote to Ms Dawson seeking her help in resolving an issue the Claimant had with the calculation of his holiday entitlement for the leave year 2016/2017. That letter was accepted as a letter of grievance by the Claimant.
28. The Claimant had a meeting with Ms Victoria Johnston, Manager at the Respondent's Charlotte Street restaurant regarding the matter and the Claimant provided to her details of how he had calculated his entitlement to annual leave pay.
29. Ms Johnson wrote to the Claimant by a letter dated 14 October 2017 confirming that the Claimant's grievance was not upheld and set out the reasons in detail for that conclusion. The Claimant was given a right of appeal. No appeal was pursued.
30. By letter dated 8 January 2018, the Claimant was requested to attend at an investigation meeting on 10 January 2018: "To provide an explanation for the following matters of concern:
 - The ability to open kitchen on time
 - Dough prep incomplete by 11:30am (following brand standards)
 - Daily veg prep
 - Speed of service
 - Tuesday 19th, Thursday 21st and Friday 22nd morning each shift needing management or 2nd chef to help finish prep as kitchen not ready for service
 - Negative behaviour towards all management
 - Negative behaviour towards trainee in kitchen during shift on Friday 22nd evening
 - In subordinate and not willing to compromise when given the option to go home due to poor business and then refusing to support as 2ndchef when another chef was sent home instead. Friday 22nd in the evening at 6 pm
 - Raised voice on restaurant floor during service aimed at the restaurant manager Friday 22nd
 - Continually issues over the last 9 months and showing no improvement on attitude or work ability".
31. The Claimant was provided with copies of the disciplinary policy, shift statements, and manager's observation. The Claimant was informed that the hearing may result in disciplinary action and was given the right to be accompanied.
32. There was a meeting on 10 January 2018, but it was undertaken by the Manager allegedly involved in the Claimant's circumstances. Therefore the meeting was rearranged.
33. The Claimant attended at an investigation meeting on 22 January 2018 with Mr Alistair Prior as Investigating Officer, who was the Manager at the Respondent's

restaurant at Horsham. Ms Johnston was notetaker. The Claimant accepted in evidence that Mr Prior was a suitably independent person to the events.

34. By a letter dated 26 January 2018 the Claimant was invited to a disciplinary hearing on 31 January with Ms Dawson. The letter states: "The purpose of the hearing is to discuss allegations of:
- Aggressive behaviour and unprofessional conduct towards a fellow employee in that you pushed Reese Ambrose on 8 December 2017
 - Insubordination and serious failure to follow reasonably legitimate management instructions in that you:
 - Raised your voice towards Sophie Beeson on the restaurant floor on Friday 22nd of December
 - Refused to support a trainee chef that in closing duties on Friday 22nd December
 - Refused to sign the Risk Assessment for Festive and Event Decorations
 - Refused to swap Boxing Day shift with consideration to unknown business level resulting in a complaint regarding slow service and quality of food and lost business"
35. The Claimant was provided with: the disciplinary policy and procedure; a copy of an unsigned risk assessment; a statement by Sophie Beeson regarding 6 December 2017 and 22 December 2017; a statement by Reese Ambrose dated 11 December 2017; a statement by Kirsty Kimber dated 11 December 2017; a statement from Matt Taylor dated 26 December 2017; investigation notes (typed and handwritten) from the investigation on 22 January 2018; investigation notes and capability invite letter from a previous manager of the Uckfield restaurant.
36. The Claimant was informed that the hearing may result in disciplinary action including dismissal and the Claimant was given a right to be accompanied.
37. That meeting did not go ahead due to Ms Dawson going on annual leave. It was rearranged, by a letter dated 29 January 2018, for 05 February 2018 before Mr James Ince, Operations Manager.
38. The Claimant was unable to attend the disciplinary hearing on 8 February 2018 and Mr Ince wrote the Claimant by a letter dated 08 February 2018 which stated: "I write further to your disciplinary meeting on Monday 5th February 2018 at 2pm in Pizza Express Horsham. As you were unable to attend the meeting and as discussed on the telephone I confirmed with you I would take into account a written statement from yourself which is subsequently email to me that evening. In your statement you raised a number of concerns with the original investigation process and as such I feel it is necessary to undertake further investigations before I am able to write to you with a conclusion".
39. That investigation was passed to Ms Johnston and she emailed the Claimant on 15 February 2018 stating: "As you know you were due to be at a disciplinary hearing last Monday, however due to transport issues you were unable to attend. James Ince received your statement and as a result of the points that you raised he believes that further investigation into these points is required. James is

currently on holiday and has asked me to carry this out in his absence. You are not required to do anything I just wanted to let you know no outcome as yet been decided due to additional investigation. When it has been completed James will be in touch with his outcome”.

40. During this period a quality and safety audit was carried out at the Uckfield Branch on 6 February 2018 by Ms Gosia Gocek, Quality and Safety Advisor. The Respondent considered that serious health and safety issues were highlighted within the audit and a full investigation was carried out with the team members on shift, which included the Claimant. For example, three safety alerts were issued with regard to food safety which received a final audit score of 67%
41. The Claimant attended at a meeting on 9 February 2018 with the Manager of the East Grinstead branch.
42. By letter dated 23 February 2018 Ms Johnston provided a reply to the points raised by the Claimant in his statement sent to Mr Ince on 5 February 2018. The letter concludes: “I believe having responded to your points raised in your letter, there is still a disciplinary case to answer. You will receive this letter response as part of your new disciplinary hearing invite, alongside the additional statement from Kerry Pool”.
43. On the same date the Claimant was sent a letter by Ms Dawson inviting him to attend at a disciplinary hearing on 28 February 2018. The allegations raised in that letter were the same as those previously communicated to the Claimant in the letter 26 January 2018, together with additional allegations of:

“Serious breach of food safety policy, food preparation process and allergen processes resulting into safety alerts being issued for the first two points below:

 - Out of date Kids Bolognese found in kitchen service fridge;
 - Incorrectly followed process for Vegan Margarita in that it was served without a Santos tomato;
 - Incorrectly followed process for mushroom preparation”.
44. The letter enclosed copies of further documents that had arisen since the non-attended disciplinary hearing of 5 February of: the Claimant’s statement of 05 February 2018; Ms Johnston’s response to that statement; a statement by Kerry Pool dated 21 February 2018; a statement from Kirsty Kimber dated 21 February 2018; the Claimant’s employment contract; a statement by Sophie Beeson dated 21 February 2018; and a Risk Assessment for Festive and Event Decorations. It also included documents considered to be relevant to the new allegations: an email from Ms Gocek QS Auditor confirming issues found on the day of the audit; the Claimant’s investigation meeting notes from 9 February 2018; and Kerry Pool investigation notes from 09 February 2018.
45. The Claimant could not attend at the date arranged and the disciplinary hearing finally took place on 07 March 2018 conducted by Ms Dawson. The Claimant was accompanied by a colleague.

46. The notes of the meeting were signed by the Claimant with the manuscript addition: "I am not happy but have to sign". The notes were signed by the Claimant's colleague.

47. The Claimant was given an outcome letter dated 7 March 2018 which states:

"I am writing to confirm my decision to summarily dismiss you for Gross Misconduct for the first part of your disciplinary hearing (rescheduled from February 5th). The reasons for this are:

1. Aggressive behaviour and unprofessional conduct

a. I believe you did push Reese Ambrose on 8th December 2017. You have rejected all witness statements made, in balance of probability there are two witnesses to the incident and you offer no reasonable alternative scenarios in that you said today that you are 'very calm' yet I have witness statements to the contrary.

2. Insubordination and serious failure to follow legitimate reasonable instructions

a. I believe you did raise your voice and speak in an aggressive tone towards Sophie on the restaurant floor on 22nd December 2017. There is a witness statement to support this and you have demonstrated today that he did not agree did not respect her decision as a Restaurant Manager and ask a pizzaiolo to go home.

b. I believe you did refuse to help the trainee with close down duties as you said yourself in your investigation meeting that you were going home and 9pm and did not want to stay later.

c. I believe you did refuse to sign the risk assessment. Although you say you were not shown the risk assessment to sign, I see no reason for the manager to falsify this and you also argue that full training should be given the support you were asked to sign the risk assessment.

Your lack of self-awareness or awareness of the deterioration in the relationships with your colleagues due to your behaviour, alongside the lack of acceptance of any responsibility resulted in your denial of all events and my belief that these events did happen".

48. The Claimant was given the right of appeal which he did by a letter dated 12 March 2018. The Claimant appealed on the issues of: "procedural inaccuracies in the investigations undertaken leading to conclusions that no reasonable employer would have made; failure to follow the Disciplinary Policy of Pizza Express; and an inappropriate determination of Gross Misconduct in contravention of case law of such terminology.

49. On 12 March 2018 a letter was sent to the HR Department of Pizza Express by "Pizza express staffs Uckfield" itemising unfair treatment towards them from "the management side" and criticising Ms Beeson, Ms Kimber and Ms Pool. The Tribunal concludes that it is quite clear that the Claimant had input into this particular document.

50. By a letter dated 20 March 2018 to Ms Dawson, the Claimant set out more detail to his heads of appeal.

51. Mr Coxhead, Regional Operations Manager, wrote to the Claimant by a letter dated 27 March 2008 entitled 'Appeal Hearing' and states: "I am writing to you as a result of our telephone conversation on Friday 23rd March 2018. During this conversation you stated that you will be unable to attend the scheduled Appeal Hearing at our Head Office on 28th March 2018, because of the cost involved in travelling to London. I had researched the ticket prices and understand that this cost is as little as £12.10 return. I offered you two solutions to the issues raised; firstly that you would travel to the hearing and I would recompense you (in cash) upon your arrival and secondly that we would conduct your Appeal Hearing via written representations. You chose the option of written representations and my request for further information, based on the grounds of your letter dated 20th March 2018 (from here on referred to as AL) are below. As your initial Appeal Letter to us (12th March 2018) had the same heads of terms but less detail, I have based this appeal process on 20th March letter".
52. Mr Coxhead confirmed the three grounds of appeal and stated: "As part of this appeal process, in addition to the information I have requested, I would like to offer you the opportunity to include in your response any information you feel I should be aware of in arriving at a conclusion... Can I please request that you supply me with this information by Tuesday 10th April (via the address on this letterhead) and I will endeavour to respond with my outcome within two weeks of this".
53. The address on the letterhead was the Respondent's address at Charlotte Street, London W1.
54. The Claimant wrote a letter in response dated 13 April 2018. The Claimant's letter was addressed to Mr Coxhead at an address on Malcolm Street, London NW1.
55. Mr Coxhead wrote a letter to the Claimant on 4 May 2018 which states: "To recap: You were offered paid travel in order to attend but declined and requested that the hearing be completed via written representations. You were originally requested to send further information to assist the hearing by the 10th April. You later contacted me via telephone to state that you had posted your response to the wrong address and I offered an extension until the 15th April (confirmed by email on 06/04/18). I have then waited for a further two weeks before proceeding with the information available to me".
56. Mr Coxhead upheld the decision of Ms Dawson to terminate the Claimant's employment for gross misconduct. Mr Coxhead gave brief reasons for his conclusion.
57. Having regard to the guidelines **BHS -v- Burchell** the Tribunal makes the following conclusions:
58. The Tribunal concludes that the Respondent did hold a genuine belief in the Claimant's conduct.

59. The Claimant argued that these matters arose as a consequence of him raising a query over how his annual leave was calculated (although it should be confirmed that his claim before this Tribunal was one of ordinary unfair dismissal only). However, the Tribunal notes that the Claimant was invited to a Stage 1 capability hearing in 2016, which demonstrates that potential performance/attitude issues had been identified by the Respondent prior to the annual leave points being raised by the Claimant. The Tribunal also concludes that there was sufficient evidence produced by employees of the Respondent for it to be considered that there was a genuine issue to be addressed.
60. With regard to whether or not there was a reasonable process, the Tribunal refers to the chronology of events set out above and concludes in all the circumstances that this process was objectively reasonable.
61. The original investigation by the Claimant's Manager was redone by a Manager wholly independent from the Claimant and his circumstances.
62. The Tribunal concludes that it was reasonable for the Respondent to undertake the additional elements of the disciplinary process, which was initially to make further investigations and then to include matters subsequently arising from the Audit.
63. The Tribunal further concludes that it was reasonable for Ms Dawson to consider the initial disciplinary meetings to form part of the overall disciplinary process completed by the meeting on 07 March 2018.
64. The Tribunal concludes that the Claimant was given invitation letters that itemised the allegations; the Claimant was provided with all the necessary and relevant documentary materials in advance of the meetings; the Claimant was given the right to be accompanied; the Respondent rearranged meetings when the Claimant was unable to attend; the Respondent made and provided to the Claimant notes of the meetings; the Claimant was provided with outcome letters and given a right of appeal; and reasonable steps were taken to facilitate his attendance and involvement in the appeal process.
65. The Tribunal concludes in the circumstances that it was reasonable for Mr Coxhead to deal with the appeal on the information he had available to him. The Claimant sent his additional information to the wrong address and did not supply a further copy as confirmed by Mr Coxhead in his letter of 04 May 2018 and his evidence to the Tribunal.
66. The Tribunal further concludes on balance that the Respondent held a reasonable belief in the Claimant's conduct.
67. The Claimant argued that the Respondent had identified alleged misconduct of the Claimant that arose on 08 December 2017, but Ms Beeson's statement of 02 February 2017 confirmed that as at 23 December 2017 she saw the matter as performance development issue and it was later raised as a potential disciplinary point.

68. The Tribunal concludes that there were a number of issues of concern that had allegedly arisen over a relatively short period of time in December 2017, as evidenced by the statements made by the individual members of staff, culminating initially with an alleged event occurring on 24 December 2017. The Tribunal concludes on balance that it was objectively reasonable for the Respondent to investigate the matters as a potential conduct issue and Ms Beeson's accounts do not negatively impact on Ms Dawson's reasonable belief.
69. It is true that Ms Beeson does not refer to the 08 December allegation in her statement dated 19 January 2017, but then does so in her later statement of 21 February 2018. However, the 08 December event is evidenced by Ms Ambrose and Ms Kimber (who later confirms the accuracy of her statement) and this material was before Ms Dawson.
70. The Claimant argued that the issues were not raised in his performance review by Ms Beeson, but the Tribunal accepts that the matter was treated by the Respondent as a conduct issue, not as a capability point.
71. The Claimant argued that the Respondent always preferred the account of others rather than his own account. The Tribunal concludes that there was sufficient corroboration of events and evidence before Ms Dawson for her to reasonably believe the conclusions she made.
72. With regard to the risk assessment issue, it was reasonable for Ms Dawson to consider that the Claimant appeared to give a conflicting account. He was shown the risk assessment (not signed by him) and stated: "I was just asked to sign, not trained". When he was read Ms Beeson's statement the Claimant stated: "That never happened, I sign everything they give me" and accused Ms Beeson of lying.
73. The Claimant contended in the meeting of 22 January 2018 that he knew better than his manager and alleged that Ms Beeson was trying to get him into trouble and get rid of him because of the holiday pay issue. However, the allegations of poor attitude were witnessed by staff other than Ms Beeson and those individuals made independent written statements to that effect. Although attention was drawn on behalf of the Claimant to the statement of Ms Beeson being made on 21 February 2018, some time after the events, this was simply confirmation of her view of all alleged events in which she was involved, which had already been evidenced by others (and herself with regard to some matters). It was reasonable for Ms Dawson to reject the Claimant's contention.
74. The Claimant's investigation evidence demonstrates that it was reasonable for Ms Dawson to reach her conclusions with regard to allergen risk. For example in the meeting notes at pages 103 and 104 of the bundle regarding the identification of customers receiving the correct allergen-free food. The Tribunal also considers that it was reasonable for Ms Dawson to conclude that Ms Gocek had not provided an incorrect photograph of the 'kids bolgnese'. The Tribunal concludes that it was reasonable for Ms Dawson to rely upon and believe the Audit report and concludes that there was no evidence to suggest that Ms Gocek

produced information to support the Respondent's alleged desire to dismiss the Claimant, as he alleged.

75. On appeal, although Mr Coxhead could not recall whether he had seen the group letter of 12 March 2018, the Tribunal accepts his evidence that he would not have accepted an anonymous letter as part of the Claimant's appeal process.
76. On the evidence reasonably available to him, it was objectively reasonable for Mr Coxhead to believe in the Claimant's conduct as found by Ms Dawson.
77. Once the Respondent was in a position to hold a reasonable belief in the Claimant's conduct after a reasonable investigation, the Tribunal concludes that the Claimant's summary dismissal for gross misconduct fell within the range of objectively reasonable options available to the Respondent. The Respondent considered the Claimant's employment record and possible alternative sanctions.
78. The allegations relating to interrelations with staff and management, and the breach of food safety policy, particularly with regard to allergens, were sufficiently serious for the Respondent to believe that it amounted to a repudiatory breach of contract warranting summary dismissal.
79. Accordingly, the Claimant's claim of unfair dismissal is unsuccessful.
80. With regard to the wrongful dismissal claim, the Tribunal refers to the evidence of the members of staff that the Tribunal had before it during this Tribunal hearing and also the content of the audit report. The Tribunal has also taken into account the Claimant's statements made during the disciplinary stage and produced at the appeal stage, including the letter of 13 April 2008 and has also considered the investigation meeting notes.
81. The Tribunal has also considered the evidence provided to it by both parties at the Tribunal hearing.
82. On balance, the Tribunal reaches similar conclusions on the evidence as Ms Dawson at the disciplinary hearing stage. The Tribunal concludes that the contemporaneous and corroborating accounts of management and staff together with the Audit report are persuasive elements.
83. The Tribunal concludes that there is no material evidence of any collusion or agenda against the Claimant by those who made the statements. The Tribunal also concludes that the Audit investigation officer, Ms Gocek, was entirely independent of these events and the audit account was her genuine professional view.
84. Applying the different test for wrongful dismissal claims compared to those of unfair dismissal, on balance from the evidence before the Tribunal it concludes that the Claimant did commit a repudiatory breach of contract that entitled the Respondent to dismiss without notice and that the wrongful dismissal claim is also unsuccessful.

Employment Judge Freer
Date: 28 November 2019