Case Number: 3313404/2019

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M Mansfield	**v**	Northampton College

Heard at: Cambridge **On:** 21 and 22 July 2020

Before: Employment Judge Tynan

Appearances
For the Claimant: In person
For the Respondent: Ms J Shepherd, Counsel

RESERVED JUDGMENT

1. The Claimant's complaint that he was unfairly dismissed by the Respondent is not well founded and is dismissed

RESERVED REASONS

1. By a claim form presented to the Employment Tribunals on 27 March 2019, the Claimant complains that he was unfairly dismissed by the Respondent when it dismissed him by reason of his alleged gross misconduct on 28 November 2018. The complaint is denied by the Respondent.

2. The Claimant was employed by the Respondent as a Course Co-ordinator for Public Services. He commenced employment with the Respondent on 22 August 2007 and his employment was terminated summarily, that is to say without notice or payment in lieu of notice, on 28 November 2018.

3. The Claimant was dismissed in response to his alleged misconduct on 14 and 15 May 2018, namely behaviour that was perceived as threatening and intimidatory conduct and / or serious acts of bullying of colleagues and / or unprofessional conduct generally.

4. The Claimant represented himself at Tribunal. He gave evidence in support of his claim and I also heard evidence in support of his claim from two former colleagues, Mr Tony Clarke and Lieutenant Colonel Anthony Turner. Another former colleague, Ms Helen Russel, had made a written statement but did not attend Tribunal to give evidence. I was informed that Ms Russel remains employed by the Respondent. I have read her statement and note, amongst other things, that Ms Russel makes various criticisms of Elizabeth Spurling (one of the individuals towards whom the Claimant was found to have behaved inappropriately). At paragraph 9 of her statement, Ms Russel refers to events on 15 May 2018 shortly after an altercation between the Claimant and Ms Spurling. The Respondent has been denied the opportunity to question Ms Russel about her statement. In those circumstances I have decided that I should give little weight to Ms Russel's statement, particularly in circumstances where Ms Russel is critical of Ms Spurling and indeed goes as far as to say that she felt she had been groomed by her. Notwithstanding her ongoing employment with the Respondent it was incumbent upon Ms Russel to attend Tribunal to be asked about the allegations she makes.

5. On behalf of the Respondent, I heard evidence from Ms Pat Dubas, an Education Consultant and former Headteacher, who investigated a grievance raised by the Claimant in 2017 and was retained again by the Respondent in 2018 to investigate the allegations of gross misconduct against the Claimant as well as various grievances raised by him in the course of the disciplinary investigation. Evidence was also given by Mr Stephen Rankine, Director of Finance and Corporate Affairs, who chaired the disciplinary proceedings and by Ms Pat Brennan-Barrett, the College Principal, who determined the Claimant's appeal against his dismissal. Finally, I heard evidence from Ms Jan Hutt, Vice Principal, Human Resources and Student Services. Ms Hutt had recommended that the Claimant should be suspended when the allegations of misconduct arose, albeit the other HR aspects were led by Ms Hutt's colleague, Ms Sally Bamford. Ms Hutt supervised the process overall, however it was Ms Bamford who attended both the disciplinary hearing and appeal hearing to provide HR support and advice. Ms Bamford did not give evidence.

6. There was a single joint bundle of documents running to some 938 pages. I was referred to a limited number of documents in the course of the hearing.

7. At the outset of the hearing I sought to identify with the Claimant whether he accepted or disputed that the Respondent had dismissed him for misconduct, even if he disputed that any alleged misconduct amounted to gross misconduct warranting his dismissal. The Claimant was uncertain on the issue and accordingly the hearing proceeded on the basis that, pursuant to s.98(1) of the Employment Rights Act 1996, it would be for the Respondent to prove, on the balance of probabilities, that it had dismissed the Claimant for a potentially fair reason, namely a reason relating to his conduct rather than some other undisclosed reason. I explained to the Claimant that once an employer establishes a potentially fair reason for

dismissing an employee s.98(4) of the Employment Rights Act 1996 requires a Tribunal to consider whether in the circumstances (including having regard to the size and administrative resources of the employer's undertaking) the employer has acted reasonably, or unreasonably, in treating that reason as a sufficiently fair reason for dismissing the employee. Neither party has the burden of proof at this second stage. The question of whether an employer has acted reasonably or unreasonably is to be determined in accordance with equity and the substantial merits of the case.

8. I also drew the Claimant's attention to the well established principles in the case of British Home Stores v Burchell [1978] ICR 303, in which Arnold J said,

> *"The case is one of an increasingly familiar sort in this Tribunal, in which there has been a suspicion or belief of the employee's misconduct entertained by the management; it is on that ground that dismissal has taken place, and the Tribunal then goes over that to review the situation as it was at the date of dismissal. The central point of appeal is what is the nature and proper extent of that review. We have had cited to us, we believe, really all the cases which deal with this particular aspect in the recent history of this Tribunal over the past three or four years; and the conclusions to be drawn from the cases we think are quite plain. What the Tribunal have to decide every time is, broadly expressed, whether the employer who [dismissed] the employee on the ground of the misconduct in question (usually, though not necessarily a dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds on which to sustain that belief. And thirdly, we think that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further. It is not relevant, as we think, that the tribunal would itself have shared that view in those circumstances."*

9. I explained to the Claimant that Tribunals will have regard to whether dismissal is within the band of reasonable responses, that is to say whether it is a disciplinary penalty that could reasonably be imposed in light of the employer's findings, even if some employers would impose a disciplinary sanction falling short of dismissal. Employment Tribunals my not substitute their own view as to whether or not an employee was guilty of gross misconduct providing that the employer in question has a

genuinely and reasonably held belief in the employee's guilt following a reasonable investigation and disciplinary process. Likewise, it is not the role of the Employment Tribunals to substitute their own view as to the appropriate disciplinary penalty if dismissal was within the band of reasonable responses.

10. I shall set out my findings and conclusions by reference to the Burchell principles.

Findings

11. Although the Claimant was dismissed with reference to his alleged misconduct on 14 and 15 May 2018, as is frequently and inevitably the case, there was a broader context and history to the matter. In March 2017 the Claimant had raised a grievance with the Respondent regarding how he and other members of staff within the Public Service Department had been treated. He expressed concern that he had not been effectively supported and managed. His grievance paints a picture of a poorly managed department, with various staff on long term sick leave and other staff leaving but not being replaced, with the result that he felt under pressure and overworked. Certain aspects of his grievances were upheld and a number of recommendations were made, though the Claimant considers these recommendations were not followed up. Whatever grievances were harboured by himself and his colleagues, these seem to have been exacerbated following Ms Spurling's employment by the College. Specifically, it was believed that she was being paid at a higher rate of pay despite being regarded by her colleagues as the least experienced and least qualified member of the team.

12. The situation was further exacerbated in April 2018 when the role of Curriculum Manager was advertised internally and it was considered that the person specification had been relaxed in favour Ms Spurling by the removal of the normal requirement for the successful candidate to have a teaching qualification. In fact, Mr Clarke potentially benefitted from this change to the person specification as he too lacked a teaching qualification (albeit his evidence at Tribunal was that he had not applied for the position because he did not possess a teaching qualification and accordingly considered himself an unsuitable candidate for the role).

13. For the Respondent, the relevant context is that for some years the performance of the Public Services Department had been identified as unsatisfactory, with demonstrably poor outcomes for students. Ms Brennan-Barrett addressed this in the course of her evidence; she did not suggest that the Claimant was in any way responsible for this state of affairs, which reflected poor leadership within the department, but equally she was clear in her evidence that the Claimant's actions in May 2018 potentially seriously undermined the College's efforts to introduce new leadership and turn the department around.

The reason for dismissal

14. There is extensive and compelling evidence in the joint bundle of documents that the Respondent dismissed the Claimant for a reason relating to his conduct rather than for some other undisclosed reason. Indeed, there was no evidence before me to suggest that this was other than a conduct related dismissal. It is a classic case in which a Claimant denies or disputes the alleged misconduct, but otherwise there is no evidence in the extensive bundle or in the various witness statements that supports an ulterior motive by the Respondent or that it was using the events of 14 and 15 May 2018 to remove someone whom it regarded as a troublesome or poorly performing member of its staff. The Claimant does not suggest in his claim form that he was dismissed for a reason unrelated to his conduct. Instead, his complaints are set out under the following headings:

    14.1 the investigation took an unreasonable length of time;
    14.2 the investigation was not thorough enough to collate the facts correctly;
    14.3 the findings were bias and ignored vital evidence that would have given reasons for the allegations; and
    14.4 statements were full of contradictions that the chair chose to ignore.

15. The Claimant does state in his claim form that his dismissal *"would ensure [Ms Spurling] had free reign to do as she pleases, this would include falsifying certification for students or allowing students to mark their own work."* However, this was not a line of argument he pursued at Tribunal. In any event in my judgment, it is unfounded. It was not Ms Spurling's decision to dismiss the Claimant, the evidence supports that the decision was taken by Mr Rankine and upheld on appeal by Ms Brennan-Barrett. There is simply no evidence before me that Ms Spurling was involved in the decision to dismiss or the refusal of the appeal against dismissal, let alone that the Claimant's dismissal would have served a claimed agenda by Ms Spurling to falsify certifications and allow students to mark their own work. It was abundantly clear from Mr Rankine and Ms Brennan-Barrett's evidence at Tribunal that they each genuinely believed the Claimant to be guilty of misconduct.

The disciplinary and grievance investigation

16. I return below to the question of whether the Respondent had reasonable grounds for its belief in the Claimant's guilt. I shall first deal with the question of whether there was a reasonable investigation, including a reasonable disciplinary process.

17. On 14 May 2018, the Claimant met with Angela Twelvetree, the Assistant Principal, when she informed him that he had been unsuccessful in his application for the role of Curriculum Manager, Public Services. It was alleged during that meeting that the Claimant:

a. told Ms Twelvetree that he would be going home and that she would need to find cover for his classes that afternoon; and
b. had questioned Ms Twelvetree's response, suggesting that she was 'shaky' as she knew the College had appointed the wrong person to the post.

18. It was further alleged that in a conversation with Ms Spurling the following day, 15 May 2018, the Claimant had made the following comments:

a. "you're going to have to work very hard";
b. "you have no honesty or integrity";
c. "you are a liar";
d. "you have not done a stitch of work all year"; and
e. "you are secretive, hiding things".

19. The Claimant admits that he had made the bulk of the comments attributed to him though considers they were taken out of context and that in each case they need to be considered within the context of the overall discussion and the wider surrounding circumstances, not least what the Claimant regarded to be a flawed recruitment process essentially designed to ensure that the Respondent's preferred candidate, Ms Spurling, was appointed Curriculum Manager.

20. On becoming aware of the Claimant's alleged conduct the Respondent concluded, as I consider it was bound to do, that the matter should be investigated. Ms Dubas was appointed to carry out an investigation. She is an independent consultant. She has evidently undertaken quite a number of other investigations for the Respondent. I do not consider that has any bearing upon her independence, professionalism or integrity. She is herself a former Headteacher. Miss Shepherd described her as an impressive witness. I agree. She was measured and thoughtful in her evidence, and plainly saw it as her responsibility to assist the Tribunal rather than advance a particular case or cause.

21. Ms Dubas knew the Claimant as she had investigated his 2017 grievance. Again, I do not consider (and the Claimant did not suggest) that precluded her further involvement in 2018. Her Investigation Report following the 2017 grievance is at pages 181 – 378 of the joint bundle of documents. It runs to nearly 200 pages. The grievance itself was taken forward by Mr Rankine and gave rise to an 8-page outcome letter dated 7 July 2017, a copy of which is at pages 391 - 398 of the joint bundle of documents. If, as the Claimant alleges, various recommendations were not acted upon by the Respondent the responsibility in that regard does not rest with Ms Dubas as the investigating officer. As regards Mr Rankine's decision on the grievance itself, the Claimant did not exercise his right to appeal against the outcome even though various aspects of the grievance were not upheld.

22. Miss Shepherd submits that Ms Dubas undertook a very thorough investigation into the 2018 allegations, particularly in circumstances where

the Claimant accepted that he had made a number of the comments complained of. There is considerable force in the submission.

23. Ms Dubas' Investigation Report in relation to the 2018 allegations is at pages 527 – 650 of the joint hearing bundle. Although a number of documents referred to in the report were omitted from the bundle to avoid duplication, the report and appendices runs to over 200 pages. The report itself is 27 pages long and there are 23 statements appended to it. The Claimant, Ms Twelvetree and Ms Spurling were each interviewed on three separate occasions. Ms Dubas' separate Investigation Report in relation to the grievances raised by the Claimant in the course of the disciplinary proceedings is at pages 651 - 710 of the joint bundle of documents. Once again, duplicate documents have been omitted. Putting aside the appendices, the Investigation Report in relation to the Claimant's two grievances runs to approximately 36 pages.

24. In my judgment, Ms Dubas went significantly above and beyond what might reasonably have been expected of her as an Investigating Officer. She did not, as she might have done, limit herself to interviewing the Claimant, Ms Twelvetree and Ms Spurling notwithstanding no one else was privy to their conversations on 14 and 15 May 2018. Not only did Ms Dubas seek to secure evidence from others as to their conduct and demeanour both prior to and immediately following the events in question, she also explored the wider context, including the background history, in order that Mr Rankine would have as much information as possible to assist him in coming to a decision on the allegations against the Claimant as well as the related concerns raised by the Claimant in his grievance.

25. The Claimant is critical of the fact that it took Ms Dubas 22 days from his conversation with Ms Spurling on 15 May 2018 to interview himself, Ms Twelvetree and Ms Spurling. Emails at pages 403 and 404 of the joint bundle of documents confirm that Ms Dubas was approached by Ms Bamford on 18 May 2018 to undertake an investigation. Terms of reference were sent to her on 21 May 2018, when she immediately identified that she had previously investigated a grievance by the Claimant, though, rightly in my judgment, identified that this did not present an issue. She asked Ms Bamford if the Claimant, Ms Twelvetree and Ms Spurling would be available to meet with her the following week, or whether they would be on their half term break. As she suspected, all three individuals were on their half term holiday the following week and accordingly interviews could only be scheduled for the week commencing 4 June 2018. Ms Dubas was available on 5 or 8 June 2018 and it seems that the 8 June was selected as the date when Ms Dubas would undertake her initial interviews. The timing was unfortunate, but Ms Dubas cannot be criticised for the fact that the Claimant, Ms Twelvetree and Ms Spurling were on leave the week commencing 28 May 2018. The delay was not unreasonable. Ms Dubas was offering to interview those involved as soon as the second day following their return from leave.

26. The disciplinary and grievance Investigation Reports evidence that Ms Dubas interviewed witnesses extensively through June. There is no evidence of statements being taken during July 2018, though that may be because it was approaching the end of the summer terms and staff would then have been on holiday. The final interviews took place on 24 August 2018. Ms Dubas produced her two very detailed reports within just over one month of the final interviews. Given the number of witnesses who were interviewed and the volume of material involved, I do not consider there to have been any unreasonable delays on Ms Dubas' part in producing her reports. On the contrary, she is to be commended for having marshalled the evidence and produced her two reports in the time she did. Although the Claimant criticises the length of time the investigation took in his claim to the Tribunal, this was not something he pursued with Ms Dubas when he questioned her at Tribunal.

27. The Claimant spent some time questioning Ms Dubas about her investigation into the recruitment process by which Ms Spurling had been appointed to the role of Curriculum Manager. However, whatever criticisms the Claimant makes of the recruitment process, this case is fundamentally about whether or not the Claimant was unfairly dismissed. Ms Spurling's appointment as Curriculum Manager may provide context, but ultimately this is not a case in which the Claimant is pursuing a legal claim (for example, a complaint of discrimination) in respect of the recruitment decision. It is a feature of this case that the Claimant and, to a lesser extent, his witnesses have focused unduly on the circumstances of Ms Spurling's appointment as Curriculum Manager. The Claimant has a deeply held and ongoing sense of grievance in relation to that decision but it is not a matter in respect of which this Tribunal can offer him any remedy, or about which make it would be appropriate to make any significant findings.

28. A number of the Claimant's questions of Ms Dubas were framed on the basis that she was the decision maker, when in fact the Investigation Reports confirm, and I accept her evidence at Tribunal, that she limited herself to investigating the allegations, leaving it to Mr Rankine to make specific findings. For example, one of the issues for Mr Rankine was whether the Claimant's conduct had caused Ms Twelvetree to shake on 14 May 2018. Mr Turner, who was unsuccessful in his application for the Curriculum Manager role, had met with Ms Twelvetree prior to the Claimant's meeting with her. He described her as visibly shaking during their meeting. The Claimant suggests that this evidences that Ms Twelvetree was already nervous and 'shaky' when they met, rather than as a result of any conduct on his part towards her. Ms Dubas included this information in some detail in her Investigation Report though quite rightly left it up to Mr Rankine to decide whether Ms Twelvetree was already anxious prior to meeting with the Claimant. The Claimant's criticisms of Ms Dubas in this regard are baseless and, indeed misconceived. It was not Ms Dubas' responsibility to make specific findings. She discharged her responsibilities by ensuring that relevant information was available to the decision maker. Her investigation 'findings' are set out in considerable

detail at pages 529 – 533 of the joint bundle of documents and, in my judgment, are beyond criticism. They provide a thorough summary of the allegations and of the conflicting accounts and explanations, as well as providing a solid base from which findings could then be made by Mr Rankine.

29. One of the Claimant's criticisms of Ms Dubas at Tribunal was that she had failed to interview his previous line manager, Adele Barnett. The Claimant struggled to develop his line of questions on this issue so I invited him to consider whether there were any particular lines of enquiry that he felt Ms Dubas might usefully have pursued with Ms Barnett. He could not identify any. Likewise, he did not elaborate further in his own evidence or in his questions of Ms Dubas as to the further questions of witnesses that ought reasonably to have been asked following his third interview with Ms Dubas and how and why these were material omissions on her part. So, although he is critical of Ms Dubas, he is unable to identify with any clarity specific lines of enquiry that he believes should have been pursued as part of a reasonable investigation.

30. In my judgment Ms Dubas undertook a reasonable and thorough investigation. She spoke to a wide range of witnesses and interviewed the Claimant, Ms Twelvetree and Ms Spurling on three separate occasions each. She evidently followed up lines of enquiry where these were reasonably indicated. She kept detailed notes of her interviews with witnesses and made these available to the Claimant and Mr Rankine. Her resulting Reports are detailed and present the evidence and arguments in a thorough and balanced way. She was careful not to intrude into Mr Rankine's area of responsibility. It is apparent that she did not set out simply to find evidence against the Claimant. On the contrary, notwithstanding many of the alleged comments were admitted by the Claimant Ms Dubas investigated the circumstances and put forward the conflicting accounts and evidence that had emerged in the course of her investigation.

<u>The disciplinary process</u>

31. As regards the disciplinary process, the allegations were that the Claimant had engaged in conduct that had been perceived as threatening or intimidatory, or that it was serious bullying of colleagues and / or unprofessional conduct generally. It concerned his conduct towards an immediate member of his team who was to take up post as Curriculum Manager and on doing so would then be the Claimant's Line Manager. The other complainant, Ms Twelvetree would be Ms Spurling's Line Manager, and accordingly might become directly involved in the event of difficulties in the Claimant and Ms Spurling's working relationship. In those circumstances, the Respondent acted entirely reasonably in my judgment in deciding that the Claimant should be suspended pending the outcome of the disciplinary investigation and any resulting disciplinary proceedings. The suspension was a neutral act on the part of the Respondent. In any event, the Claimant was afforded the right to challenge his suspension

(which had been recommended by HR and sanctioned by Ms Brennan-Barrett).

32. The suspension was formally reviewed at a Suspension Appeal Hearing on 25 June 2018 at which the Claimant was accompanied by his Union representative. In the experience of this Tribunal, it is very unusual for there to be a formal appeal process in respect of decisions to suspend an employee. It evidences that additional protections that were available to the Claimant during the disciplinary process.

33. There is no suggestion by the Claimant that he was denied a reasonable opportunity to state his case at any stage during the disciplinary process. As noted, he was interviewed three times by Ms Dubas and there was a formal opportunity for him to challenge his suspension. The written record of the Disciplinary Hearing on 7 November 2018 and subsequent Appeal Hearing on 18 December 2018 evidence that the Claimant was able to put forward his case in some detail and to call witnesses on his behalf. The duration of the Hearings are not documented, but the Disciplinary Hearing notes run to some 16 pages and the Appeal Hearing notes run to 6 pages. They evidence a structured and thorough process at each stage, with no suggestion in the written records that the Claimant or his Union representative were critical of how the hearings were handled even if they disagreed the outcome.

34. In his claim form, the Claimant criticises Mr Rankine's findings, stating that Mr Rankine was biased and ignored vital evidence as well as alleged contradictions in certain of the witness statements. Otherwise, he does not criticise the process itself. I remain unclear what the Claimant means when he says that Mr Rankine was biased. It was not something he pursued with Mr Rankine when he questioned him at Tribunal. For example, he did not suggest that Mr Rankine's handling of the 2017 grievance or other dealings with the Claimant precluded his involvement in the disciplinary proceedings. The fact he did not appeal Mr Rankine's decision on his 2017 grievance evidences that he accepted the findings and conclusions. My attention was not drawn to any evidence in the disciplinary hearing notes that the Claimant or his representative had objected to Mr Rankine's involvement on the basis that he was biased. As to the allegation that Mr Rankine ignored vital evidence, again this was not pursued in questions of Mr Rankine. The suggestion that Mr Rankine ignored evidence of alleged bullying behaviour by Ms Spurling is not in any event supported by Mr Rankine's disciplinary outcome letter. He acknowledged others' criticisms of Ms Spurling, but ultimately his decision was informed by the fact that the Claimant admitted to having made a number of the comments attributed to him.

35. There is no suggestion by the Claimant that the Acas Code of Practice was not adhered to or that the Respondent's documented disciplinary policy and procedure was not followed. He was accompanied at the Disciplinary and Appeal Hearings by his Union representative who argued his case on his behalf. As already noted, the Claimant was able to call

witnesses. In my judgment, the Respondent followed a fair process before dismissing the Claimant.

The basis of the Respondent's belief in the Claimant's guilt

36. As to whether the Respondent had reasonable grounds for believing the Claimant to be guilty of gross misconduct, the Claimant has an unshakeable belief in his innocence in this matter. He continues to regard Ms Spurling as the villain of the piece. I reiterate that where a Claimant claims they have been unfairly dismissed it is not the function of the Employment Tribunal to substitute its own view as to whether or not the Claimant was guilty of misconduct. In spite of my comments at the outset of the hearing, the Claimant's questions of Mr Rankine and Ms Brennan-Barrett essentially rehearsed the various arguments he had sought to advance during the disciplinary proceedings, namely that he was innocent of misconduct. His questions of Mr Rankine and Ms Brennan-Barrett came nowhere close to establishing that either of them had arrived at an unreasonable decision that was unsupported by the evidence. His principal difficulty was that he was largely condemned by his own admitted actions. The written record of the Disciplinary Hearing suggests that his Union representative recognised this, even if the Claimant did not, and that his representative sought to mitigate the damage that had been done by arguing for a sanction short of dismissal and by stating that the Claimant was willing to apologise for his actions and participate in workplace mediation to restore trust and effective working relationships.

37. Mr Rankine's decision is at pages 745 – 752 of the joint bundle of documents. It is structured and deals with each of the allegations in turn, summarising the evidence and the Claimant's submissions in relation to them. Having done so Mr Rankine goes on to set out his findings in relation to each allegation, including his reasons. The letter is structured, clear, thorough and reasoned. I cannot identify any errors in his approach such that it might be said that his belief in the Claimant's guilt was unreasonable. Having set out his findings, Mr Rankine, goes on to detail the College's Code of Professional Conduct Policy, before concluding on the balance of probabilities that the Claimant was guilty of gross misconduct, save that he considered there was no evidence to suggest that the Claimant's actions constituted dangerous behaviour. Similarly, Ms Brennan-Barret's cannot be criticised for her decision on the appeal. It did not proceed as a re-hearing rather by way of a review of Mr Rankine's decision. Nevertheless, it is structured, clear, thorough and reasoned.

38. Throughout the Tribunal hearing the Claimant's manner was polite and dignified. He was respectful to the Tribunal, to Counsel for the Respondent and to the Respondent's witnesses. I make absolutely no criticism of him in terms of his conduct of the proceedings. However, the fact is that his position unravelled under cross-examination. Whereas his Union representative had expressed contrition on his behalf at the Disciplinary Hearing, it was clear at Tribunal that any contrition was not genuinely felt and that the Claimant had expressed remorse and offered

an apology simply in the hope of preserving his employment. It was evident at Tribunal that he does not in fact take responsibility for his conduct on 14 and 15 May 2018 or recognise the impact in terms of the Respondent's continued trust and confidence in him, notwithstanding he told his colleague and soon-to-be Line Manager, Ms Spurling to her face that she was a liar, had not done a scrap of work, had no honesty or integrity and it was his perception that she was not liked by her colleagues. Two years on from these events, the Claimant still believes that such comments were justified and were provoked by Ms Spurling. On any reasonable view his comments were unpleasant and unprofessional, yet his attitude can only reasonably be described as being that she got what was coming to her.

39. Having genuinely and, in my further judgment, reasonably concluded that the Claimant was guilty of gross misconduct, the only question in my judgment is whether dismissal was within the band of reasonable responses.

<u>The decision to dismiss</u>

40. The Claimant confirmed that he was aware of the Respondent's Dignity at Work Policy and its Professional Code of Conduct Policy and that he had agreed to abide by these.

41. The College's key principles in its Professional Code of Conduct Policy are:

- Respecting and helping each other
- Engaging people through teaching and expertise and enthusiasm
- Developing people through learning
- Bringing out the best in each other
- Playing a positive role in our community

The Code is explicit that staff have a responsibility to behave in accordance with the College's values.

42. Paragraph 6.6 of the Code of Professional Conduct Policy further provides,

> *"The College values and relies upon the professional integrity of relationships between members of staff… in order that College business is conducted, and perceived to be conducted, in a professional and proper manner, staff must understand and acknowledge the responsibilities and trust inherent to their role."*

43. And at paragraph 6.7,

> *"All staff… have a responsibility to act professionally at all times and to avoid any conduct which would lead to any reasonable person questioning their motivation or intentions."*

44. And finally, at paragraph 6.9, staff are expected

> *"… to exercise the highest standards of professional integrity".*

45. The Code of Professional Conduct Policy is also reflected in the Dignity at Work – Harassment and Bullying Policy. For example, the responsibilities section states,

> *"… every member of staff should treat colleagues with dignity and respect and to ensure their own conduct does not cause offence or misunderstanding."*

46. Mr Rankine found that the Claimant had made Ms Twelvetree feel vulnerable and intimidated in his actions on 14 May 2018. He considered the Claimant's conduct to be unreasonable, unacceptable and unprofessional. Likewise, and with reference to the Claimant's own admissions, Mr Rankine concluded that the Claimant had conducted himself in a manner that constituted intimidatory conduct and / or serious acts of bullying of another employee and / or unprofessional conduct generally. Mr Rankine summarised his findings as follows,

> *"Having carefully considered all the evidence presented, the finding is that allegations 1 and 2 are both substantiated. It is reasonable to conclude, on the balance of probabilities that you were hostile on both 14 and 15 May 2018 towards both Angela Twelvetree and Elizabeth Spurling and that your behaviour reflected you as being angry and agitated.*
>
> *Allegations 1 and 2 both demonstrate unprofessional and intimidating behaviour towards two different colleagues, both newly appointed Managers, on two different successive days. There is also evidence of anger from several different witnesses which will have enhanced the intimidatory nature of this behaviour, in relation to allegation 1. Angela Twelvetree also reported that in her professional career she had never experienced anything so unprofessional and intimidating."*

47. It is apparent that the Claimant and his three witnesses have a low opinion of Ms Spurling. The same is not true of Ms Twelvetree. The Respondent's witnesses spoke of her reputation as someone who is professional and fair-minded. Two years on from the events in question, the Claimant has demonstrated little or no insight as to why an experienced, professional and fair-minded colleague should have come away from an interaction with him reporting that she had never experienced anything so unprofessional and intimidating in her professional career and that she did not wish to have any further unaccompanied interactions with him.

48. Given Mr Rankine's specific findings, in my judgment he reasonably concluded that the Claimant's behaviour constituted gross misconduct. As such, in accordance with the Respondent's Disciplinary Policy, it was conduct that potentially warranted the Claimant's dismissal. Given Mr Rankine's findings, it was conduct that went beyond simply being rude to two colleagues. In the case of Ms Spurling, the anger and aggression that was found to have been directed at her from the Claimant was in the context that she had been successful in her application to be Curriculum Manager, whereas the Claimant had not and in due course she would become his Line Manager. If he was dissatisfied with the recruitment process, the Respondent's grievance procedure was available to him. It was not Ms Spurling's decision that she should be appointed Curriculum Manager, yet he visited his anger and frustration upon her by telling her that she had no honesty or integrity, that she was a liar, that she had not done a stitch of work all year, that she was secretive and hiding things, and that he perceived her colleagues not to like her. It is self evident that by such comments the Claimant would have created a hostile working environment for Ms Spurling and fatally compromised their future working relationship. Out of pique and frustration the Claimant made highly ill-advised comments to Ms Twelvetree and Ms Spurling on consecutive days. In my judgment the Respondent acted within the band of reasonable responses in dismissing the Claimant for gross misconduct.

49. I was initially concerned that in deciding to dismiss the Claimant Mr Rankine had seemingly relied upon an earlier incident on 1 March 2017, when the Claimant had called his then Line Manager, Adele Barnett, a *"disgrace"* in an open office. However, I am satisfied that this matter falls within the ambit of the Court of Appeal's Judgment in Airbus UK Ltd. v Webb [2008] ICR 561, in which the Court held that the employer had been entitled to take the Claimant's previous, though expired warning, into account when deciding whether or not it was reasonable to dismiss. As the Court of Appeal explained in the Airbus case, once the warning ceased to have effect as a penalty, it could not be relied upon as the reason for dismissal. Lord Justice Mummery said,

> *"The language of Section 98(4) is wide enough to cover the employee's earlier misconduct as a relevant circumstance of the employer's later decision to dismiss the employee, whose later misconduct is shown by the employer to the Employment Tribunal to be the reason or principal reason for the dismissal."*

50. The Court of Sessions' earlier decision in Diosynth Ltd. v Thompson [2006] IRLR 284 is to be distinguished, where the employer had not been entitled to dismiss the employee by reason of an expired warning on his file in circumstances where his subsequent misconduct was not sufficient, on its own, to justify dismissal. In other words, the expired warning was not capable of *"tipping the balance"* in favour of dismissal.

51. Having carefully considered Mr Rankine's letter of 28 November 2018 and his evidence at Tribunal, I am satisfied that the previous incident on 1

March 2017, which was dealt with informally, did not tip the balance in favour of the Claimant's dismissal. At page 7 of his disciplinary outcome letter (page 751 of the joint bundle of documents), Mr Rankine made a clear finding and conclusion that the Claimant was guilty of gross misconduct by reference to the events of 14 and 15 May 2018. That placed the matter firmly within the ambit of dismissal. Whilst the Airbus decision would have entitled Mr Rankine to have considered the Claimant's earlier misconduct as a relevant consideration, in any event I conclude that its main relevance was in addressing representations put forward on the Claimant's behalf by his Union representative to the effect that he had an unblemished disciplinary record. Whilst it was correct that the Claimant had no current or expired disciplinary warnings, a record had been kept of the Claimant's actions on 1 March 2017. The Claimant accepted at Tribunal that he had called Ms Barnett a *"disgrace"* in an open office. In my judgment Mr Rankine did not act unreasonably in referencing that incident in his decision, involving as it did a very public act of insubordination towards the Claimant's then Line Manager. Whether or not the Claimant considered Ms Barnett a *"disgrace"*, it is difficult to imagine circumstances in which it might be appropriate for an employee to call their Manager a *"disgrace"* let alone to do so publicly. In circumstances where, in response to allegations of gross misconduct, the Claimant's representative was seeking to claim that the Claimant had an exemplary record, in my judgment it was not unreasonable for Mr Rankine to provide a slightly more balanced view.

52. For all the reasons above, I am satisfied that the Respondent acted reasonably in treating the Claimant's misconduct as sufficient reason for dismissing him. In these circumstances the Claimant's complaint that he was unfairly dismissed is not well founded and is dismissed.

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Employment Judge Tynan

Date: 7 August 2020

Sent to the parties on: ..12/08/2020.....

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For the Tribunal Office