EMPLOYMENT TRIBUNALS

Claimant: **Mr S Keita**

Respondent: **Tesco Stores Limited**

Heard at: **East London Hearing Centre**

On: **20 September 2019**

Before: **Employment Judge G Tobin**

Representation
Claimant: Ms A Walsh (Trade Union representative)
Respondent: Mr D Lemer (Counsel)

JUDGMENT having been sent to the parties on 19 October 2020 and reasons having been requested by the Employment Appeal Tribunal in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013.

REASONS

The Case

1. The claimant issued proceedings on 21 May 2019. In his Claim Form, the claimant said that he was employed by the respondent from 14 May 2012 until 25 February 2019 and that he was a shift leader at the time of his dismissal. The claimant contended that he was unfairly dismissed and dismissed in breach of contract, i.e. he was owed notice pay and he also claimed arrears of pay. The claimant contended that he was suspended and dismissed for not having the right to work in the UK and not submitting an application for leave in the UK. By the hearing, the claimant did not pursue any alleged shortfall in wages.

2. The Response was received on 1 July 2019. The Grounds of Resistance is reasonably detailed. The respondent contended that the claimant was employed on the basis that he had a valid right to work in UK. This right was based on the claimant's family member having a Residence Card. It came to the respondent's intention that the claimant's Residence Card

expired on or around 7 March 2018. The respondent therefore completed an Employer Checking Service ("ECS") in respect of the claimant's right to work in the UK and on 11 June 2018 the ECS response confirmed that the claimant had the right to work in the UK at that time and that the result of the cheque would remain valid for 6 months, expiring on 10 December 2018. The respondent made a further ECS check in respect of the claimant's right to work and, on 12 February 2019, the ECS response confirmed that the claimant no longer had a right to work in the UK and stated that if the claimant had not submitted an application for leave [to remain] in the UK, then the respondent should not continue to employ the claimant as he had lost his right to work. The respondent contended that if it was found to have employed the claimant illegally, then the respondent could face prosecution with an unlimited fine and/or imprisonment.

3. The Grounds of Resistance said claimant was suspended on 15 February 2019 pending investigation and invited to a disciplinary hearing which went ahead on 25 February 2019. The respondent contended that the claimant was unable to provide evidence that he had the right to work in the UK and in light of the negative ECS response, it summarily dismissed the claimant for gross misconduct. The claimant appealed against the decision to dismiss him. An appeal hearing took place on 28 March 2019, which upheld the claimant's dismissal.

4. The respondent contended that it had a fair reason to dismiss the claimant, which was misconduct. The respondent contended that it followed a reasonable procedure and formed a genuine and sustainable belief in the claimant's misconduct. The respondent contended that, in the alternative, the claimant was dismissed due to illegality, i.e., the respondent was not legally permitted to continue the claimant's employment as the claimant did not have the right to continue to work in the UK. This argument was abandoned at the outset of the hearing. The Grounds of Resistance raised another alternative, the respondent contended that the claimant was dismissed for some other substantial reason; the respondent had a legitimate business reason for dismissing the claimant, namely that he was not legally permitted to continue work in the UK at the time of his dismissal. The respondent contends that it followed the ACAS Code of Practice in respect of the disciplinary dismissal.

The law

5. The claimant claims that he was unfairly dismissed, in contravention of section 94 Employment Rights Act 1996 ("ERA").

6. Section 98 ERA sets out how the Tribunal should approach the question of whether a dismissal is fair. First, the employer must show the reason for the dismissal and that this reason was one of the potentially fair reasons set out in s98(1) and s98(2) ERA. If the employer is successful at that first stage, the Tribunal must then determine whether the dismissal was fair under s98(4):

> Where the employer has fulfilled the requirements of subsection (1), the determination of the question of whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.

7. The s98(4) test can be broken down to two key questions:

   a. Did the employer utilise a fair procedure?

   b. Did the employer's decision to dismiss fall within the range of reasonable responses open to an employer of this size and type?

8. The respondent's primary argument is that it dismissed the claimant for a conduct-related reason, pursuant to s98(2)(b) ERA, although the claimant denies the misconduct in question. For misconduct dismissals, the employer needs to show:

   a. an honest belief that the employee was guilty of the offence or allegations;

   b. that there were reasonable grounds for holding that belief; and

   c. that these came from a reasonable investigation of the matter.

   These principles were laid down in *British Home Stores v Burchell [1980] ICR 303.* The principles were initially developed to deal with dismissals involving alleged dishonesty. However, the *Burchell principles* are so relevant that they have been extended to provide for all conduct-related dismissals. Conclusive proof of guilt or culpability is not necessary, what is necessary is an honest belief based upon a reasonable investigatory process.

9. S98(1)(b) ERA is a catch-all category covering dismissals for "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee he held". This applies a residual potentially fair reason for dismissal, which an employer can use if the reason for dismissal does not fall into any of the other specific categories in s98(2). The employer is required to show only that the substantial reason for dismissal was a potentially fair one. Once the reason has been established, it is then up to the Tribunal to decide whether the employer acted reasonably under s98(4) in dismissing for that reason.

10. Accordingly, the emphasis of the case at the hearing was whether the Tribunal could be satisfied that, in all the circumstances, the respondent was justified in dismissing the claimant for the reasons given, i.e. in relation to his purported misconduct or, more specifically, in relation to this purported inability to work legally in the UK.

11. ACAS has issued a Code of Practice under s199 Trade Union and Labour Relations (Consolidation) Act 1992. Although the Code of Practice is not legally binding in itself, Employment Tribunals will adhere closely to the relevant Code when determining whether any disciplinary or dismissal procedure was fair. The ACAS code of practice represents a common-sense approach to dealing with disciplinary matters and incorporates

principles of natural justice. In operating any disciplinary procedure or process, the employer will be required to:

- Deal with the issues promptly and consistently;
- Established the facts before taking action;
- Make sure the employee was informed clearly of the allegation;
- Allow the employee to be accompanied to any disciplinary interview or hearing and to state their case;
- Make sure that the disciplinary action is appropriate to the misconduct alleged;
- Provide the employee with an opportunity to appeal the decision.

12. In *West Midlands Cooperative Society Limited v Tipton [1986] ICR 192* the House of Lords determined that the appeals procedure was an integral part of deciding the question of a fair process. Indeed, a properly conducted appeal can properly reinstate an unfairly dismissed employee or remedy some procedural deficiencies in the original hearing.

13. In judging the reasonableness of the employer's decision to dismiss an Employment Tribunal must be careful to avoid substituting its decision as to what was the right course of action for the employer to adopt for that which the employer did, in fact, chose. Consequently, the question for the Tribunal to determine is whether the respondent's decision to dismiss the claimant fell within the band or range of reasonable responses open to a reasonable employer: see *Foley v Post Office; HSBC Bank plc v Madden 2000 ICR 1283*. The range of reasonable responses test applies not only to the decision to dismiss but also to the procedure by which that decision is reached: *J Sainsbury plc v Hitt 2003 ICR 111 CA* and *Whitbread plc (t/a Whitbread Medway Inns) v Hall 2001 ICR 669 CA.*

The evidence

14. I (i.e. the Employment Tribunal) heard evidence from the dismissing officer and the appeal officer on behalf of the respondent and from the claimant. Mr Sujathan Somadas, Store Manager, was the dismissing officer. He submitted a 44-paragraph, 9-page statement. Ms Roberta Bartaska, People Partner for Convenience Stores, was the appeal officer and her statement ran to 43 paragraphs and 9 pages. The claimant provided a witness statement which was understandably shorter, consisting of 24 paragraphs and 4 pages. All witnesses confirmed their statements and were asked questions by the representatives. I also ask questions to help clarify matters.

15. I also considered a hearing bundle consisting of 227 pages. At the outset of the hearing, I emphasised to the parties that, as a matter of course, I would not read all of the documents contained in a Hearing Bundle. I stated I would read documents referred to me by a representative or party or which had been cross-referenced in a witness statement. I said I may read additional documents that have not been referred to me and, if so, I would identify those documents; however, I emphasised that if a party thinks a document was relevant and important, then he or she should bring that document to my attention.

Findings of fact

16. I made the following findings of fact. I did not resolve all of the disputes between the claimant and the respondent, I merely concentrated on those disputes that would assist me in determining whether or not the claimant had been unfairly dismissed or dismissed in breach of contract. I have set out how I have arrived at such findings of fact where this is not obviously derived from the documents or where, I determine, this requires further explanation.

17. The claimant commenced work with the respondent on 14 May 2012.

18. On 2 January 2014 D Farrow, store manager, wrote to the claimant about his responsibilities regarding his permission to work in the UK. The letter stated:

> In February 2008, new legislation came into force requiring employers to check to documents of all employees who have limited leave to remain in the UK, at least once every twelve months.
>
> You have presented documents which indicate that your leave to remain/permission to work in the UK will expire on 07/03/18.
>
> It is your responsibility to ensure that your permission to stay and work does not expire; please make any applications for your permission to be extended, well in advance of the expiry date.
>
> So long as your extension or new application has been made before your current permission expires, your permission will automatically be extended, until such time as you hear back from the UK Border Agency.
>
> Once you have heard back from the UK Border Agency, you must inform us what the outcome is.
>
> If your leave to remain/permission to work in the UK expires, and you have not made an application to extend it before your expiry date, Tesco cannot allow you to continue to work. You will be suspended without pay until you are able to provide new permission to work or live in the UK. Prolonged inability to provide new permission documents will result in your dismissal from the company. The UK Border Agency is able to fine Tesco up to £10,000 if it finds your documentation is not up-to-date…

19. This letter was consistent with the Right to Work Policy, which Mr Lemer contended had been incorporated to the claimant's contract of employment as a Collective Partnership Agreement. Such contractual status was not disputed by the claimant. In any event, the claimant signed the 2 January 2014 letter on 4 January 2014 to confirm: "I accept and understand my responsibilities as outlined above".

20. The claimant's resident card expired on 7 March 2018.

21. The claimant applied for a further residence card and received a Certificate of Application on 22 March 2018. On 30 May 2018 the Home Office wrote to the claimant to refuse his application for a residence card under the Immigration (European Economic Area) Regulations 2016. The Home Office determined that the claimant had not provided adequate evidence to show that he still qualified for a right to reside in the UK as the family member of his EEA sponsor (who was also his wife).

22. On 11 June 2016 the ECS of UK Visa & Immigration provided a Positive Verification Notice to the respondent, which confirmed that the claimant had a right to work for 6 months, which expired on 10 December 2018. The notice said that the respondent should carry out a follow-up right to work check on the claimant before the notice expired.

23. On 12 February 2019 the respondent received the response to their follow-up ECS check. This determined that the claimant did not have the right to work in the UK. The reason given for the negative response was: "This person has not submitted an application for leave in the UK". The notice stated:

What this means	You should not employ this person, or continue to employ them, if they are an existing employee, as they do not have the right to work in the UK.
Ensure your compliance	If you are found employing this person illegally you could be prosecuted for knowingly employing an illegal worker, which means you may face an unlimited fine or imprisonment.

The notice also prominently emphasised the respondent's duty to prevent illegal working under sections 15 to 25 Immigration, Asylum and Nationality Act 2006.

24. The claimant was informed of the negative ECS check and suspended from work by his store manager, Mr Mustapha Oulare, on 15 February 2019. Mr Oulare suspended the claimant pending an outcome of an investigation into allegations of:

(1) not having the right to work in the UK; and
(2) not submitted an application for leave in the UK.

The letter stated that as the claimant did not have the correct right to work, his suspension would be unpaid. Unpaid suspension was consistent with the respondent's letter of 2 January 2014. The investigatory meeting proceeded on 19 February 2019. The investigation concluded that the claimant had an ECS check which had been returned with a Negative Verification Notice and that the claimant had not made a new application to the Home Office to remain in the UK.

25. The claimant's disciplinary hearing proceeded on 25 February 2019 before Mr Somadas. The hearing commenced at 3pm and concluded at 4.21pm. During the hearing Mr Somadas asked the claimant the following significant questions:

- whether or not he had made an application for leave to remain in the UK (since his last meeting or since the Negative Verification Notice);
- did he have any new evidence to show him;
- whether he had been in contact with the Home Office since 30 May 2018; and
- what communication had he had with the Home Office.

26. In his evidence, which I accept, Mr Somadas said that the claimant had had over 9 months to sort out his immigration and right to work status. He expressed surprise that the claimant was reluctant to take up this matter with the immigration authorities; he said the claimant told him he wanted to sort out his divorce first. Mr Somadas said that he took into account the claimant's good standing and length of service; however, the respondent was in a difficult position because the claimant could give no clear indication when, or if, he would get a positive ECS check again.

27. In his contemporaneous notes, Mr Somadas recorded under conclusion and rationale:

> Sekou has not made a new application since is first one was refused by home office and he was given time to provide evidence of his right to work in the UK and he has not been able to. Sekou has not applied for a new application since 30th of May and has been waiting for his divorce to settle before applying. Because Sekou has not been able to provide evidence to work in UK, I have no choice but to summary dismiss as of today. Sekau has been a great member of staff for us and is a great loss that we will be losing him.

28. By letter dated 25 February 2019, Mr Somadas confirmed that the claimant was summarily dismissed for gross misconduct, the reason being, not having the right to work in the UK. Mr Somadas confirmed that the claimant's last day of employment with the respondent was 25 February 2019 and that he would be paid up to that date.

29. The claimant appealed against his dismissal on 11 March 2019. The grounds of appeal stated that: (a) according to the Home Office's letter of 13 May 2018, the claimant was still considered a direct family member of his EEA wife so he was not required to apply for documentation to confirm his right to reside in the UK; (b) therefore his status has not changed and he still has the right to work in the UK; and (c) that this was consistent with Tesco's policy document "Guide to managing right to work in the UK".

30. The appeal hearing took place on 28 March 2019. The hearing lasted almost 2 hours. The claimant presented a precedent case which Ms Bartaska contended involved the right to reside and not the right work. Ms Bartaska stopped the hearing to take legal advice. The claimant's appeal was based on his contended right to work. His grounds of appeal did not address or take into account the ECS Negative Verification Notice of 12 February 2019 and the instruction and warnings contained therein. Ms Bartaska said, and I accept, that this document was central to her determination. She said that The ECS notice document clearly stated that the claimant did not have the right to work in the UK. The claimant's appeal suggested Ms Bartaska could go behind this document to assess whether or not he had an underlying right to work in the UK and she said she could not do that.

31. The claimant had raised an application for permanent residence with the Home Office through his immigration solicitors on 14 March 2019, which was 2½ weeks after his dismissal and 3 days after he appealed against his dismissal. Ms Bartaska was clear that if the claimant had applied earlier or if he had received a positive answer from the Home Office within the 4 weeks from his dismissal, then she would have reinstated the claimant. However, irrespective of the claimant's late Home Office application, she

said, the immigration authorities had determined that he still did not have the right to work in the UK, according to the February 2019 ECS notice.

32. Ms Bartaska confirmed that this matter was classified as "gross misconduct" because not to have the right to work is a one-off act so serious that, she contended, it could lead to dismissal. Ms Bartaska statement sets out the mitigation that she took into account and she said, which I accept, she was very sympathetic towards the claimant's predicament. However, the respondent had been specifically advised by UK Visa & Immigration that the claimant should no longer be employed, and the respondent was also warned of the financial and criminal consequences of disregarding such notice.

33. Ms Bartaska said that if the claimant was able to prove his right to work then she believed the claimant would be re-employed by the respondent because, she said, he was a "great" worker.

Determination

34. I explained at the outset of this hearing to the claimant, that the Employment Tribunal will not determine his immigration status and whether he had or has the right to work in the UK. The claimant's case was in respect of unfair dismissal and that entailed a thorough examination of the respondent's dismissal process and the decision-making of its officials.

35. It is for the respondent to show the reason for dismissal. Mr Lemer contended at the outset that the reason for dismissal was one which relates either to the claimant's conduct, pursuant to s98(2)(b) ERA, or for some other substantial reason of a kind such as to justify the claimant's dismissal, under s98(2)(1)(b). The respondent did not contend that they could demonstrate that the claimant had actually contravened a statutory enactment so as to justify the dismissal under s98(2)(d) as a genuine belief in such a contravention was not enough, according to *Bouchaala v Trust House Forte Hotels Limited [1980] ICR 721*. At no stage did the respondent say that, as a matter of law, the claimant did not have the right to work in the UK; instead, the respondent said that at all relevant times, *it did not believe the claimant had the right to work in the UK and that such a belief was reasonable*.

36. I quizzed Mr Lemer at the outset of this hearing on the applicability of misconduct to matter that engaged whether or not the claimant had a right to work. The respondent's case was that it was the claimant's obligation to ensure that he had a valid right to work in the UK. The disciplinary procedure afforded the appropriate mechanism to address whether or not the claimant could show he had such a right and by utilising the disciplinary procedure the respondent could address this through a substantially fair process. I am aware that whilst the ACAS Code of Practice applies to disciplinary dismissals: it does not apply to all some other substantial reason dismissals. I am aware that both Mr Somadas and Ms Bartaska said during the hearing that the claimant was an excellent worker, and that this is echoed in the documents.

37. The respondent wrote to the claimant on 2 January 2014 setting out his

responsibility regarding his permission to work in the UK. The claimant accepted these requirements and signified his understanding of this when he signed and returned this letter to the respondent.

38. The claimant contended that his right to work in the UK arose from his marriage to an EEA national and that the Home Office letter of 30 May 2018 acknowledged this. The letter contained a reference to the legal position, which said that direct family members of an EEA notional exercising Treaty rights are not required to apply for documentation to confirm the right to reside in the UK. However, this part of the Home Office letter is a statement of the legal position; it does not, in itself, convey a right to work. The claimant's right to work was conveyed in the ECS Positive Verification Notice, the latest one being dated 11 June 2018, which was valid for 6 months. It was the ECS returns that the respondent relied upon, and not any application to or correspondence from the Home Office.

39. On or shortly after 12 February 2019 UK Visa & Immigration provided a ECS Negative Verification Notice. This notice stated very clearly that: "This person does not have the right to work in the UK". It is this notification that the respondent's officers reacted to and not the Home Office's earlier determination of 30 May 2018.

40. The respondent's policy on the Right to Work in the UK is written in very clear English, under the section stated, "What will happen if my right to work has ended", it stated:

> We can no longer legally employee you if you're right to work has ended, and we will bring your employment to an end unless you can provide evidence that you have applied for new permission to work in the UK with the Home Office, before the date your current permission to work document expires.
>
> Before we take the step, we'll invite you to a meeting with us so we can understand your immigration status.

41. This is what happened so the respondent acted in accordance with their policy. The respondent's approach was consistent with both the right to work policy and its letter dated 2 January 2014.

42. The respondent's officials undertook a separate investigation, hearing, and appeal. The claimant was advised of his right of representation and the disciplinary allegations. At every stage the investigation officer, disciplinary officer and appeal officer set out their concerns and provided the claimant with copies of the evidence or information upon which they relied and invited either evidence or representation from the claimant before making their decision. The claimant made no allegation that his dismissal was "procedurally" unfair, and I could not see any deficiencies in the process adopted from my examination of events. The dismissal hearing and appeal hearing were not cursory affairs, the length of time of each hearing was appropriate and from reading the notes both Mr Somadas and Ms Bartaska were open-minded and fully engaged. So, in utilising the disciplinary procedure, the respondent followed a substantially fair procedure or process in dismissing the claimant. The dismissal process followed was consistent with the respondent's letter of 2 January 2014 and the respondent's right to work policy.

43. Both the respondent's letter of 2 January 2014 and the right to work policy make it clear that it was the claimant's responsibility to establish that he had the right to work in the UK. The claimant never contended that the ECS was not valid, instead he contended that he did, in fact, have a right to work in the UK. His marriage to an EEA sponsor was a precursor or precondition to the claimant having the right to a residence card and therefore the right to work in the UK. It seems that the claimant never engaged with the crucial point with regard to the immigration and right to work issue; his right to work did not revolve solely around his marital status as his spouse/sponsor still needed to both reside in the UK and to exercise her Treaty rights. And the claimant needed to demonstrate this to the immigration authorities. Accordingly, the claimant had not satisfied the Home Office that he was entitled to a residence card, pursuant to the Immigration (European Economic Area) Regulations 2016 (as amended).

44. Following Mr Lemer's representations, my analysis of the claimant's immigration situation is as follows:

    a. If the claimant was, at the material time, the spouse of an EEA national exercising her Treaty rights, he would be entitled to live and work in the UK, and this included working for the respondent.

    b. So far as the Home Office was concerned, the claimant needed to demonstrate that he was still the spouse of his EEA national sponsor, but also that she was still in the UK exercising her Treaty rights (by working, seeking work or being self-employed).

    c. The purpose of obtaining a residence card was to prove that, as at the date the card was granted, the claimant had met all of the requirements of the Immigration (European Economic Area) Regulations 2016.

    d. Whilst the Home Office accepted that the claimant continued to be the spouse of an EEA national (that was the reason for the refusal of his application for a residence card on the basis of his having retained a right of residence) he had not provided any evidence that his spouse continued to exercise her Treaty rights.

    e. It follows that whilst the claimant's wife *may have been* exercising Treaty rights, such that the claimant would then continue to have the right to reside, and more germane for our purposes the right to work, there was no evidence of that fact available, so the Home Office did not accept the claimant qualified for a residence card. Of particular significance, the claimant did not demonstrate to the respondent, or indeed, to the Employment Tribunal now that his wife (or latterly ex-wife) was exercising her Treaty rights at any material point.

    f. However, the crucial and overarching determinant of whether or not the claimant was permitted to work in the UK was the UK Visa & Immigration return notice of 12 February 2019 and this clearly stated that the claimant did not have the right to work in the UK.

g. The civil penalty regime under the Immigration, Asylum and Nationality Act 2006 provides protection for an employer, even if it transpired that the employee had no entitlement to work, where an employee provides a prescribed document. In the claimant's case this would be a valid residence card or a certificate of application proving the submission of an application together with a positive verification notice. In this case, the claimant's valid residence card had expired and the alternative option with the second tranche of documents covered an initial 6-month extension of the claimant's right to work following the expiry of his Residents Card on 7 March 2018. No further such documents were provided by the claimant. In respect of the claimant's immigration application of 14 March 2019, even if this was submitted before his dismissal, it is clear that providing a covering letter from the claimant's solicitor referring to the submission of an application would not suffice since it would not afford the respondent's protection under the statutory excuse criteria and it would not, in any event, demonstrate that the claimant had a right to work in the UK.

45. The Negative Verification Notice of the ECS was the game-changer. Both the dismissing officer and the appeal officer based their decisions on this ECS return. Both were mindful of the penalty provisions for employing someone illegally, as set out clearly in the Negative Verification Notice of 12 February 2019. They said they were aware and concerned in respect of the possible fine, personal liability and the reputational damage for the respondent.

46. Following the Home Office letter of 30 May 2018, the claimant had over 9 months to establish his right to work in the UK yet he steadfastly failed to attempt to regularise his right to work until he was dismissed. By the appeal hearing, the claimant had made another immigration application. He could have done this earlier, when he was still employed by the respondent. Indeed, both Mr Oulare and Mr Somadas queried with him why he had not done so. The only reason the claimant gave for not doing so was that he wanted to sort out his divorce first. Yet it was his dismissal that gave rise to this further immigration application and not his divorce. I accept Ms Bartaska's contention that this was not enough to justify reinstatement, because it came too late and there was no clarity about when (or even if) the claimant's right to work would be restored.

47. There is no doubt that the respondent's officers had a genuine belief that the claimant did not have the right to work in the UK because that is clearly set out in the Negative Verification Notice of 12 February 2019. Mr Oulare undertook a proper and fair investigation into the claimant's immigration position and both Mr Somadas and Ms Bartaska drew fair and reasonable conclusions regarding the claimant's right to work in the UK. In particular, there was no suggestion that Mr Somadas and Ms Bartaska did not follow the respondent's internal policies as regards to the disciplinary and appeal processes. The claimant failed to provide evidence to demonstrate he had a continued right to work in the UK.

48. Drawing the above threads together, I determine that the respondent's dismissal of the claimant – either for a conduct-related reason or for some

other substantial reason – was because both Mr Somadas and Ms Bartaska did not believe the claimant had the right to work in the UK and that such a belief was within the range of reasonable responses.

49. In respect of the claimant's contract claim and for completeness, because of his immigration status, the claimant did not have the right to work in the UK. This meant he was unavailable for work which was a fundamental breach of contract that entitled the respondent to summarily dismiss him.

Employment Judge Tobin
Date: 13 October 2020