EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Mr O Ogundolie		Interserve Security (First) Limited

Heard at: London Central Employment Tribunal

On: 9, 10, 11 October 2019

Before: Employment Judge Adkin (sitting alone)

Representations

For the Claimant: Mr D Renton (Counsel)
For the Respondent: Mr G Probert (Counsel)

REASONS

1. By a claim presented on 14 January 2019 the Claimant complained of unfair dismissal, arising from his dismissal on 27 September 2018.

2. The circumstances leading to the dismissal arose from the ejection of an intruder into BBC premises on 9 September 2018 and failings by a number of staff to appropriately escalate and report the circumstances to managers within the Respondent business. In summary the Claimant was dismissed for failing to report an incursion that had been reported to him by a member of the BBC staff, and in respect of which he saw the ejection of the intruder.

3. Oral reasons for the finding of unfair dismissal were given at the hearing on 11 October 2019.

4. The written judgment was sent to the parties on 15 October 2019. The Respondent requested written reasons on 16 October 2019 by email. Unfortunately due to an administrative omission this request was not drawn to my attention until 24

February 2020 after the Respondent chased up the request for written reasons by an email dated 20 February 2020.

5. References in these reasons thus [70] are to pages in the agreed hearing bundle.

The Issues

6. The parties presented the Tribunal with an agreed written list of issues the first morning of the hearing. This list of eight points, was originally drawn up by the Respondent on 13 May 2019:

> 1. What was the reason for the Claimant's dismissal? The Respondent contends that the reason was the Claimant's conduct.
>
> 2. Was that reason a potentially fair reason under Section 98 (2) of the Employment Rights Act 1996?
>
> 3. Was the decision to dismiss Claimant fair or unfair in all the circumstances in accordance with section 98 (4) of the ERA?
>
> 4. If dismissal was procedurally unfair, what is the likelihood that the Claimant would have been dismissed in the event (Polkey)
>
> 5. If the claim succeeds, what remedy should be ordered, reinstatement, re-engagement, and or compensation?
>
> 6. If a finding of unfair dismissal is made, should any reductions to compensation be made under sections 122 (2) and 123 (6) of the Employment Rights Act 1996, and if so, to what extent?
>
> 7. Was the failure to pay the Claimant notice pay a deduction from his wages in contravention of section 13 ERA 1996?
>
> 8. (In the alternative to the claimant for Unlawful Deductions from wages above) was the failure to pay the Claimant notice pay a breach of contract arising or outstanding on termination of the Claimant's employment?

7. In the interests of identifying what was the nub of the dispute between the parties, Mr Renton, for the Claimant, characterised the real dispute as being:

7.1. Did dismissal fall within the range of reasonable responses?

7.2. It being accepted that it was a conduct dismissal, no point was being taken by the Claimant on the fairness of the dismissal.

7.3. In respect of wrongful dismissal, and whether the employer was entitled to summary dismiss, it was said that this essentially stood or fell with the range of reasonable responses test. For clarity it was not contended that the legal test was identical but Mr Renton's view was that in practical terms

in the circumstances of this case it would be likely that the same result would be arrived at.

8. During the course of submissions I explored with the parties whether I could consider the question of procedural unfairness. This arose out of questions that I posed to the dismissing manager, given that it seemed that he had been aware of a material matter which was exculpatory in respect of the disciplinary and which might at the very least amount to mitigating circumstances. This material matter was not shared with Claimant during the investigation. (The detail of this is set out below).

9. The Respondent opposed any expansion from the way that Mr Renton had characterised the case at the outset of the hearing.

10. The Claimant considered that it was open to me to consider procedural unfairness, in particular given that the point about procedural unfairness had only become apparent the day before the hearing started, in some last-minute disclosure from the Respondent and furthermore that the Claimant was relying on the knowledge of the dismissing manager referred to above as evidence of the substantive unfairness of the sanction of dismissal. Considering the dismissing manager's knowledge, which was not shared with the Claimant, as a procedural concern would be a "mere relabelling" of the same point.

11. I have given some consideration whether it would be appropriate for me to consider the question of procedural unfairness. I consider that it would be appropriate given the following reasons:

    11.1. The jurisdiction arises from the claim form. The claim asserts unfair dismissal. Considering procedural unfairness is an inherent part of any such claim, and it must be open to a Tribunal to deal with it.

    11.2. Procedural unfairness is identified on the written list of issues which is the basis on which both parties have prepared evidence and prepared to argue the case at trial. It is difficult to see therefore why the Respondent would be prejudiced.

    11.3. The Claimant relies upon the knowledge of the dismissing manager in respect of his contention that the dismissal was substantively unfair. It is a short step to taking account of the same matter in respect of procedural fairness.

    11.4. I take account of the last-minute nature of the disclosure of the material documents relating to the Respondent's dismissing manager's knowledge.

    11.5. The dismissing manager Mr Minnis was able to give an account of his knowledge in his oral evidence and the point which he became aware of the material facts during cross examination, re-examination and answering questions from the Tribunal.

The Evidence

12. For the Claimant I heard from himself and received a witness statement from Mr Tony Norton, whose witness statement was not challenged by the Respondent and who did not give oral evidence.

13. For the Respondent I heard evidence from the dismissing manager Mr John Minnis and the appeal manager Mr Tom Meredith.

The Law

14. The law on dismissal for misconduct is set out in a three stage test in the well-known case of *Burchell v BHS* [1978] ICR 303.

15. As to the sanction of dismissal, this was considered by the Court of Appeal in *British Leyland (UK) Ltd v Swift* [1981] IRLR 91, CA, where Lord Denning MR stated: 'The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view: another quite reasonably take a different view.

16. In *Iceland v Jones* [1983] ICR 17 the EAT confirmed that (1) the starting point should always be the words of section 98(4) themselves; (2) in applying the section an industrial tribunal must consider the reasonableness of the employer's conduct, not simply whether the Tribunal considers the dismissal to be fair; (3) in judging the reasonableness of the employer's conduct the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer; (4) in many (though not all) cases there is a band of reasonable responses to the employee conduct within which one employer might reasonably take one view, another quite reasonably take another, it would only be if the decision to dismiss is outside of this band that it would be unfair.

17. In *Sainsbury's v Hitt* [2002] EWCA Civ 158 the Court of Appeal confirmed that band of reasonable responses test applies to the procedure followed by an employer as well as the substantive decision to dismiss.

18. I have also taken account of ACAS Guidance which stresses that employers should keep an open mind when carrying out an investigation: their task is to look for evidence that supports as well as weakens the employee's case. In any event I consider, sitting in my function as an industrial jury that this is no more than a basic requirement of fairness. An employer should be on the look out for exculpatory evidence or mitigation evidence as part of an overall fair process.

The Facts

19. The Claimant commenced his employment on 10 March 2006.

20. There was a transfer under TUPE in 2014 which is not material for present purposes.

21. In November 2017 the Claimant moved to "New Broadcasting House" following a restructure.

22. For the first 11 years of his employment for the Respondent the claimant worked as a Night Fire Security Officer. In the final year of his employment he worked as a Security Officer.

23. At the time of events in September 2018 leading to the Claimant's dismissal he worked in the Newsroom. This because he had a problem with his knee and this position enabled him to sit down.

24. On 9 September 2018 when the Claimant was providing temporary relief for a security officer colleague on the Front of House. This position required security officers to stand, which the Claimant could do for a short period of time to provide relief for a colleague. There was an incident where a female "intruder" was ejected from new broadcasting House by a member of BBC staff Ms Smyth. The Claimant was present and saw the woman escorted out of a disabled access door. CCTV footage showed that he had not been present at the point that this woman had originally gained entry to the building. Shortly after the woman was ejected the Claimant went on his break.

25. One member of the Respondent's staff "S" reported the incursion to a Team Leader "H", but thereafter the incident was not escalated any further. No other of the Respondent's staff escalated the matter.

26. On 18 September 2018 the Acting Deputy Editor of the Today programme Mr Stone-Lee reported "quite a serious security breach", based on information that had been provided to him by Ms Smyth. Mr Renton for the Claimant contends that the words used suggested less than a serious breach. The meaning of the word 'quite' can vary significantly according to context. My interpretation of this email exchange is that the BBC staff did regard this incident as being potentially serious, and worthy of further escalation within the Respondent's management. Although no harm had been done by the incursion, the BBC staff were concerned about it.

27. On 21 September 2018 the Claimant was told that he was being suspended in a telephone call from Jonny Kempster.

Investigation

28. On 25 September 2018 the Claimant attended an investigation meeting with Barry Kelly, a manager of the Respondent tasked with investigating the matter. At this meeting the Claimant gave a short account of the female intruder being let out by a female employee of the BBC. He said his colleague "S" went after the intruder and asked her some questions. The answers given by the intruder made little sense. The BBC employee Miss Smyth then spoke to Claimant. It seems from CCTV footage that this conversation was in the region of 45 seconds. The Claimant said that Ms Smyth reported to him that the woman was found upstairs and she didn't have a pass and hence was brought out.

29. The Claimant was asked whether he had informed the DSM (Duty Security Manager), the CPO (Close Protection Officer) or the NCCR (a call centre control

room). The Claimant admitted that he had not and initially struggled to explain why he had not, although he did say "I was surprised this action hasn't taken place", which was a reference to escalation to management [70].

30. Later on in the same meeting the Claimant adds "it wasn't because it was only me there was other guys I am not taking ownership of this I thought the guys working permanently front of house will deal with this situation we were all there together it was reported to all of us I thought it would be dealt with I can't I am not justifying it personally" [70].

31. Later on he adds "once I left that place for my break my feeling was that the guys at front of house would deal with the matter. The DSM doesn't come round to me downstairs but they would have let the DSM know what had occurred" [71]. 'Downstairs' here was a reference to the Claimant's normal station in the newsroom.

32. The investigation conclusion [74] was that the Claimant thought that the Front of House officers would have reported/escalated the incident, as he normally works in the Newsroom. The conclusion of the investigator was that this did not excuse the failure to report.

Disciplinary

33. In a letter dated 25 September 2018 the Claimant was invited to a disciplinary hearing on 27 September 2018. This letter did not refer to the potential sanction of dismissal.

34. On 27 September 2018 the Claimant attended a disciplinary hearing accompanied by his union representative Wilfred Christopher. This hearing was held by John Minnis. At the outset of this meeting the Claimant was told that one possible outcome could be dismissal. In the course of this meeting there was further discussion about the case. The Claimant gave some further detail of the conversation with Ms Smyth, the member of BBC staff to report the intruder. He said that Ms Smyth said "she looks suspicious doesn't have a pass and no one signed her in, she shouldn't have been there and brought her down". The Claimant was asked what he should have done in the event that a person was in the building without a pass. He replied "escalate the matter and call the necessary people". He explained that phone or radio would be acceptable.

35. The Claimant reiterated what he had said at the investigation meeting that he didn't use any of the options because "I thought the guys that are working on the reception permanently would have done so as I said before I have not to justifying this I thought they would have dealt with it at that point yes I didn't call the DSM or CPO or NNCR". He confirmed that he had not explicitly discussed with the two members of staff who were permanently positioned by the disabled door whether or not they were going to escalate. He said he thought that they would do it. He also mentioned the incident to the person (unspecified) that he handed back over to when he went downstairs to resume his normal position in the newsroom. He admitted that he had not heard anyone report the matter to the DSM or CPO.

36. The Claimant speculated that "S" had seen the CPO when he had been outside. Although he was clear that he couldn't say this for certain. Mr Minnis went on to say "how did that make you feel in relation to being confident that the matter had been reported? You said the matter should be reported and escalated haven't done it you haven't heard any of your colleagues do it so what made you think it had been reported?". At the time that Mr Minnis asked this question he was aware, from investigations in the other colleagues that in fact S had reported the manager to his Team Leader. Mr Minnis admitted this in his oral evidence. Nevertheless he asked questions of the Claimant without revealing this piece of information which showed that the Claimant's assumption about his colleagues reporting the matter was factually correct. The Claimant was not provided with witness statements (anonymised or otherwise) containing the information that his assumption that the matter had been escalated was correct.

37. The Claimant explained the reason for his belief "because they were permanently on the post even if they don't report at that time the manager comes to see them a few times in the night I believe when the managers, they would be in conversation" [83]. He explained that by contrast no one came to visit him [in his Newsroom post].

38. Later on Mr Minnis questioned the Claimant about whether it was worthwhile for him to speak to the DSM. The Claimant reiterated that he believed the matter would have been discussed with the manager and that was why he did not speak to him. He had to acknowledge that this was an assumption rather than certain knowledge on his part.

39. Toward the end of the disciplinary hearing the Claimant acknowledged that if the same situation arose he would handle it differently and he would take the initiative and call the manager. He apologised and acknowledged that it shouldn't have happened and that he was wrong to just assume that someone else would reported the matter. At this stage he did not know, as Mr Minnis did, that S had reported the matter.

Dismissal

40. By a letter dated 27 September 2018 the Claimant was dismissed. Mr Minnis recorded the Claimant's position that he thought that one of the others would do it as he didn't normally work in this post. What he did not do either in this letter or in the disciplinary with the Claimant, is to acknowledge that this assumption was correct.

Appeal

41. On 17 October 2018 at the appeal hearing the approach of Mr Meredith's the appeal manager was only to consider new evidence.

42. In the appeal the Claimant continued to reiterate his position that he thought that his other colleagues, who were permanently on the front of house station, would have escalated the matter. Somewhat confusingly he said "I'm not saying that's why I didn't report it". At page 94 it is recorded that the claimant said "My colleague

had gone and done with matter. I was told afterwards that he spoke to [the] supervisor". By this stage, therefore it seems that the Claimant had found out that S had actually spoken to the supervisor.

43. He also in this meeting tried to minimise the significance of the incursion, and question whether or not it was sufficiently serious to be raised. He said this type of incident happens all the time. The Respondent contends that this is an inconsistency. I accept that there is something of a tension between comments made by the Claimant in the appeal hearing and what he said at other stages during the investigation and disciplinary hearings. Ultimately, however, I concluded that the Claimant did have an assumption that colleagues would have reported the matter and also that he reiterated this on a number of occasions during the disciplinary process to the dismissing manager.

44. The Claimant also raised inadequacy of training in the appeal. It appears from the other documents relating to more senior individuals who were dismissed following a wider investigation precipitated by the incident that the Respondent acknowledged that training at the site was "extremely poor".

45. The 26 October 2018 an outcome to the appeal against dismissal was confirmed in writing rejecting the appeal.

Other investigations & "comparators"

46. Various other investigations were going on at around the same time as the Claimant's own investigation and disciplinary. In brief:

46.1. On 28 September 2018 a colleague H, a team leader was dismissed by John Minnis for failing to escalate or deal with a report from S in relation to the intrusion on 9 September 2018.

46.2. On 2 October 2018 colleague S received confirmation that no further action would be taken in disciplinary proceedings, on the basis that he had correctly reported the incident straight away to a member of management team, as is the expectation.

46.3. On 2 October 2018, in a letter written by John Minnis, the Area Manager on the W1 estate was placed on full paid suspension following removal from site at the request of the BBC. The incident on 9 September 2018 was a precipitating event leading to a substantial further investigation. There were a whole series of problems uncovered by the investigation regarding communication, shifts being dropped, the standard of training, the fact that the on-site assignment instructions had only been signed by approximately 20% of staff at the W1 site, over time management was poor and staff welfare had not been completed, despite instructions from HR.

46.4. On 4 October 2018 the Cluster Manager on the W1 estate had 12 weeks' contractual notice served on him. Again the events of 9 September 2018 were a precipitating event. The letter of 4 October refers however to a contractual F notice having been served by the BBC for what they

perceived as "fundamental failures" by the Respondent's management. The letter details "collective and widespread systemic failure".

The Respondent's policy

47. The Respondent's policy on the reporting of incursions has been difficult to clearly identify. Mr Minnis' assertion that the Claimant was required to report specifically to his own line manager is not substantiated by any documents produced to this tribunal, nor is it consistent with the disciplinary policy which only requires reporting other matters to management in general.

48. I have not been shown any policy or procedure document from the Respondent own internal documentation explaining what the Claimant was supposed to do in the event of an incursion, nor any documentary evidence from the Respondent's own documents which I could assess whether or not he was in breach.

49. I have not been shown any evidence of training to show what the Claimant's understanding of the policy was or should have been.

50. As to the documentation of policy that would be available to the Claimant Mr Minnis on the first day of this hearing, gave evidence that there were "Assignment Instructions" relating to this site. He was not sure what this document contained, however. He clarified that he imagined that they would be in place. These have not been adduced in evidence at any stage. On the second day of the hearing a two-page document entitled "Standards of Behaviour for Security Operatives" by the Security Industry Authority was produced and added to the bundle. This is not the Respondent's own internal document. It contains a provision under the heading General Conduct "in carrying out his/her Duty, a Security Operative should: * Report all incidents to the management".

51. I should acknowledge that the Claimant did understand in general terms that security officers needed to escalate incidents to others.

52. Importantly however Mr Minnis accepted during his oral evidence that if the Claimant knew the incursion had been escalated he would not need to personally report it. He said he "wouldn't expect every single officer to report an incursion".

53. It follows from the above however that if the Claimant knew that a colleague had escalated the matter there would be no requirement for him to personally escalate the matter at all.

CONCLUSIONS

54. *(1) What was the reason for the Claimant's dismissal?* (*2) Was that reason a potentially fair reason under Section 98 (2) of the Employment Rights Act 1996?*

55. There is no real dispute that the reason for the dismissal was conduct, which is a potentially fair reason.

56. *(3) Was the decision to dismiss Claimant fair or unfair in all the circumstances in accordance with section 98 (4) of the ERA?*

57. I have broken this down to considerations of *procedural* and *substantive* fairness.

58. *Was the procedure followed within the band of reasonable responses?* The Claimant's belief that his colleagues who were permanently stationed by the relevant door would have escalated the matter to managers was mentioned by him throughout the stages of the investigation and disciplinary. From the Respondent's point of view the Claimant was not required to personally escalate the matter if another colleague had done so. That the Claimant's belief or assumption was in fact correct was something that would strengthen his position. While it would not necessarily avoid a charge of misconduct, it was certainly it was a mitigating argument. Had he known it he could argue, with some justification that it was reasonable of him to assume in particular circumstances that one of the other two colleagues would have escalated the matter.

59. My finding is that a reasonable employer, acting reasonably in the investigation of this matter would consider any evidence that this assumption was correct. At the very least this would be a mitigating circumstance.

60. The range of reasonable responses test applies to the procedure as much as the substantive decision to dismiss. In my assessment, the procedure followed in this case does fall outside of the range of reasonable responses in two respects:

    60.1. A failure to inform the Claimant of the fact that his assumption was correct, whether by providing him with documentation from the investigation of "S" or by simply telling him. This was evidence that supported the Claimant's case insofar as it demonstrated that his assumption was correct and provided potential support for arguments that his assumption was justifiable or that his blameworthiness was only slight.

    60.2. A failure to at the very least to consider this as a mitigating circumstance as part of the decision-making. According to the policy articulated by Mr Minnis the Claimant's only failing was to check with his colleague that his assumption that the matter had been escalated was correct.

61. *Was the substantive decision to dismiss within the range of reasonable responses?*

62. It is not for this Tribunal to substitute its own view.

63. It has been argued on behalf of the Claimant that:

    63.1. He was dismissed for failing to report the negligence of another guard. I accept the Respondent's submission that this mischaracterises the nature of the reason for dismissal.

    63.2. A comparison with other colleagues who were dismissed is instructive. I am not persuaded that the comparisons with other employees who were dismissed in this case urged by the Claimant's counsel necessarily helps

the tribunal. It seems a fair argument that compared to various of his colleagues the Claimant's omission was less blameworthy. The test here however is not a comparative exercise with others who were dismissed, but rather by reference to the objective range of reasonable responses test.

64. Considering the thought process of the dismissing manager, at paragraph 23 of his witness statement, he stated "it seems clear from [the Claimant's] responses to my question is that there was no real basis to his assumption that the incident had been escalated by one of his colleagues".

65. The Claimant did articulate a basis for his assumption however, as he described in the disciplinary hearing on 27 September (page 83). He explained that his colleagues were permanently on the post where the intruder was ejected. The manager comes to see these colleagues a few times during the night. By contrast the manager would not visit the Claimant in the news room. The Claimant believed when the manager visited the colleagues permanently stationed there would be a conversation about the incident. There was a degree of supposition here, but it was based on Claimant's knowledge of the way that the Respondent operated at this particular site and the way that staff communicated. Furthermore, the supposition was correct. The Respondent did not suggest during the disciplinary process, nor during the Tribunal hearing that the Claimant was wrong in fact about the way staff communicated. It might have been open to Mr Minnis to conclude that it was an insufficient basis for the assumption but "no real basis" overstates it.

66. Considering all of the circumstances of the case, I consider that the decision to dismiss did fall outside the range of reasonable responses open to a reasonable employer. I rely on all of the circumstances and evidence, but in particular:

66.1. The nature of the omission on the part of the Claimant was minor, as Mr Minnis understood it. There was no requirement for every security guard to separately report the matter. The Claimant assumed, correctly, that the permanent Front of House staff would escalate the matter to a manager.

66.2. In this light the Claimant's only failing was failing to check with Front of House colleagues that they had escalated. Had he done so, S would have confirmed that he had escalated and there would be no further action to be taken.

66.3. This omission in itself did not prejudice the Respondent's reputation, since manager H had been already by notified by S of the incident and failed himself to escalate matters further up the Respondent's line management chain.

66.4. The severity or importance of this omission does not correspond to the seriousness of the examples of gross misconduct set out in the Respondent's disciplinary policy (relevant examples of which are set out more fully below).

66.5. Mr Minnis failed to properly engage with the Claimant's explanation for his assumption.

66.6. It was in any event the Claimant's first 'offence' and he had 12 years' unblemished service.

67. *4. If dismissal was procedurally unfair, what is the likelihood that the Claimant would have been dismissed in any event (Polkey)*

68. Given that I have found that the decision to dismiss was procedurally as well as substantively unfair, I have not made any reduction under the principle in *Polkey v AE Dayton Services Ltd* [1987] UKHL 8.

69. 5. If the claim succeeds, what remedy should be ordered, reinstatement, re-engagement, and or compensation?

70. The Claimant has only pursued the remedy of compensation.

Contributory fault

71. 6. If a finding of unfair dismissal is made, should any reductions to compensation be made under sections 122 (2) and 123 (6) of the Employment Rights Act 1996, and if so, to what extent?

72. My assessment is that there is some contributory fault in this situation. Had the Claimant either escalated himself or checked that his colleague had escalated, the likelihood is that he would not have been dismissed. I consider that this is a minor omission.

73. I have considered the points made by Claimant counsel about the level of reduction for contributory fault by reference to the decision of HHJ Peter Clark in *Croydon Health Services NHS Trust v Brown* [2013] UKEAT 0601/11, although I have not found this particularly helpful. I have made my own assessment, not by reference to that case, but to a sum which is just and equitable.

74. My assessment is that 25% is the just deduction for contributory fault.

Wrongful dismissal

75. *7. Was the failure to pay the Claimant notice pay a deduction from his wages in contravention of section 13 ERA 1996?*

76. *8. (In the alternative to the claimant for Unlawful Deductions from wages above) was the failure to pay the Claimant notice pay a breach of contract arising or outstanding on termination of the Claimant's employment?*

77. An employer can summarily dismiss an employee without notice if there has been a repudiatory breach of contract on the part of the employee if not the dismissal without notice is a wrongful dismissal.

78. The burden of proof of establishing a repudiatory breach of contract is on the employer. In order to amount to such a breach the employee's behaviour must disclose a deliberate intention to disregard the essential requirements of the

contract. More recent authorities have expressed the threshold for repudiation by reference to the "implied term of mutual trust and confidence".

79. In the case of *Briscoe v Librizol* [2002] IRLR 607 CA the Court of Appeal approved a test "conduct 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 his employment. The legal test is whether conduct amounts to repudiation of the whole contract, more than whether the label "gross misconduct" and "gross negligence" are the appropriate labels.

80. It is instructive nevertheless to consider what the Respondent identifies as being gross misconduct in its disciplinary policy. Paragraph 9.4 of that policy [61f] provides:

> "gross misconduct is a serious and material breach of contract and includes conduct, which, in the Company's opinion is likely to prejudice its business or reputation, or irreparably damage the working relationship between an employee and the company".

81. A series of examples, expressed to be non-exhaustive, are given in the disciplinary policy. The nearest relevant examples are as follows:

81.1. Gross negligence in the performance of the employee's duties or serious neglect of duties, or a serious or deliberate breach of contract or operating procedures;

81.2. Bringing the Company into serious disrepute;

81.3. Serious disregard for Company policies, procedures and rules and the applicable rules, policies and procedures of the client.

82. On balance, having considered the circumstances as set out in detail above, in my assessment the Claimant was not guilty of a "serious and material breach of contract", nor gross negligence, nor of bringing the Company into serious disrepute, nor of serious disregard for policies, procedures and rules. The Claimant himself acknowledges that he may be guilty of misconduct. I do not consider however that this was either gross or serious.

83. Standing back from the labels gross or serious, I do not consider that the conduct of the Claimant amounted to a repudiation of the whole contract. It follows therefore that there was not a serious breach of contract, the summary dismissal was a wrongful dismissal.

Employment Judge Adkin

Date 02 March 2020

JUDGMENT SENT TO THE PARTIES ON

02/03/2020

FOR THE TRIBUNAL OFFICE