



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Coles

**Respondent:** The Members of Fairwater Social and Athletic Club  
(by the Management Committee of the Club)

**Heard at:** Cardiff (CVP)                      **On:** 1 and 2 July 2020

**Before:** Employment Judge Brace

**Representation**  
Claimant: Mr D Roberts (Friend)  
Respondent: Mrs S Allott (Committee member)

## RESERVED JUDGMENT

The claim of unfair dismissal is well founded and succeeds.

## WRITTEN REASONS

### Background

1. The claim before me is one of unfair dismissal arising from the dismissal of the claimant asserted by the respondent to be on grounds of gross misconduct.
2. This matter had already been listed for a final hearing on 17 April 2019, when it had been concluded by Judge Beard that that was in the interest of justice to postpone that hearing and make directions to prepare the case for full hearing.
3. This final hearing was a remote hearing fully conducted by Cloud Video Platform ("CVP"), Judge Moore having determined at a preliminary hearing on case management on 11 June 2020, that it was in the interests of justice that the full hearing, which had been listed to take place on 1 and 2 July 2020, take place remotely. A face to face hearing was not held because it was not practicable, factors in this decision had included the fact that a number of the respondent's witnesses shielding, and all issues could be determined in a remote hearing..
4. I joined the CVP hearing with the clerk from Cardiff Magistrates Court and all other participants participated remotely from various locations.

### *The issues*

5. At the hearing on 17 April 2019, Judge Beard had set out the list of issues to be determined at the final hearing, Judge Harfield on 14 November 2019 having determined that the unfair dismissal claim could proceed to this full hearing.

**Case No: 1601821/2108 (V - CVP)**

6. These were set out at paragraphs 9 and 10 of the case management summary in Judge Beard's order and the parties were reminded that these were the issues that the tribunal was being asked to determine.

*The evidence*

7. I heard evidence from three witnesses from the respondent: Dr Teehan (who is currently shielding,) Miss Karianne Allott and her mother, Mrs Sharon Allott (who is also currently shielding). Mrs Sharon Allott also represented the respondent at this hearing. Miss Allott and Mrs Allott were physically in the same room when Miss Allott gave evidence, but I ensured that both were visible throughout the evidence. Once Miss Allot completed her evidence, she left the physical room and only Mrs Allott remained and was on her own in that room when she gave evidence.
8. In addition, I also had a very short statement from Mr Serle, a member of the Management Committee and one of two of the dismissing officers. Mr Serle did not attend the CVP hearing.
9. Mrs Allott had written into the tribunal on 29 June 2020 to explain that Mr Serle was undergoing hospital treatment and was too unwell to attend the hearing. Prior to the hearing the respondent was written to and reminded that the hearing was being conducted remotely and that the Tribunal may place little or no weight on the statement of a witness who did not attend the hearing in person to give that evidence orally and be available for questioning under oath.
10. The respondent was informed that no application for a postponement, due to the unavailability of witnesses due to health, had been made and the case was still listed for hearing on 1 and 2 July 2020. The parties' attention was drawn to the Presidential Guidance issued in December 2013 on Seeking a Postponement of a Hearing and on, in particular, rules 30A(1) and (2) ET Rules of Procedure 2013. No application for a postponement was made before or during the full hearing.
11. I also heard evidence from the claimant and on his behalf, from Mr Tyler Aveline, Mr Joshua Coles (the claimant's son,) Mr Rob Gibbs (the claimant's GMB trade union representative) and Mr David Roberts, who also presented the case on behalf of the claimant.
12. The claimant and his son were physically in the same room when Joshua Coles gave evidence, but again I ensured that both the claimant and Joshua Coles were visible on screen throughout that evidence. Only the claimant was in the physical room when he gave his evidence, the claimant having confirmed to me that his son had left the room.
13. In addition, the claimant had produced a witness statement from a Carly Warren who did not attend to give evidence orally. Again, it was explained that as certain witnesses were not present, their evidence could only be given limited weight.
14. There was a tribunal bundle of approximately 80 pages. There were considerable difficulties with the bundle, with pages in the respondent's bundle missing and in a different order to that in the claimant's possession and as produced for the Tribunal by the claimant. Time was spent at the outset resolving these issues, as well as during the hearing and involved having a number of adjournments to resolve the issue and included:
  - a. allowing the addition of text messages, which the respondent had requested be included in the bundle, but had been omitted (included at pages 7/1 – 7/7);

- b. providing the respondent with the correct page numbers to section 5, as the bundle provided to the respondent differed to that held by the claimant and produced by the claimant for the tribunal; and
  - c. the parties agreeing that the documents, contained at the section numbered 6 in the bundle, were not relevant and would not be referred to by either party. This had arisen as none of these documents were in a legible format in the copy provided to the tribunal.
15. Prior to Mr Gibbs giving evidence, he also confirmed that he had left his hard copy of the bundle in his GMB offices and had not been able to access those offices during the Covid-19 lockdown. An adjournment took place to ensure that a copy of the bundle was scanned and emailed to him by the claimant's representative before we continued to hear evidence from Mr Gibbs.
16. References to the hearing bundle within this judgment appear in square brackets [ ] below.
17. As the hearing was being conducted by CVP, we timetabled the evidence such that the respondent's evidence concluded at the end of the first day and the claimant's evidence concluded towards the end of the second day.
18. Oral submissions were made at the end of the hearing and I confirmed that written judgment with reasons would be sent out to the parties.

*Assessment of the evidence*

19. I was satisfied that all witnesses gave their evidence honestly and to the best of their knowledge and belief. I did not consider it necessary to reject a witness's evidence, in whole or in part by regarding the witness as unreliable or as not telling the truth.
20. I look for evidence to be internally consistent and consistent with documentary evidence where available. Whether evidence is probable will be influenced by a number of factors, including but not limited to whether it is corroborated by other witness evidence and/or by the contemporaneous records or documents, whether the witness is speculating rather than testifying, what is the witness's motive for their account.

**Facts**

21. The respondents are the members of Fairwater Social & Athletic Club (the "Club"), a private members club which operated as an unincorporated association from premises owned by Cardiff City Council.
22. Documents provided in the bundle [2/1 - 2/3] indicate that there were approximately 150 members as of November 2017. The Club ceased to operate and closed around 17 December 2018.
23. Whilst it is a commonly agreed fact that at that point the Club was in some financial difficulties, neither the scale of any financial problems nor the exact reasons that the Club ceased to operate and close, were in evidence before me and I decline to make any findings of fact on those issues.
24. The claimant started his employment on 10 August 2010 as the Club's bar steward. He had during his 8 years' employment, unblemished service. He was

**Case No: 1601821/2108 (V - CVP)**

considered by Mrs Allot to be a 'good worker', a 'good steward' and 'brilliant' with the members.

25. An extract only of his contract of employment has been provided by the claimant and is within the bundle [3/1-3/5] although the claimant confirmed that a full copy of his contract of employment was in his possession. A bungalow, leased by the Club from the Council, formed part of his employment terms although the terms relating to the residential property were not included. The claimant was permitted to remain in residence in that bungalow after his employment and lived there until August 2019.
26. There is no dispute from the respondent that the Grievance and Disciplinary Procedure, contained within that extract in the bundle, were the procedures that applied to the claimant's employment. I refer to the document for the full detail but essentially the disciplinary procedure provided (amongst other matters) that:
  - a. no action would be taken before proper investigation had been undertaken by the Secretary or any persons appointed by the Management Committee of the Cub (the "Committee") relating to the circumstances of the matter complained of (para 2.4.1);
  - b. the claimant would be given details of the complaint against him at least two days before the holding of any disciplinary hearing and that he may be accompanied by a fellow employee of his choice (para 2.4.2); and
  - c. There was a right of appeal to the Chairman or (if involved at an earlier stage) a person or persons nominated by the President of the Club (para 2.4.3)
27. Examples of misconduct and gross misconduct were provided and para 8.3 [3/5] set out the basis upon which it was stated that the Club could terminate the employment with immediate effect. This included if the claimant committed any act of gross misconduct (8.3.1) and if he was in the reasonable opinion of the Club incompetent in the performance of his duties.
28. Discussions had taken place at some point in 2017 between Mrs Allott (then Chair of the Club) and Mr Roberts (then Secretary of the Club) when the financial position of the Club had been discussed. Whilst there is a dispute between Mrs Allott and Mr Roberts (who now represents the claimant,) as to when any such discussions took place, what was discussed regarding the financial position and its impact on the position of the claimant, on balance I preferred the evidence from Mrs Allott on this issue.
29. She was specific and clear in her evidence that there had been no problems with the claimant until 2018. I found that a discussion had more likely than not taken place in or around August 2017, just after Mrs Allott had been appointed Chair of the Club, when Mr Roberts had raised concerns regarding the Club's costs and in particular the wage bill and was seeking to discuss how that could be reduced.
30. I accepted Mrs Allott's evidence that she had flippantly suggested to Mr Roberts that making redundant three lower paid members of staff would cost the Club financially the same as simply dismissing the claimant, but I also accepted her evidence that the Club placed great reliance on the claimant's services and it resonated with me that she would have rejected and did reject the option of making the claimant redundant due to that reliance.
31. The fact that no redundancies were progressed at that point, or indeed at any other later point, and that the claimant remained in employment throughout 2017

**Case No: 1601821/2108 (V - CVP)**

until August 2018, was sufficient to satisfy me that Mrs Allott's evidence was to be preferred.

32. By the latter part of 2017, the Club's bank account was not being used as the mandate on the bank account had not been altered to allow payments to be made from it by an appropriate signatory. I had no evidence before me which enabled me to conclude when this issue had arisen or, in turn, when paying for transactions in cash only had started. From the draft minutes of the Special General Meeting of the Club, held on 27 October 2017 [2/19] however, the practice of using cash only was already in place at that date.
33. As a result, all transactions from at least October 2017 were undertaken as cash transactions. A system was put in place whereby expenditure receipts and invoices for goods purchased/delivered and services rendered e.g. artists playing at the Club, would be placed in a black box. Generally, this black box and the expenditure receipts within, were kept in the main Club safe. At the end of the week the expenditure receipts/invoices were provided to Mrs Allott together with the week's cash takings and an A4 sheet which itemised all the week's transactions.
34. In order to be able to evidence the amounts of cash that he gave to Mrs Allott each week, the claimant personally purchased his own cash receipt book (containing original and duplicate receipts that could be removed,) such that on giving Mrs Allott the cash, she would sign for the cash receipt within that cash receipt book. Both the original signed receipt and the duplicate copy however would remain within the receipt book and be retained by the claimant.
35. The claimant kept this receipt book in the spare safe which was kept in the cellar of the Club. For the avoidance of doubt, this was a different receipt book to the expenditure receipt book held in the black box in the main safe in the Club.
36. Again, I am unable to conclude when this practice started but I consider that it is likely that this would have commenced at the point that the bank account stopped being used.
37. In November 2017 Dr Teehan, whilst not formally appointed Treasurer of the Club, agreed to review the financial position of the Club to gain an understanding of its financial position. She remained as a member of the Club and attended Committee meetings.
38. In the early part of 2018, continuing up to May of that year, she reviewed the Club's cash transactions that were being undertaken. She recorded her findings on a spreadsheet that noted total income, total spend and balances. She suggested a new system for recording financial information daily and included the introduction of daily Till Report Sheets and the Club sought to implement this. By May 2018, the bank mandate was resolved, and the Club's bank account was again in use.
39. In April 2018 a meeting was held with a number of the Committee, including Mrs Allott as the Club Chair, and staff to discuss changes: in the introduction of time sheets and holiday forms; and to changes to payment of wages, moving from cash payment to payment being made on the Friday of each week in hand into personal bank accounts.
40. At that meeting the claimant objected to the timing of the payment of salary being changed to a week in hand and wanted to continue to be paid cash in hand. It was agreed that Mrs Allott and Dr Teehan would seek to resolve the salary payment issues. The introduction holiday forms, discussed at the April

**Case No: 1601821/2108 (V - CVP)**

meeting, was introduced into working practice just prior to the claimant's annual leave on 21 May and time sheets were put in place around the same time.

41. On 14 May 2018, the claimant was asked to bank the week's takings by 5pm Friday 18 May 2018. The claimant refused stating that he wished for the cash to be used to pay his wages and his wife's wages as there was no money in the Club and he wanted the money to go on holiday.
42. This information was communicated to Dr Teehan who expressed concern as on her assessment of the weekly sheets provided by the claimant, there should have been an excess of £21,000. The claimant confirmed to her that all transactions had been recorded and all stock purchases had been included. The claimant did not bank those monies and left for his holiday on Monday 21 May 2018.
43. The following day Mrs Allott received a call from Mr Ben Squires, an individual who we did not hear evidence from but was agreed by both parties to be the individual responsible for undertaking the Club's stock take. Mr Squires informed Mrs Allott that after completing the recent stock take there was a £7,000 surplus in the stock for April/May. He also told her that there had been a £4,000 surplus in the stock take for February/March 2018. She was told that this surplus had been caused by receipts he had not received. He asked for copies of the receipts as the surplus would equate to the missing stock and when he would then recheck the stock again.
44. He provided the April/May 2018 stock report to Mrs Allott. Stock reports prior to that date, at least up to December 2017, had been provided to Mr Roberts, as Club Secretary. There is a dispute as to where the February/March stock report had been sent, with both Mrs Allott and Mr Roberts denying having had a copy of that report. Whilst Mr Roberts was still employed as Club Secretary at this time, he had not attended the Club since January 2018 and tells me that he did not receive a stock report after December 2017.
45. As Mr Squires was not present to give evidence, I decline to make any finding as to whom Mr Squires gave the Feb/April 2018 stock report, or indeed when.
46. That afternoon, Mrs Allott saw the claimant's son, Joshua Coles, and asked him if he could check in the bungalow where his father resided, for any receipts relating to the stock. She also asked him for the keys to the safe.
47. A few days later, she again spoke to Joshua Coles who confirmed that he had spoken to his father who had confirmed that there were no more receipts. He also told her that he had been told by his father that the keys to the spare safe were in the claimant's mother's safe, and that as a result the Club could not have them until after he had returned from holiday. Mrs Allott informed Joshua Coles that if the keys were not handed over, then the police would have to be called.
48. There is a dispute as to whether Mrs Allott told Joshua Coles that money was 'missing' from the Club'. Mrs Allott's evidence is that she had told him that there had been an £11,000 surplus, whereas Joshua Coles' evidence is that Mrs Allott told him on two separate occasions that £11,000 was missing and that the police had been contacted.
49. On balance, whilst I accept that Mrs Allott told Joshua Cole that there was a surplus in the stock and receipts were needed to reconcile the stock, I was also persuaded that it was more likely than not that Joshua Coles was told that money was missing from the Club for the following reasons:

**Case No: 1601821/2108 (V - CVP)**

- a. The claimant had just gone on holiday and had failed to bank the week's takings;
  - b. At the same time, Dr Teehan was reporting to the Club that her cash reconciliation had indicated that there was a significant discrepancy in the accounts;
  - c. Mrs Allot told Joshua Coles that the police had been contacted.
50. I accept that there is a possibility that it was not Mrs Allott that told him that money was missing, and that this information may have come from a third source, but either way, I accepted that whilst on the claimant was holiday his son Joshua Coles was told that money was 'missing' from the Club. Joshua Coles had then communicated that to his father.
51. The claimant returned from holiday and telephoned Mrs Allott on or about 4 June 2018. He was concerned that he was being accused of theft. I don't consider it necessary to resolve the dispute as to whether the claimant was told not to return to work until 7 June 2018, or whether it was arranged for the claimant to come into the Club on 7 June 2019 after his non-working days, as it is commonly accepted that the claimant didn't go back into the Club until 7 June 2018 when a meeting, took place.
52. The meeting was attended by the claimant, Mrs Allott, Mr Peter Serle and Mr Paul Brooks. The stocktakes were discussed which had shown an £11,000 surplus for the April/May and February/March 2018 stocktakes. It was agreed by those present including the claimant that the receipts would be required to resolve the surplus.
53. The claimant's position is that Mrs Allott and Dr Teehan had been given the invoices or expenditure receipts on a weekly basis for April and May 2018 and that these should have had been provided to Mr Squires to undertake his stock take for April/May 2018. It was the claimant's evidence that there would have been in particular two invoices for stock for this period: one for 'Macro' and one for 'Double In' which would have accounted for around £7,000 of the surplus. It is Mrs Allott's position that all and any the invoices in her possession that she had been given by the claimant had been given to Mr Squires for him to undertake the stock take.
54. These positions were repeated in evidence at this hearing and I accepted both accounts as having been given truthfully and as accurate by the claimant and Mrs Allott. I have no evidence before me to make any findings of fact on what has happened to the expenditure receipts and invoices to support the stock surplus.
55. The claimant was again asked for the keys to the spare safe. He told those present at the meeting that there was no cash in that particular safe, only his cash receipt book. He did not return the keys to that spare safe at that meeting and was not asked again to return them.
56. The following day the claimant attended his GP and was signed off sick with anxiety and depression and remained on sick leave until the termination of his employment. The respondent decided not to investigate matters further at that stage due to the claimant's ill-health.

**Case No: 1601821/2108 (V - CVP)**

57. After a period of weeks, the claimant was referred to a well-being clinic and advice was given to relieve his symptoms of anxiety was to seek to resolve issues with the Club.
58. The claimant attended the Club on 18 July 2018 and retrieved from the spare safe, his cash receipt book and returned to Mr Brooks, the Club's Vice Chair, the keys to the spare safe. No other items were held within that spare safe. Mrs Allot provided the claimant at that stage with copies of the weekly sheets he had prepared, but no invoices.
59. As a result, the claimant contacted the Club's suppliers and obtained duplicates of the expenditure receipts to try to reconcile the accounts and deal with any further queries from the Club regarding expenditure. The claimant informed Mrs Allott that he had been able to reconcile the accounts as a result. She asked to see the evidence which demonstrated this. She gave him a week to provide this evidence and when nothing further was forthcoming from the claimant the respondents decided to commence disciplinary action. On 2 August 2018 the claimant was sent a letter [2/6] for and on behalf of the Club's Management Committee informing him that he was required to attend a disciplinary meeting on 7 August 2018.

60. The letter stated as follows:

*'At this meeting the question of disciplinary action against you will be considered with regard to:*

- 1. Complaint of aggressive behaviour toward a club official*
- 2. Refusal to relinquish property belonging to the club.*
- 3. Refusal to meet the expectations of the committee with regard to working practices.*
- 4. Refusal to cooperate with an ongoing investigation related to working practices.'*

61. The claimant was advised that he could have a neutral representative to attend the meeting with him and attending the meeting would be:

- a. Mr P Serle, referred to in the letter as 'Committee';
- b. Mr A Anderson, referred to in the letter as 'Committee';
- c. Ms C Teehan, referred to in the letter as 'Treasurer';
- d. Mr T Mason, referred in the letter as 'Trustee'; and
- e. Mrs C Brierly, referred to in the letter as 'Member'.

62. Reference to Ms C Teehan is reference to Dr Teehan, one of the respondent's witnesses.

63. By way of letter dated 6 August 2018 the claimant responded [2/7]. The letter really needs to be reproduced in full to do it justice, but its contents are incorporated by reference and are summarised as follows:

- a. the claimant complained that he had not been given 2 clear days' notice of the meeting;
- b. he was concerned that he had taken out a grievance against the Vice Chair, Mr Brooks, and wished to know how this issue was being resolved; and
- c. he raised objections that Mr Mason and Mrs Brierly should attend a disciplinary meeting as trustees and members as this was outside the scope of policy.

64. The claimant also set out in some detail a number of specific questions in relation to each of the four allegations, essentially requesting further information



**Case No: 1601821/2108 (V - CVP)**

and the evidence to support each allegation. He also requested that he be accompanied by Mr Roberts, the Club Secretary. He was advised that Mr Roberts would not be able to accompany him and that the disciplinary meeting would be rescheduled.

65. On Saturday 18 August 2018, the claimant was sent a further letter from the respondent in response reconvening the disciplinary meeting to Monday 20 August 2018 [2/10].
66. The letter did not respond to the queries raised by the claimant but simply reiterated the allegations and provided some further brief detail as follows:
  - a. That the complaint of aggressive behaviour toward a club official related to:  
*'Aggressive behaviour towards Mr Paul Brooks on the evening of Saturday 28 July 2018;*
  - b. That the refusal to relinquish property belonging to the club related to:  
*'Refusal to hand over safe keys when requested, copies of receipts relating to club business;*
  - c. That the complaint of refusal to meet the expectations of the committee with regard to working practices related to:  
*'Refusal to comply with holiday request forms, time sheets, financial report sheets' and*
  - d. Refusal to cooperate with an ongoing investigation related to working practices related to:  
*'Refusal to relinquish copies of all outgoing receipts relating to £15,000 missing from club accounts'.*
67. There is no investigation report within the bundle and, save for the letters to the claimant [2/4-2/14] relating to the disciplinary hearing, there are no additional documents relating to the allegations.
68. I have heard no oral evidence from any of the respondent's witnesses on what investigation was undertaken into these allegations save for the following:
  - a. On cross examination by Mr Roberts, Mrs Allott stated that witness statements had been taken in relation to allegation one i.e. that an altercation that had allegedly taken place between the claimant and Mr Paul Brooks on the evening of 28 July 2018;
  - b. that the claimant had been provided with copies of these statements;
  - c. Mrs Allott confirmed that these documents were not within the bundle as the claimant had not been dismissed for this allegation and that this allegation had been dealt with separately by way of verbal warning.
69. However, no documents relating to this first allegation were contained in the bundle and the claimant denied having received any warning for this altercation
70. In relation to allegation 4, Mrs Allott was cross examined by Mr Roberts regarding the form any investigation took, her response was that that an investigation could not take place as the claimant refused to hand in 'paperwork'.
71. Both Mrs Allott and the claimant appeared to be fixed in their respective positions that the other held the original expenditure receipts and invoices. The claimant was unwilling to hand to Mrs Allott the duplicate copies of the

**Case No: 1601821/2108 (V - CVP)**

expenditure receipts/invoices he had obtained and now held. There is a dispute as to whether Mrs Allott suggested that the claimant could provide copies of those duplicate expenditure receipts. The claimant denies that Mrs Allott had ever asked for copies of the duplicates, only that she wanted his duplicates. The claimant chose not to give the respondents his duplicates or even photocopies of those duplicates. It seems to me that if he had, this may have resolved the concerns regarding the stock surplus.

72. Either way, whilst this is the evidence from Mrs Allott at this hearing, I was not persuaded, due to the lack of this contemporaneous evidence and the responses from Mrs Allott, that there had been any investigation at the time into the allegations. Furthermore, I was not persuaded that the first allegation, namely that involving an alleged altercation with Mr Brooks, had been dealt with separately by way of warning or otherwise.
73. Whilst it is possible, taking into account the allegations, that any investigation would not necessarily have been, or needed to have been detailed, nowhere within the bundle nor indeed in the written statements or oral evidence given by the respondent's witnesses was there any evidence of any investigation into any of the allegations.
74. On receipt of that 18 August 2018 letter, the claimant wrote and hand-delivered to each member of the Management Committee, a letter [2/11 and 2/12] and enclosing a copy of the letter of 18 August 2018 that he had received [2/10]. He requested the evidence available to support the allegations and confirmed his position that the originals of all expenditure receipts had been handed to the Treasurer.
75. He confirmed that he would be unable to attend the meeting on the following Monday, as he had not been given time to prepare having, only received the further letter setting out more specific allegations on Saturday 18 August 2018. He also specifically requested a pack with all evidence provided to him.
76. It appears that despite this request, the disciplinary meeting in some form took place on 20 August 2018 in his absence and knowing that the claimant would not be attending.
77. I have no evidence from any dismissing officer or indeed anyone who had attended that disciplinary meeting. I have no documents which might have reflected any discussions. None of the respondent's witnesses dealt with the reason for dismissal either in evidence in chief or on cross-examination. In response to a question from me about the constitution of the disciplinary panel, Mrs Allott confirmed that she was not on that panel and that she did not make the decision to dismiss; that this was a decision taken by two members of the respondent's Committee, Mr Serle and Mr Anderson, with Mrs Brierly and Mr Mason as members simply sitting in.
78. I therefore have no evidence before me on what in fact happened on 20 August 2018.
79. On 28 August 2018 the claimant received a copy of a letter dated 27 August 2018 [2/14] which confirmed that the disciplinary committee was aware of the claimant's non-attendance at the disciplinary meeting but decided that the meeting would proceed in the claimant's absence. The letter further confirmed that a decision had been made to terminate the claimant's employment with the respondent with immediate effect. The letter further confirmed that the claimant had the right of appeal which should be made before 1 September 2018.

**Case No: 1601821/2108 (V - CVP)**

80. Mrs Allott's evidence is that the letter of dismissal was dated 23 August 2018 and a copy of that letter was contained at page 2/13; that this was the copy that had been sent to the claimant and not the copy at page 2/14. Whilst the font and dates referred to do differ to that contained at page 2/12, the remainder of the letter remains the same and does not impact on anything other than date of termination which is not critical in this case insofar as its impact on any full years' service.
81. For the avoidance of doubt, I found on balance of probabilities that the claimant received the letter at 2/14, as opposed to the letter at 2/12, and that he received this letter on 28 August 2018 as this is the letter that is referred to in the claimant's appeal letter dated 31 August 2018 [2/15].
82. In that appeal letter the claimant applied for reasons why his employment had been terminated and asked for the grounds for the termination of his employment.
83. On 17 September 2018, the claimant was sent a letter from the Committee of the Club informing him that the appeal hearing would take place on 20 September 2019 so that his trade union representative could attend [2/16]. That appeal hearing was postponed at the request of Mr Gibbs, the claimant's GMB representative due to his non-availability [4/7] and was re-arranged to 24 September 2018. As Mr Gibbs was on annual leave over that period, the appeal was again re-arranged to 1 October 2018 [4/9].
84. That communication and the re-arranged date for the appeal was sent only to Mr Gibbs, the claimant's trade union representative. There was no direct communication between the respondent and the claimant. Mr Gibbs also failed to inform the claimant of the date for the appeal hearing and the claimant did not become aware of it until the day of the hearing.
85. The claimant attended that meeting with Mr Gibbs, his trade union representative. No minutes of that meeting are in the bundle. None of the witnesses, including the claimant's witnesses, gave any detailed evidence regarding what was discussed. At that meeting Dr Teehan produced receipts totalling £4,500 only leaving a surplus unaccounted for of £15,000. When asked by the claimant where the expenditure receipts invoices were from the last stocktake he was informed that the respondent did not know where they were.
86. It is agreed that the outcome of that appeal meeting was that the claimant was to meet with Dr Teehan to work through the Club's financial reconciliations.
87. The claimant contacted Mr Squires to ask where he had sent the invoices/expenditure receipts for this last stock take and Mr Squires confirmed that he had sent them back to Mrs Allott. Mrs Allott denies having had the invoices returned to her. Mr Squires has not given evidence and I decline to make any findings as to what has happened to the missing invoices.
88. The claimant then carried out his own reconciliation [3/6 (originally 5/1 in the respondent's version of the bundle)] using the duplicate expenditure receipts that he had personally obtained from suppliers concluded that this resulted in a small surplus of £343.18. As I made clear on several occasions throughout this case, it is not the tribunal's role to undertake an investigation into whether there were discrepancies in the Club's accounts and/or to make any determination on whether any one individual had responsibility for the Club's financial position or indeed to undertake a banking reconciliation for the Club. I therefore decline to make any findings as to whether Dr Teehan's figures or the claimant's figures set out in his reconciliation are accurate.

89. In the latter part of November 2018 unsuccessful attempts were made by both parties to arrange a meeting between the claimant and Dr Teehan. On 26 November 2018 Mr Gibbs contacted Mrs Allott to arrange for the claimant to meet up with Dr Teehan and a date of 29 November 2018 was given to the claimant [4/11]. Mr Gibbs was unavailable and invited the respondent to review the outcome of any meeting between the claimant and Dr Teehan, before holding the appeal meeting [4/20].
90. Mrs Allott responded the same day and asked Mr Gibbs to set a date when he was free as she understood that his diary was busy, and that the respondent wished to co-operate [4/3].
91. The claimant continued to try to arrange to meet with Dr Teehan sending her numerous texts. There is no evidence before me to find that Dr Teehan responded to such requests from the claimant or made any effort to arrange a further meeting. The respondent was warned by Mr Gibbs that the time for filing the claimant's unfair dismissal claim was imminent [4/21] and a meeting arranged for 29 November 2018. This meeting was cancelled by the claimant's representative as he was unable to attend. In relation to a re-arranged meeting the claimant was informed that Dr Teehan was busy over the following weeks.
92. The claimant continued to try to arrange a meeting with Dr Teehan and eventually sought to contact her at her workplace. He spoke to a work colleague of Dr Teehan who asked about the purpose of his call. He told them that it was about his appeal; to go through the accounts. The claimant was asked what these were and he told Dr Teehan's work colleague that since October 2017, his tax and NI had been 'stopped' and that he was receiving emails from the pension provider to say that he was missing pension payments.
93. As Dr Teehan was at this time undergoing medical treatment, and as she perceived that the claimant had been harassing her to arrange the meeting through his numerous texts and calls, she contacted Mrs Allott and told her that she would not meet the claimant. Mrs Allott communicated that to the claimant told him that she would try to find someone else to meet with him.
94. The claimant sought to re-arrange this meeting and made several attempts to contact Mrs Allott in the latter part of December. He was informed by Mrs Allot that she would try to find an alternative person to meet with him.
95. On 17 December 2018 the Club ceased to operate and closed down. No further meetings were held with the claimant and the claimant's appeal was not concluded.
96. On the same date the claimant issued proceedings for unfair dismissal.

### **Issues and Law**

97. With unfair dismissal, I first have to consider the reason for the dismissal and whether it was a potentially fair reason for the dismissal.
98. In this regard, the respondent bears the burden of proving on balance of probabilities, that the claimant was dismissed for one of the potentially fair reason set out in section 98(2) Employment Rights Act 1996 (ERA 1996). The respondent states that the claimant was dismissed by reason of his conduct which was a potentially fair reason for dismissal pursuant to section 98(2)(b) Employment Rights Act 1996 (the "Act").

**Case No: 1601821/2108 (V - CVP)**

99. In submissions provided to me by Mr Roberts, it is suggested that conduct was not the reason and that the claimant does not know the reason for dismissal. He has further suggested that in fact, the dismissal may have been to avoid a redundancy payment to the claimant.

100. After considering the reason for dismissal, on the presumption that I identified a potentially fair reason for dismissal, I then have to consider whether the application of that reason in the dismissal for the Claimant in the circumstances was fair and reasonable in the circumstances (including the respondent's size and administrative resources). This should be determined in accordance with equity and the substantial merits of the case and the burden of proof in this regard is neutral.

101. In considering the question of reasonableness, if I concluded that conduct was the reason for dismissal, then I had to bear in mind the very well-established authorities of BHS v Burchell [1980] ICR 303 EAT, Iceland Frozen Foods Ltd v Jones [1993] ICR 17 EAT; the joined appeals of Foley v Post Office and Midland Bank plc v Madden [2000] IRLR CA and Sainsbury's Supermarkets Limited v Hitt [2003] ICLR 23.

102. In short this requires me to:

- a. focus my enquiry on whether there was a reasonable basis for the respondent's belief and test the reasonableness of the investigation.
- b. I should not put myself in the position of the respondent and test the reasonableness of their actions by reference to what I, myself, would have done in the same or similar circumstances.
- c. In particular, it is not for me to weigh up the evidence that was before this respondent at the time of its decision to dismiss (or even indeed the evidence that was before me at the hearing,) and substitute my own conclusions as if I were conducting the process myself. Employers have at their disposal a band of reasonable responses to the alleged misconduct of employees, and it is instead my function to determine whether, in the circumstances, this respondent's decision to dismiss this claimant fell within that band.
- d. I also need to consider whether the sanction of dismissal was appropriate in the circumstances bearing in mind requirement for me to apply the range of reasonable responses test set

103. I must apply a three stage test and consider whether the Respondent genuinely believed that the Claimant was guilty of gross misconduct, whether the Respondent had reasonable grounds upon which to sustain that belief and also, at the stage it formed that belief on those grounds, the Respondent had carried out as much investigation was reasonable in all the circumstances.

104. When assessing the reasonableness of the Respondent's actions against those of a reasonable employer I was conscious not to substitute my own views as to the appropriateness or otherwise of the dismissal.

**Conclusions**

Reason for dismissal

**Case No: 1601821/2108 (V - CVP)**

105. In applying my findings to the issues identified at the outset, I needed to initially consider the reason for dismissal and whether it was potentially a fair reason for dismissal.
106. The Respondent has asserted that the reason for the dismissal was conduct. The claimant has submitted that he still does not know the reasons why he was dismissed.
107. I have heard no evidence from Mr Serle or Mr Anderson, the decision-makers. Mrs Allott explained that Mr Serle was unwell and unable to attend the hearing. Mr Serle's very short written statement provides no explanation for why the claimant had been dismissed. I had no explanation on why Mr Anderson was unable to attend and give evidence.
108. Whilst on questioning from me, Mr Gibbs, the claimant's trade union representative, stated that he believed the claimant had been dismissed on the basis of all four allegations as set out in the letter inviting the claimant to the disciplinary, I have to make findings on balance of probabilities based on the evidence before me.
109. At first one might take the view that as the letter inviting the claimant to the disciplinary had set out some allegations, therefore it would, on balance, more likely than not be the case that those conduct reasons were the reasons that the claimant had been dismissed (as was Mr Gibbs' belief).
110. However, whilst I appreciate that Mrs Allott has worked hard in trying to deal with this case on the information that she has in her possession:
- a. I have had no evidence from any dismissing officer;
  - b. I have had no evidence from any of the respondent's witnesses as to the reason for dismissal;
  - c. Neither the statement from Mr Serle nor indeed the letter of termination provides an explanation for the dismissal;
  - d. the claimant has not been provided with a written response to his request for reasons for dismissal.
111. Further, there are additional background issues, not set out in the disciplinary invite that may have relevance on the issue of why the claimant was dismissed including the more general position of the finances of the Club, the potential that the respondent needed to make costs savings as a result. Equally however I did not conclude that the claimant had been dismissed to avoid making a redundancy payment. There was no evidence before me that the respondent was in a redundancy situation at that point.
112. For these reasons I am not satisfied that the respondent has discharged the burden of proof and demonstrated to me on balance of probabilities that the reason for dismissing the claimant was his conduct.
113. On that basis the claim succeeds, and I conclude that the claimant has been unfairly dismissed.
114. Had I concluded that the respondent had established a potentially fair reason for dismissal, I would still have concluded that the dismissal was unfair within the meaning of s98(4) ERA 1996, as the respondent had not followed a fair procedure for the reasons set out below. Even if the respondent had established that the claimant had been dismissed for all or any of the four allegations set out in their letter of 18 August 2018 [2/10], there was no evidence before me that there had been any, or any reasonable investigation:

**Case No: 1601821/2108 (V - CVP)**

- a. There was no evidence before me on who had been appointed investigation officer, if anyone, or who had been interviewed, if anyone. It follows that the respondent wholly failed to follow its own procedure in terms of appointing an investigating officer;
  - b. The claimant had not at any point been interviewed;
  - c. There was no investigation report, simply a series of allegations not supported with any evidence;
  - d. Whilst the claimant did have a vague outline of the allegations against him, those allegations were far from clear;
  - e. Whilst the claimant was advised of the right to be accompanied, he was not allowed his chosen companion and he was not advised of the risk of dismissal;
  - f. The decision was made without holding any form of hearing when some sort of investigation might have taken place;
  - g. The claimant was not afforded an appeal hearing. Attempts made by the claimant to resolve the financial situation at the Club were met with delay to the extent that he was unable to meet with Dr Teehan.
115. In conclusion the Respondent had carried out any or any fair and reasonable investigation which would reach the standard required of a reasonable employer.
116. In relation to whether it could have been said that the respondent's belief of any misconduct was held on reasonable grounds;
- a. Save for allegation one relating to the incident on the evening of Saturday 28 July 2018, the allegations were vague. In any event the respondent's position is that the claimant was not dismissed for this allegation;
  - b. Whilst there was evidence that the claimant had not handed in the keys to the spare safe on 7 June 2018, there was no evidence that he had refused to do so;
  - c. There was no evidence that the claimant refused to comply with the Club's new procedures in terms of holiday request forms, time sheets or financial report sheets;
  - d. The claimant presented as sick on return from leave and maintained the position that he had provided all expenditure receipts/invoices to the respondent. It was not reasonable for the respondents to consider it an act of misconduct to fail to deliver up any duplicate copies that he had obtained to protect his position.
117. What would have been a reasonable step would have been to arrange for a formal investigation meeting to discuss the stock surplus and cash position of the Club. It is possible that this may have resolved concerns regarding the financial position of the Club and may not have led to the claimant being subjected to a disciplinary hearing. In those circumstances I am not satisfied that reasonable grounds had been made out for any belief in gross misconduct
118. On the issue of genuineness of the Respondent's belief, i.e. did the respondent reasonably believe that the claimant committed the misconduct set out in the letter of 18 August 2018, it follows that as they had undertaken no investigation and there was no reasonable grounds to hold any belief of misconduct, that I find that they did not.
119. The procedure followed was inadequate and unreasonable. Whilst the claimant was notified in a letter in advance of the allegations against him, he was not provided with any evidence to support the allegations; whilst a hearing was held at which he was able to put any case in response to those brief

**Case No: 1601821/2108 (V - CVP)**

allegations, it was held at a time when he was unable to attend and he was deprived of that ability; whilst the claimant was informed of the fact of termination, he was not provided with the reasons for the termination; whilst the claimant was given a right of appeal, the appeal was not concluded.

120. Finally, on the question of whether dismissal was a fair sanction; could a reasonable employer have decided to dismiss for the allegations set out; the claimant had a long record without any previous warnings. These were not allegations that would amount to serious offence. Theft was not being alleged. I concluded that dismissal was not a fair sanction in any event.

121. Therefore in overall procedural terms, even if the respondent had been able to demonstrate that the claimant had been dismissed for misconduct as alleged, my conclusion would still be that the dismissal was unfair and the Claimant's claim for unfair dismissal would be well-founded.

122. The respondent failed to identify clearly the circumstances in which might lead to summary dismissal. Thus, even of the procedural shortcomings had been made good, the claimant's dismissal would still have been unfair. No deduction is therefore appropriate.

123. In my judgment it cannot be said that the claimant contributed to his dismissal and there should as a result be no percentage reduction to any basic and compensatory for unfair dismissal which he is ultimately awarded.

Remedy

124. A copy of the claimant's schedule of loss has been provided and as the original full hearing was listed to consider liability and remedy no further directions are required save as follows:

- a. Further consideration of the remedies to which the claimant is entitled is adjourned to a date to be fixed for 3 hours to be conducted remotely again via CVP.
- b. Prior to the hearing, the parties are required to agree claimant's weekly net and gross earnings at the termination date or explain the basis for any disagreement.

---

Employment Judge R Brace

Date 9 July 2020

RESERVED JUDGMENT & REASONS SENT TO THE  
PARTIES ON 10 July 2020

.....  
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS