



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

MS ANITA HOWARTH

AND

Respondent

GENESIS CANCER CARE UK
LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT:
SOUTHAMPTON (VIA
CVP CLOUD VIDEO
PLATFORM)

ON: 3RD / 4TH / 5TH / 6TH NOVEMBER 2020

EMPLOYMENT JUDGE MR P CADNEY

MEMBERS: MS C DATE
MS C LLOYD JENNINGS

APPEARANCES:-

FOR THE CLAIMANT:- MR J MCMAHON

FOR THE RESPONDENT:- MR J COOK (COUNSEL)

JUDGMENT

The unanimous judgment of the tribunal is that:-

The claimants claims as set out below are not well founded and are dismissed:

- i) Suffering detriment by reason of having made a public interest disclosure.
- ii) Unfair Dismissal.
- iii) Breach of contract/Wrongful dismissal.

Reasons

1. By this claim the claimant brings claims of unfair dismissal, breach of contract (in the failure to pay notice pay) and public interest disclosure (whistleblowing) detriment. With the consent of the parties the case was heard via Kinley CVP (cloud video platform) which has allowed the case to be heard earlier than it might otherwise be and for which the tribunal thanks both parties. The tribunal has heard evidence from the claimant (Therapeutic Radiographer); and on behalf of the respondent from Ms Hayley Beaumont (Operations Director) who heard the disciplinary process, Mr Paul Gearing (European General Manager for Service Development) who heard the appeal, and Ms Kate Atkinson (Centre Leader) who is alleged to be responsible for the whistleblowing detriment.
2. The issues in the case were set out in a case management order of EJ Midgely of 17th June 2019:-

Unfair dismissal

17.1. What was the reason for dismissal? The Respondent asserts that it was a reason related to conduct, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.

17.2. Did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances? The burden of proof is neutral here but it helps to know the Claimant's challenges to the fairness of the dismissal in advance and they are identified as follows:

17.2.1. Miss Foreshaw was not properly questioned in relation to her conflicting accounts of the incident and, in particular, her descriptions of the assault she alleged had occurred;

17.2.2. the respondent failed to give due consideration to whether a statement made by another member of staff, Heather Mercer, was dishonest, and (if it were dishonest) as to the reason for her dishonesty;

17.2.3. Miss Foreshaw was not thoroughly questioned as to the reason for the changes in her accounts of the sequence of events on the day of the incident;

17.2.4. Miss Foreshaw was not questioned in any depth as to the reason for seeking to apply pressure to her direct report, Claire Cartridge, to alter her evidence to inculcate the claimant.

17.3. Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?

17.4. Did the Respondent adopt a fair procedure? The Claimant challenges the fairness of the procedure in the following respects:

17.4.1. The respondent was biased in its approach to its fact find of the evidence in relation to the allegation to the disadvantage of the claimant and to the advantage of Miss Foreshaw;

17.4.2. The respondent failed to give any or any appropriate weight to the consistency of the claimant accounts as to the manner in which she had been assaulted by Miss Foreshaw; and

17.4.3. The basis of Miss Beaumont's decision to dismiss was stated be that she did not believe that Miss Foreshaw had struck the claimant and, for that reason had concluded that Miss Foreshaw was telling the truth. That was an insufficiently strong ground for dismissal and the respondent acted unreasonably in deciding to summarily dismiss upon that finding.

17.5.If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

17.6.If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged.

Public interest disclosure claim/s

18.1. What did the Claimant say or write?

18.1.1. Did the claimant email Mr Jackson, Head of Operations, in January 2018 making a complaint that Miss Atkinson bullied staff, and raising concerns about the manner in which she observed clinical protocols?

18.2.In any or all of these, was information disclosed which in the Claimant's reasonable belief tended to show that:

18.2.1. Miss Atkinson had failed to comply with a legal obligation to observe clinical protocols to which she was subject in her capacity as Centre Leader

18.2.2. The health or safety of any individual patients had been or would be likely to be put at risk because of the failure to observe clinical protocols and/or that the health and safety of staff would be put at risk because of the bullying by Ms Atkinson, which in turn would place the patients' health and safety at risk.

18.3. If so, did the Claimant reasonably believe that the disclosure was made in the public interest? The Claimant relies on the following as going to show the reasonable belief:

Detriment complaints

18.4. If protected disclosures are proved, was the Claimant, on the ground of any protected disclosure found, subject to detriment by the employer or another worker in that Miss Atkinson sought to procure the dismissal of the claimant by

18.4.1. procuring her suspension,

18.4.2. seeking to interfere with witness evidence, through her involvement in the gathering and handling of evidence during the disciplinary investigation

18.4.3. through her involvement and influence over Miss Beaumont's decision to dismiss.

18.5 .If the act of detriment was done by another worker,

18.5.1. can the respondent show that it took all reasonable steps to prevent that other worker from doing that thing or acts of that description; or

18.5.2. can that worker show that s/he had relied on a statement by the employer that the doing of the act did not contravene the Act, and that it was reasonable to rely on that statement

Breach of contract

19.1. It is not in dispute that that Respondent dismissed the Claimant without notice.

19.2. Does the Respondent prove that it was entitled to dismiss the Claimant without notice because the Claimant had committed gross misconduct in that she assaulted Miss Foreshaw on 11 June 2018? NB This requires the Respondent to prove, on the balance of probabilities, that the Claimant actually committed the gross misconduct.

19.3. To how much notice was the Claimant entitled?

Facts

3. The respondent is a private healthcare provider, specialising in treating people who have been diagnosed with cancer. The claimant was employed by the respondent as a Senior Therapy Radiographer (having been a therapeutic radiographer for some twenty-seven years) at its treatment centre in Portsmouth from 12 October 2009 until her dismissal for gross misconduct on 18 July 2018.
4. In November 2017 Ms Atkinson was appointed as the Centre Leader. The claimant alleges that after her appointment Ms Atkinson's "behaviour changed the work environment (which) became toxic". In November 2017 the claimant began to keep a log of events in which she or colleagues had complaints. On 15th January 2018 she sent a copy of this document to Mr Stephen Jackson (Deputy Director of Operations). This is the document which she asserts contains public interest disclosures. In the main the complaints concern personal interactions or Ms Atkinson's management

style. However, one entry (21st December 2017) concerns a proposal apparently made by Ms Atkinson that pre-treatment scanning should be undertaken by the respondent's staff and not the staff at Spire Hospitals as she did not think that the Spire staff were competent. The claimant disagreed and contended that Ms Atkinson's proposal for the scans to be conducted by one therapeutic radiographer was unsafe, a proposition with which Ms Atkinson apparently disagreed.

5. Ms Atkinson asserts that she never saw the e-mail or the document attached to it. However, she does not dispute that she had a meeting with Ms Beaumont and Mr Jackson in late January 2018 at which the issues were discussed. Thus, there is no dispute that Ms Atkinson was aware that the claimant had complained about her and of the subject matter of the complaints.
6. Very shortly thereafter Ms Atkinson and the claimant had a Goals Review meeting, recorded in a Goals Review form dated 4th February 2018. It is not in dispute that in that form Ms Atkinson is complementary of the claimant and no criticisms are recorded. However on 10th April 2018 Ms Atkinson sent an email to Ms Beaumont in which she expresses the view that the claimant had been proposed for ESTRO and brand champion but that she did not agree as "*Anita is not fully engaged in GC; I do not think she would be a good ambassador*".
7. On 4th May 2018 the claimant and Ms Atkinson had a conversation about Ms Foreshaw, whom Ms Atkinson intended to appoint as Acting Deputy Centre Leader. The claimant does not dispute that she was unhappy about this and expressed her view to Ms Atkinson that Ms Foreshaw was unsuitable for the role in robust terms. Despite the claimant's concerns on 7th May 2018 Ms Atkinson emailed the Portsmouth team to say that Ms Foreshaw had been appointed as Acting Deputy Centre Leader pending interviews for the permanent role. There were three candidates for the permanent role, the claimant, Ms Foreshaw and an external candidate. On Friday 8th June Ms Atkinson told the claimant that Ms Foreshaw had been successful and would be appointed permanently to the role.
8. The events which led to the claimant's dismissal occurred on Monday 11th June 2018. The claimant subsequently set out her account in writing prior to an investigation hearing held on 20th June 2018. In outline she contends that:-
 - i) She arrived at about 8.20/25 and saw that Kat Foreshaw (KF) and Claire Gutteridge (CG) were present both with cups of coffee. She assumed that KF had made coffee for CG and made a comment to KF "Nice of you not to make me one too." and complained about a previous incident in which KF had not made her a coffee.
 - ii) KF accused her of being angry that she had not got the job; to which the claimant replied that KF was not right to be the head radiographer (in evidence before the tribunal the claimant accepted that she had called KF a "crap radiographer") and that she didn't know how to advise prostate patients as to diet. At that point KF slapped her hard on the left side of her neck and took her phone out to begin recording. The claimant tried to take the phone from her, but denies touching her,

with the result that the phone cover came off. She (KF) began to speak into the phone accusing the claimant of having hit her and broken her phone (which the claimant denies).

- iii) KF left the control area where this altercation took place, and the claimant followed her into the reception area and then into an office, which she left at KFs request. At some point whilst in the office the claimant began to record the incident on her own phone.
9. Although there are a number of factual disputes the central one is whether the claimant was physically aggressive to Ms Foreshaw, or whether Ms Foreshaw slapped the claimant on the neck, which she denied.
10. It is not in dispute that following the altercation Ms Foreshaw sought out Martin Robb (Senior Dosimetrist). He describes her as being visibly upset, bursting into tears and crying on his shoulder. She was sobbing uncontrollably and was largely incoherent. Whilst with Mr Robb Ms Foreshaw phoned Ms Atkinson who was at another site in Guildford. Ms Atkinson phoned Ms Beaumont who arranged for Ms Jan Kelleher of HR to attend the site and Ms Atkinson also went there. By the time Ms Atkinson arrived the police had attended having been called by Ms Foreshaw.
11. Both Ms Foreshaw and the claimant were subsequently interviewed by the police and the claimant initially accepted a Community Resolution Order (which was subsequently rescinded).
12. It was agreed by Ms Atkinson, Ms Beaumont and Ms Keleher that the claimant should be suspended, which she was following a brief meeting. The sequence of events as set out in Ms Kelleher's notes in relation to the 11th June are that when she arrived at the Centre she spoke to Ms Foreshaw and Martin Robb, Lisa Gillham and Heather Mercer. She held a meeting with the claimant at which she informed the claimant that she was being suspended, which necessarily indicates that that decision had already been made, and asked the claimant to put her account in writing.
13. It is convenient at this stage to deal with the question of the suspension of Ms Foreshaw as the difference in treatment is one the central points relied on evidentially by the claimant. As set out above Ms Kelleher asked the claimant to put her version of events in writing, which the claimant did on 20th June 2018 prior to her investigation meeting. In that account and at the investigation meeting itself it the claimant accuses Ms Foreshaw of striking her. Ms Foreshaw was subsequently suspended as a result. The claimant points to the fact that in her meeting with Ms Kelleher on 11th June she is recorded as saying that Ms Foreshaw had hit her. She invites us to conclude that as a result the respondent was aware of the allegation from the day itself and not some nine days later, which begs the question of why they were not both suspended at the same time.
14. The respondent asserts points to the fact that despite that one reference in the meeting with Ms Kelleher that the situations of the two were entirely different on 11th

June. Ms Foreshaw had reported the incident and complained to management, whereas the claimant had not, Ms Foreshaw was visibly and at points uncontrollably upset whereas all the contemporary accounts reveal the claimant to be entirely calm throughout, and that it was Ms Foreshaw who called the police. The reality of the situation as it presented itself to the respondent on the day is that there was no comparison between the two. The respondent points to the fact that Ms Foreshaw was subsequently suspended when the seriousness of the allegation became clear as evidence of the fact that they were both treated equally albeit at different points in time.

15. In our judgement it is clear that there very significant differences between the two cases not the least of which is that Ms Foreshaw made a complaint to the management which the claimant had not which explains the difference in treatment. In our judgement it is not possible to draw any inference from the absence of the suspension of Ms Foreshaw on 11th June.
16. Ms Kelleher was appointed to investigate. She received witness statements from seven people and interviewed three; the claimant, Ms Foreshaw and Claire Gutteridge who had witnessed the start of the altercation. Her conclusions as set out in the investigation report were that an incident had occurred between the claimant and Ms Foreshaw; that the claimant had started the argument; that the exact extent of any physical contact between the two could not be established; that the claimant had lengthened the incident by following Ms Foreshaw into the reception area, and by failing to walk away; that Ms Foreshaw could clearly be heard asking the claimant to leave the office but the claimant cannot be heard talking loudly or swearing; and that both had behaved unprofessionally.
17. Following the investigation, by a letter dated 4th July the claimant was invited to a disciplinary meeting to face three charges;- that she was verbally aggressive to Ms Foreshaw, that she physically assaulted her, and that she perpetuated a confrontation with her.
18. The disciplinary hearing was conducted by Hayley Beaumont on 9th July 2018. Ms Foreshaw was also the subject of disciplinary proceedings arising from the claimant's counter allegations, which, as they involved the same incident were also heard by Ms Beaumont. Both disciplinary meetings were held on the same day, that of Ms Foreshaw shortly after the meeting with the claimant.
19. Ms Beaumont concluded, which was obviously correct, that there were no witnesses to the most serious allegation, whether Ms Foreshaw had assaulted the claimant, or the claimant assaulted Ms Foreshaw. Having conducted both disciplinary meetings Ms Beaumont decided that she accepted the Ms Foreshaw's account and not that of the claimant. The reasons for that were set out in significant detail in an eight page letter dated 23rd July 2018. In summary she concluded that the claimant had physically assaulted KF; that she was verbally aggressive to KF; that she had prolonged the confrontation entirely needlessly; and that she had lied about being assaulted by KF with a view to securing KFs dismissal. She concluded that all of

these amounted to gross misconduct and that the claimant should be summarily dismissed.

20. The full reasoning of Ms Beaumont as set out in the letter is a detailed forensic examination of the evidence. It is not necessary for us to set it out in detail but we find that all of the conclusions drawn by Ms Beaumont were rationally open to her for the reasons she sets out in the letter. Not all of the conclusions are in Ms Foreshaw's favour or contrary to the claimant. By way of example Ms Beaumont accepted the claimant's contention that Heather Mercer's statement was biased against her and she discounted it for that reason; and concluded that it was unacceptable for Ms Foreshaw and Ms Gutteridge to have spoken about the incident.
21. As is set out above both on appeal and before this tribunal the claimant complains that Ms Foreshaw was not properly questioned about changes in her account, specifically in relation to the nature of the alleged assault by the claimant; and that she was not sufficiently questioned and insufficient weight was placed on her alleged attempt to interfere in the evidence given by Ms Gutteridge.
22. The first two points in relation to inconsistency in Ms Foreshaw's accounts are dealt with in detail at paragraphs 14(b) and (c) of the outcome letter. She concludes that Ms Foreshaw's account is broadly internally consistent and consistent with the audio recordings, and that she placed little significance on the same event being described as "pushed" "grabbed" or "hit". It follows firstly that the points made by the claimant were explicitly addressed by Ms Beaumont; and that in essence the claimant's complaint is that Ms Beaumont did not accept her version of events or her criticisms of Ms Foreshaw's account.
23. Similarly, at paragraph 14 (g) Ms Beaumont addresses the point as to Ms Foreshaw and Ms Gutteridge discussing the incident. In addition however she notes that Ms Gutteridge's account if anything favours the claimant and at paragraph 3 (c) and (d) that it is in fact the claimant who is seeking to rely on the evidence of Ms Gutteridge which is demonstrably incorrect. Again, Ms Beaumont has specifically addressed the points raised by the claimant.
24. We have set these examples out in some detail as they are both points made to Ms Beaumont in cross examination and as recorded in the case management hearing are specific points raised before us. As is set out below, we bear in mind that it is not for us to decide whether we would have reached the same conclusions as Ms Beaumont but whether conclusions were reasonably and rationally open to her on the evidence. In our judgment they clearly were; and they are in fact examples of the very significant care and thoroughness with which Ms Beaumont approached her decision making and conclusions.
25. The claimant appealed and the appeal was heard by Mr Paul Gearing. He had not worked with the claimant directly and had never met Ms Foreshaw. The grounds of appeal were that the decision to dismiss was unfair; the conclusions were not supported by the evidence; the allegations did not amount to gross misconduct; the

investigation was biased; the decision was influenced by others and lacked independence; it was or may have been influenced by Ms Atkinson. The appeal was a review not a rehearing, Mr Gearing's task being to assess whether in summary that the process was thorough and fair, that the conclusions were reasonable on the evidence, and whether dismissal was a reasonable sanction.

26. At the appeal the claimant accepted that the allegations if true amounted to gross misconduct and so the appeal devolved to one question, whether Ms Beaumont could reasonably have concluded that she was guilty of that conduct. In essence Mr Gearing concluded that Ms Beaumont's conclusions as to both the misconduct allegations themselves and the sanction were reasonable and dismissed the appeal.

Conclusions

Public Interest Disclosure (Whistleblowing)

27. It is sensible to start with the protected disclosures as they are the first in time. It is not in dispute that the claimant was an employee of the respondent and therefore capable of attracting the protection of the Act. In each case it is alleged that the disclosure fell within s 43B(1)(d), that is that the disclosure is that a breach of health and safety has occurred, or is occurring, or is likely to occur. The primary disputes are whether the claimant had a genuine and/or reasonable belief in each case that a breach of health and safety had occurred or was likely occur and/or had a genuine and/or reasonable belief that the disclosure was in the public interest. In any event irrespective of the conclusions as to the disclosures the respondents contend that none of them either individually or in aggregate played any part in the decision to dismiss the claimant.
28. As set out above most of the disclosures relate to personal interactions between the claimant and Ms Atkinson, or Ms Atkinson's management style. The claimant categorises this as bullying and asserts that if staff are being bullied this may affect their performance which may in turn impact patient safety. Whilst this may be true, we are not convinced that purpose of any such disclosure in fact related to patient safety or that the claimant had any reasonable belief in any public interest in them. However, in our judgement at least the disclosure referred to at paragraph 4 above in relation pre-treatment scanning is capable of being a qualifying disclosure. It is a disclosure of information, and it concerns the health and safety of patients in the form of the duty of care owed by the respondent to its patients. In addition, while there may have been a professional dispute between the claimant and Ms Atkinson about this, in our judgement we are satisfied that the claimant reasonably believed that the disclosure was in the public interest as it directly concerned patient safety. Thus, in our judgement at least one of the disclosures contained in the document was a protected disclosure.
29. The central question is therefore whether any of the detriments are causally linked to the disclosure. The respondent's primary submission is that the six month time delay

between the disclosure and the alleged detriment makes any causal link inherently improbable.

30. In respect of the first alleged detriment (suspension) the respondent submits that although Ms Atkinson was involved in the decision so were Ms Beaumont and Ms Kelleher, and that it was in any event inevitable given the seriousness of the allegation made against her. Looked at exclusively in its own right the decision to suspend the claimant does appear to be inevitable. However, the claimant submits that we should draw the inference as to the reason being the earlier protected disclosure on the basis that Ms Foreshaw was not suspended. For the reasons given above we do not find that there is any basis for drawing such an inference from the failure to suspend Ms Forshaw on 11th June 2018. Equally, in our judgment if drawing an inference from the failure to suspend Ms Foreshaw is not possible, there is no other evidence from which we could draw such an inference, and certainly no direct evidence from which we could reasonably infer that the complaint some six months earlier played any part in the decision. In our judgement there is simply no evidence that a disclosure made some six months earlier played any part in the decision making on the day in respect of what were on any analysis very unusual events.
31. The second alleged detriment is that Ms Atkinson sought to interfere in the witness evidence. There is again no evidence that Ms Atkinson did seek to interfere in witness evidence. In fact, in evidence and in her submissions the claimant's case was not that she had interfered but that she had failed to intervene in respect of the interaction between Ms Foreshaw and Ms Gutteridge set out above. As there is simply no evidence this occurred we are bound to reject this allegation.
32. In terms of the third alleged detriment (influencing the decision to dismiss) both Ms Atkinson and Ms Beaumont deny that she played any part, and there is no evidence to the contrary. Indeed, Mr McMahon accepts that he is asking us to infer that it must have taken place. Unfortunately for the claimant whilst we can draw inferences from primary findings of fact, we cannot infer the primary findings of fact themselves and there is in reality no evidence to support this allegation.

Unfair Dismissal

33. As the claimant was purportedly dismissed for misconduct there are four questions the tribunal must answer. The first, in respect of which the burden of proof is on the respondent, is whether a belief in the misconduct was the genuine reason for dismissal; misconduct being a potentially fair reason for dismissal (S98(2) Employment Rights Act 1996). If we are satisfied that it was, we must then answer the Burchell questions. Was there a reasonable investigation, were reasonable conclusions as to the misconduct drawn from that investigation and was dismissal a reasonable sanction. In judging reasonableness in respect of each of those questions it is not for us to determine how we would have investigated, what conclusions we would have drawn, or what sanction we would have imposed but to ask the range of reasonable responses question; in respect of each did the respondent fall within or outside the range open to a reasonable employer.

34. Having heard from Ms Beaumont and Mr Gearing we accept their evidence and are entirely satisfied that a belief in the misconduct was the genuine reason for dismissal, and the dismissal of the appeal.
35. Before dealing specifically with Burchell questions we will set out our conclusions as to the primary challenges made by the claimant to the fairness of the dismissal.
36. Firstly, she contends that she was the victim of a conspiracy. In the course of the hearing she contended that this included Ms Atkinson, Ms Beaumont and Mr Gearing. She accepted that Ms Kelleher was not involved. With the exception of Ms Atkinson who she asserts was biased against her because of the whistleblowing disclosures no basis for supposing that Ms Beaumont or Mr Gearing bore her any ill will or was part of any conspiracy has been advanced. In essence she invites us to reverse engineer the issue and to conclude firstly that she was not guilty of the allegations made against her, and that no reasonable person could have concluded that she was. If Ms Beaumont and Mr Gearing could not reasonably have drawn those conclusions they did it follows that there must be some other explanation for them, the most likely of which is that they conspired against her.
37. There are two central problems with this assertion. Firstly, there is no evidence in support of it; and secondly for the reasons given above, in our judgement the conclusions of Ms Beaumont and Mr Gearing were entirely rational and reasonable. Given that there is no actual evidence of any conspiracy we are unable to see any factual basis for upholding this allegation.
38. The claimant secondly alleges that even if there was no conspiracy that the issue was prejudged in that an assumption had been made on the day that she was the guilty party, not least because a Community Resolution Order had been issued, as is reflected in the fact that she was suspended immediately whereas Ms Foreshaw was not suspended until 2nd July. Ms Atkinson and Ms Beaumont were both part of the management team that had dealt with the issue on the day. Even if not pre-judged, the disciplinary decision should not have been made by Ms Beaumont for a number of reasons. Firstly, Ms Beaumont had been involved in the events of 11th June 2018 and did not therefore come to the disciplinary process with completely fresh eyes. Secondly, she was aware on the day that the claimant had accepted a Community Resolution Order which involved her acceptance that she had assaulted Ms Foreshaw. Whilst this was subsequently rescinded it remains the case that on the day of the incident itself Ms Beaumont was aware that she had apparently made this admission. As events on the day apparently supported Ms Foreshaw's account Ms Beaumont could not subsequently remain neutral in judging the different accounts and must have held a bias against the claimant.
39. In our judgement it is a fair point that Ms Beaumont was significantly involved in the events of the 11th June 2019 and it follows that it is right to subject her reasoning to significant scrutiny to assess whether there was an element of pre-judgement. For the reasons set out below we accept that there was not, but the claimant's concerns were not wholly unreasonable, and we certainly think that it would have been preferable for someone wholly uninvolved in the initial incident to have conducted the

- disciplinary hearing. However, we are well aware that it is commonplace for managers who have had this level of involvement in an incident, who for example took a decision to suspend, to be the disciplinary officer and in our judgment it is not sufficient in and of itself to render the dismissal unfair.
40. Secondly, she alleges that Ellie Harrison should not have been involved at the disciplinary or appeal stage. This is based on a passage in the disciplinary policy: “The manager carrying out the investigation will not chair or be involved as a member of any subsequent disciplinary meeting”. As set out above the manager who carried out the investigation was Ms Kelleher, and the respondent contends that she did not have any further involvement. Ms Harrison’s role was simply to provide HR support and she was at no stage involved in the investigation or in any decision making role. In essence they submit that the claimant has simply misunderstood this part of the policy. This in our judgement is correct.
41. To return to the Burchell questions in our judgement there can be no criticism of the investigation itself and the claimant does not make any; and does not accuse Ms Kelleher of being part of any conspiracy. On any analysis the investigation fell within the range reasonable open to the respondent.
42. The final question is whether dismissal was a reasonable sanction. The claimant accepts that if she was guilty, as Ms Beaumont found, of striking Ms Foreshaw and inventing allegations against her that that would constitute gross misconduct. In our judgement that is obviously correct, and it is equally obvious that for misconduct of such gravity dismissal fell within the range of reasonable sanctions.
43. That leaves the central question in this case; whether Ms Beaumont could reasonably have formed the conclusions she did as to the misconduct on the information available to her. As set out above we accept the claimant’s contention that it might have been preferable if someone not involved in the original incident had carried out the disciplinary process. However, that does not in and of itself render the dismissal unfair. The central difficulty for the claimant is that Ms Beaumont’s conclusions are detailed, thorough fair minded and wholly rational. There is not a hint of pre-judgement but a wholly rational and forensically detailed analysis of the evidence. She sets out her conclusions in the clearest terms and explains the evidential basis for them, and addresses the claimants contentions (as we have set out above). In our judgement Ms Beaumont’s conclusions clearly fall within the range reasonably open to her.
44. It follows that having answered all four questions in the respondent’s favour the claim for unfair dismissal must be dismissed.

Breach of Contract/ Notice Pay

45. As set out above the in determining whether the dismissal was unfair we have to judge the question against the range of reasonable responses test. In respect of a

wrongful dismissal claim we have to determine for ourselves whether the claimant committed a fundamental breach of contract entitling the respondent to dismiss her without notice or pay in lieu of notice. As to the primary dispute, whether it was the claimant who physically assaulted Ms Foreshaw or the other way round we only have the claimant's evidence before us and it follows that there is no evidential basis for a finding of fact that she did so. It equally follows that we cannot find, as Ms Beaumont did that the claimant has made a false allegation against Ms Foreshaw.

46. However, there are aspects of the claimant's conduct about which we can make findings. Based on the claimant's own account she adopted a highly confrontational attitude when she attended at work on Monday 11th June. She was abusive to Ms Foreshaw, calling her a "crap radiographer" on the first working day after she discovered that Ms Foreshaw had been permanently appointed, and pursued her after the initial confrontation into Ms Foreshaw's office. She accepts that she physically touched Ms Foreshaw's phone knocking the cover off, and the overwhelming contemporary evidence is that her conduct left Ms Foreshaw in very significant distress. In our judgement even on her own account the claimant was clearly primarily responsible for starting and prolonging the confrontation which in our judgement was sufficiently serious misconduct to amount to a fundamental breach of contract justifying the respondent in dismissing her.

47. It follows that all the claimant's claims must be dismissed.

EMPLOYMENT JUDGE CADNEY
Dated: 18th January 2021

Judgment sent to the parties: 27 January 2021

FOR THE TRIBUNAL OFFICE