



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr Chris Hillman**

**v**

**Ministry of Defence**

**Heard at:** Watford by CVP

**On:** 18 & 19 February 2021

**Before:** Employment Judge Manley

## **Appearances**

**For the Claimant:** Ms H Platt, Counsel

**For the Respondent:** Mr A Henderson, Counsel

## **RESERVED JUDGMENT**

1. The claimant's conduct was serious misconduct but not sufficiently serious to warrant summary dismissal by the respondent. The claimant was therefore entitled to notice. The respondent is ordered to pay the net amount due to the claimant. If the sum due cannot be agreed, the parties may ask for a hearing to determine that issue.
2. The claimant was dismissed for a reason relating to his conduct. That dismissal was not unfair.
3. The claimant has not shown that he was entitled to any further payment for holiday pay.

## **REASONS**

### **Introduction and issues**

- 1 The claimant brought claims for unfair dismissal, wrongful dismissal (notice pay) and holiday pay (either unlawful deduction of wages or breach of contract). The matter was listed to be heard over three days on 27 April 2020 but had to be postponed because of the guidance in response to the Covid-19 pandemic and a case management hearing by phone was held that day. The matter was listed to be heard for these two days.

- 2 There had been an agreement that the parties would draft a list of issues but there was not one before me at the start of the hearing. An agreed list was received during the course of the hearing and that is reproduced below:-

**Wrongful Dismissal**

1. Was the Claimant's alleged misconduct sufficiently serious to amount to a repudiatory breach warranting summary dismissal by the Respondent?
2. In particular, was the misconduct alleged rightly labelled as "gross misconduct" as described in the Claimant's Terms and Conditions of Employment?

**Unfair Dismissal**

3. Was the Claimant dismissed for a potentially fair reason within the meaning of s98 ERA 96? The Claimant's employment was terminated on the grounds of gross misconduct.
4. Was a fair investigation conducted?
5. Did the Respondent have a genuine and honest belief that the Claimant had committed an act or acts of gross misconduct?
6. Did the Respondent have reasonable grounds for the belief detailed above?
7. Was the dismissal fair or unfair in all the circumstances having regard to the size and administrative resources of the Respondent?
8. Was dismissal within the band of reasonable responses available to the Respondent?
9. Did the Respondent treat the Claimant in the same manner as other employees when deciding to dismiss him? In particular, was the alleged misconduct or mitigating circumstances materially different to the case of Caroline Keeton who was not dismissed for the same alleged misconduct?
10. Alternatively, was the Claimant dismissed for some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held, namely breakdown of trust and confidence? If so, was dismissal within the band of reasonable responses?
11. If the Claimant's dismissal was procedurally unfair would he have been dismissed in any event had a fair procedure been followed?
12. If the Claimant's dismissal was unfair, did the Claimant contribute to his own dismissal and, if so, what, if any effect should this have on his compensation?

**Remedy**

13. If the Claimant is successful in his claim for wrongful dismissal, what damages did he suffer?
14. If the Claimant is successful in his claim for unfair dismissal, what remedy is he entitled to?
  - 14.1 The parties accept the Claimant would be entitled to a basic award..
  - 14.2 What compensatory award is just and equitable in the circumstances?
  - 14.3 Has the Claimant mitigated his loss and should there be a deduction of sums earned for such mitigation, or to reflect a failure by the Claimant to take reasonable steps in mitigation?
  - 14.4 Should any compensatory award be reduced on the basis of Polkey, namely that a fair procedure would have resulted in a dismissal anyway?
15. Has there been any contributory fault on the part of the Claimant entitling a reduction in any award?
16. What damages is the Claimant entitled to for Breach of Contract in respect of unpaid holiday pay?
17. Has the Respondent failed to comply with the ACAS Code of Practice in respect of the Claimant's dismissal?
18. If so, what level of adjustment is the Claimant entitled to under section 207A and Schedule A2 of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended by the Employment Act 2008)?

- 3 Although the list above included issues for remedy, it was agreed that this hearing would determine liability only. The parties had agreed at the case management hearing to ensure that the bundle contained only relevant material and suggestions were made about the length of witness evidence and the timetable for the hearing agreed at that time.

**Hearing**

- 4 At the commencement of the hearing some preliminary matters needed to be discussed and I needed to take time to read the relevant documents in the electronic bundle and the witness statements. For the claimant there was his own witness statement and that of his wife,

Caroline Hillman (nee Keeton). For the respondent, there was a witness statement from Group Captain Lawlor and from former Air Commodore Dawn McCafferty (referred to as Mr Lawlor and Ms McCafferty from now on). The electronic bundle was a little over 300 pages.

## Facts

- 5 These are the relevant facts. The claimant had been in the RAF since 1980 and working with cadets since 2002. He applied for and was successful in getting a post in the civil service working with cadets in the Combined Cadet Force (CCF). He became part of the civil service and the civil service code therefore applied to him as well as various other policies of the respondent. These included the misconduct and disciplinary proceedings. The procedure contains an explanation of different levels of misconduct, with those relevant for this case being as follows:

*“Serious misconduct is either a repeated minor offence or significant breach of the standards expected. It will require formal management action, but is not of itself serious enough to amount to gross misconduct in the case of a first offence.*

*Gross misconduct is serious enough to destroy the working relationship between the employee and employer and the likely sanction is dismissal”.*

- 6 The bundle did not include the civil service code but it did contain what I understand to be an extract from the code or a reference to it called “*Standards of Conduct and Behaviour*” which makes it clear it applies to the claimant’s role. Although it is couched in general terms, there are some specific examples which might apply in this case. Under the heading “*Integrity*”, for example, it states “*This means putting the obligation of public service above your own personal interests*”.

Under “*You must*” one of the bullet points is

*“carry out your financial obligations responsibly (that is make sure public money and other resources are used properly and efficiently”*

Under “*Honesty*” it says you must “*use resources only for the authorised public purpose for which they are provided*”.

- 7 The claimant joined the civil service in October 2008 at civil servant grade D as a Training Evaluation and Support (TEST) Officer. He was based at RAF Northolt and his job involved visiting schools and, relevant for this hearing, arranging camps in Cyprus for cadets. It is not disputed that, at the time of the matters which gave rise to the claimant’s dismissal, there were only three officers instead of being six needed to carry out the work. This led to the claimant having many

more schools under his responsibility and working long hours. The claimant had exceptionally good appraisals in the time leading up to the events which eventually led to him being dismissed. For the Cyprus training camps, he was the officer in charge, otherwise known as Officer Commanding, and worked alongside Ms Keeton who was on the same level as him, but was designated his deputy.

8 The claimant was also responsible for some TEST senior non-commissioned officers (SNCOs). The claimant's line manager was Graeme Johnston and, for the Cyprus training camps, there was also a Camp Commandant who had responsibility, at least formally, for the cash accounts as well as notification of accidents etc. As stated, the documents show the claimant had exceptionally good appraisals.

9 He also had a clean disciplinary record. Because he commented in his witness statement that no allegations had been made against him, the respondent's witnesses referred to some historical matters where there had been questions raised about two matters of the claimant's benefits package, one related to London weighting and the other to claiming for "*all hours worked*" and/or overtime. There were no documents in relation to this and the claimant's evidence was that nothing formal ever occurred but there was a discussion about these matters. It is not clear to me whether this is anything that one would call an allegation but I am quite satisfied that nothing further occurred as a result of those discussions. Mr Lawlor, who later became involved, said that he knew about those concerns, as did Ms McCafferty but they were advised and tried to put those matters out of their minds when they came to deal with the matters with which the tribunal is concerned. I accept that they did try to do their best to do that and do not believe that it formed any part of their decision making.

10 In around April 2018 a whistleblower gave some information to the respondent which apparently raised concerns relating to the claimant and to Ms Keeton (as she then was). The information given has not been shared with the tribunal so it is not clear what the allegations were precisely. In any event, matters were investigated by the respondent. This was done by speaking to a number of SNCO's about the CCF, as well as the claimant and Ms Keeton. A summary of concerns is contained within the misconduct investigation report and does not need to be repeated here as some matters were either taken no further at the time or became irrelevant during the course of the proceedings.

11 In early May, someone from Fraud Defence, part of the respondent, met with a senior manager, Wing Commander Larwood-Hughes, to discuss the concerns and on 14 May the claimant and Ms Keeton were informed they were under investigation and suspended. The letter of suspension informed the claimant that there was to be an investigation and included a copy of the misconduct policy. A letter of

the same date advised the claimant that Mr Marriott, who was a senior counter-fraud specialist, was going to look into allegations that “*fall into the category of gross misconduct*”

12 The allegations were as follows:

- *Misuse of MOD assets, Namely, vehicle hire, other MOD vehicles and staff to facilitate a personal house move*
- *Misuse of MOD assets, Namely, MOD vehicles and staff in furtherance of private business interests*
- *Incorrect disposal of MOD assets*
- *Financial irregularities in the organisation of Cadet exercises in Cyprus*
- *Breaches of Civil Service Code*

The letter quoted the Cabinet Office definition of fraud being:-

*“The dishonest or fraudulent conduct, in the course of employment in the civil service with a view to gain for the employee or another person”.*

13 The Investigation took some time and the suspension had to be renewed on a number of occasions. The claimant met with Mr Marriott on 30 August 2018 and Ms Keeton met with him the same day, shortly after the claimant. The discussion went through some of the allegations. The ones which we need to concentrate on, as they were the ones that were taken forward to disciplinary hearings, related to a house move and moving items out of their lock-up where people and vehicles were used to move both military and personal equipment and the running of the Cyprus camp fund.

14 An investigation outcome report (page 198-219) was produced by Mr Marriott. It is detailed and relatively lengthy setting out the various people that Mr Marriott had spoken to which included the SNCO's, the claimant and Ms Keeton and a number of other relevant people. In total Mr Marriott spoke to 18 people, these included the claimant's line manager, Mr Johnston. In particular Mr Johnston was asked about the Cyprus account. He said he did not audit but that he “*had no reason not to trust*” the claimant or Ms Keeton. When he was asked about the house move Mr Johnston said that he was aware about it and that “*some staff assisted*” but that he was not involved. He said he did not think they would have helped in work time and that he was not aware of service vehicles being used. He said that, if service equipment was being moved, he would have authorised the use of service vehicles but he was not asked for permission.

15 In the report there is a summary of all the interviews Mr Marriott held. The allegations had been broken down so that there were now seven. Under the seven different allegations Mr Marriott

gave a summary and then an outcome. For the first matter, which relates to using vehicles and staff for the house move, Mr Marriott said "*Misconduct - No case to answer*". For the lock-up matter which related to personal business he said "*Misconduct - Case to answer*". He said "*Insufficient evidence - no further action*" in relation to the allegation about disposal of MOD assets (relating to boots). For the financial irregularities in the cadet camp (Item 4), his conclusion was "*Misconduct - No case to answer*" as was item 5 which is a similar matter and 6 which related to the service funds account. For the final item, which is breach of the Civil Service Code, he concluded that there had been breaches in relation to "*honesty and integrity*" and concluded there was a case to answer.

16           Although there were some differences, a similar outcome was also suggested for Ms Keeton. Mr Lawlor was appointed to be the decision maker at a disciplinary meeting to be arranged. He was somewhat senior to the claimant but it was agreed that he was of sufficient seniority to deal with the matter. The claimant had made a number of allegations that said there was a conspiracy to remove him and it was appropriate for there to be a senior officer to decide the matter.

17           A decision meeting invitation was sent to the claimant on 11 October, which informed him that all allegations which had been investigated would be considered (including those where the investigation report had said "*Misconduct – No case to answer*"). The claimant was sent the investigation report and the meeting was to be held on 22 October 2018. The claimant attended with a colleague, Mr Lawlor was there with an HR caseworker from whom had sought considerable support and advice from over the course of preparing for and during this hearing. There was also somebody present to take a note and I have seen a detailed note of that meeting and the one that Ms Keeton attended on the same day.

18           In both meetings there was considerable discussion about the matters which constituted the reasons for dismissal. These were the house move and the lock-up move as well as the arrangements for the money in Cyprus.

19           To put it as succinctly as possible, the facts were that the claimant and Ms Keeton were living together and had to move house relatively quickly in November 2016. Some military equipment was stored in the garage of the house they were moving out of. The claimant's case was that he had asked Mr Johnston for permission to rent a vehicle through the CCF and that an SNCO arranged this. As far as the house move was concerned, there was a mixture of vehicles used, including a hired vehicle booked through CCF and about four members of staff had assisted. Of the items moved, the majority were personal items of the claimant and Ms Keeton, with a minority being military items, which were the property of the respondent. At a later

stage the claimant suggested the proportions were something like 70% personal matters and 30% military items.

20 As far as the move from the lock-up is concerned, this was a property used by the claimant to store some personal and some military items. The claimant's evidence was that he had booked a van and had his own family, although some staff did assist. Considerable detail was gone into at the various hearings about how much equipment there was and Mr Lawlor accepted that, at the very least, some MOD parachutes were in the lock-up.

21 The concern the respondent had was that it appeared CCF vehicles and staff had been used to help the claimant and Ms Keeton move personal items.

22 The question about the Cyprus account is rather more complicated. Again, putting it as shortly as possible there was considerable confusion about how monies were accounted for with respect to Cyprus camps. The claimant was Officer Commanding and Ms Keeton was his deputy, but as far as accounting for what were largely cash sums, Ms Keeton was the one who kept the receipts and prepared a spreadsheet showing how the money had come and gone. When people paid for flights to Cyprus, that was paid into the service funds account at Northolt. Occasionally there was a surplus in that account if the flights were cheaper than was expected and that was drawn out in Euros to be spent during the camps. The cadets would also hand in cash for various activities and receipts were expected to be kept to keep a track on spending. The initial responsibility for carrying that out was Ms Keeton's but I accept that the claimant as the more senior officer in respect of this needed to have overall insight. There was considerable confusion about what had been received and what had been paid out with difficulty reconciling the figures.

23 Although, from time to time, there seemed to have been suggestions that there was some problem with money going astray, it seems that this cannot be shown and that there was considerable difficulty sorting out what had and had not been spent. I did hear some evidence from Mr Lawlor about what he discovered about that. This became problematic because Ms Keeton, during her decision meeting, had handed a lot of receipts to Mr Lawlor to see if he could make more sense of the accounts. He undertook an exercise which he called the "*reconstituted accounts*" but, if there was a document, it was not shared with either the claimant or Ms Keeton it was not in the bundle of documents.

24 In any event Mr Lawlor, having heard what the claimant and Ms Keeton both said at the hearing and having looked at what the investigation report showed, took the view that dismissal was the only option really open to him. What he said is set out in a relatively detailed letter of dismissal to the claimant dated 2 November 2018 was



that he found the use of MOD assets for house and lock-up move was misconduct and that the claimant had "*little or no regard to policies and processes*" in those actions. He also stated that the claimant had overall responsibility for the Cyprus accounts. He concluded – "*I can find little in the way of mitigation and by your actions and behaviour you have lost the confidence and trust of your subordinates and command chain*". The claimant was dismissed without notice. Mr Lawlor also formed the view that the claimant had committed internal fraud in line with the Cabinet Office's definition and he must therefore refer the matter to the Cabinet Office.

25 Ms Keeton was also dismissed and both she and the claimant appealed the decision. Ms McCafferty was the appeal officer. Now retired, Ms McCafferty had long experience working for MOD, including considerable work with the CCF. She had not carried out a disciplinary appeal before and relied on HR support. Again, she had all appropriate documents as did the claimant and Ms Keeton. The claimant's appeal was in a letter (page 315-316) where he criticised Mr Lawlor, particularly in relation to the first allegation which Mr Marriott had said there should be no case to answer. The claimant had, on a number of occasions, said there was collusion and conspiracy to remove him from post.

26 The claimant attended a disciplinary appeal hearing with Ms McCafferty on 13 December 2018. This was not a re-hearing but a review of the decision taken by Mr Lawlor. The same HR officer attended and the claimant was without a colleague on this occasion. Ms McCafferty had read the investigation report and the minutes from the disciplinary hearing. I have read the notes from this appeal hearing. There was discussion about the Cyprus accounts that Mr Lawlor had reconstructed. She stated that the claimant was unwilling to accept that he had done anything wrong and showed "*no remorse or contrition*". Ms McCafferty took some time to consider her decision and wrote to the claimant by letter of 19 December 2018. She found that the claimant's actions were not deliberate or fraudulent, she decided that the decision was correct. She answered the points raised in his appeal letter. She did decide that it was not necessary to refer the matter to the Cabinet Office and the referral was withdrawn.

27 As far as Ms Keeton was concerned Ms McCafferty decided that she would uphold that appeal. The penalty of dismissal was reduced to a final written warning. The reasons that Ms McCafferty gave for this is that she took the view that the claimant was a more senior officer, being the officer in charge, and that he should have had oversight of the Cyprus funds. In particular she took into account that Ms Keeton was contrite, asked for a second chance and offered to undergo training. She also took into account the fact that Ms Keeton had evidence that she was suffering from PTSD from a serious incident which had occurred during the Cyprus camp. Although Ms McCafferty

was aware that the claimant had been on anti-depressants no such mitigation was suggested by him.

## Law and submissions

28 The issues set out the legal tests which must be applied in an unfair dismissal claim. The relevant statutory provisions are set out in s98 Employment Rights Act 1996 (ERA). Section 98 (1) and (2) contain the potentially fair reasons for dismissal including “conduct”. The burden of showing a potentially fair reason rests on the respondent. In this case, the respondent suggests an alternative reason might be the loss of trust, which could amount to “*some other substantial reason*” as set out at section 98 (1) b) ERA.

29 As to the fairness or otherwise of the dismissal, if I am satisfied that there was such a potentially fair reason, Section 98 (4) states;-

*“Where the employer has fulfilled the requirements of subsection (1), the determination of the question 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”*

30 I am also guided in my deliberations, because this is said to be a conduct dismissal, by the leading case of *British Home Stores v Burchell* [1978] ICR 303 which sets out the issues which I should consider including whether the respondent had a genuine belief in the conduct complained of which was founded on a reasonable investigation and whether a fair process was followed. The investigation should be one which is fair and reasonable and the band of reasonable responses test applies to that part of the process as well as to the overall consideration of the fairness of the sanction (*Sainsburys Supermarkets Limited v Hitt* [2003] IRLR 23)

31 I must also not substitute my view for that of the respondent, a point emphasised in *Iceland Frozen Foods v Jones* [1982] IRLR 439 (and re-affirmed in *Foley v Post Office and HSBC Bank Ltd v Madden* [2000] ICR 1283). Rather, I must consider whether the dismissal fell within a range of reasonable responses.

32 The claimant also claims wrongful dismissal. This needs me to consider whether there has been a breach of contract. In this case, the question is, as the list of issues sets out, whether there has been conduct which was so serious as to allow the respondent to treat the

contract as having been broken by the claimant and summarily dismiss him. There is no real dispute on the legal tests between the parties.

33 The representatives presented written submissions and added to them orally. In summary, the respondent, which bears the initial burden of proof, submits that the dismissal was for the potentially fair reason of conduct or there was a breach of trust and confidence. The respondent further submits that the investigation was manifestly fair, that there was a genuine and honest belief in the conduct, citing *Royal Mail v Jhuti [2018] ICR 982* for the point that it is only the decision maker's mental processes that are relevant. Given that the claimant had admitted using service colleagues and a service vehicle for a house move and a move from his lock-up, it is submitted that must amount to a reasonable belief in the misconduct. The respondent reminded me that I must not substitute my view for that of the employer as mentioned above and referred me to *Tayeh v Barchester Healthcare [2013] IRLR 387* that a dismissal can only be unfair if it is outside the band of reasonable responses. As far as the disparity in treatment of the claimant and Ms Keeton is concerned, the respondent submitted there were good reasons for this as explained by Ms McCafferty. The respondent also made submissions on the Polkey arguments as well as the breach of contract claim, arguing that the misconduct amounted to gross misconduct.

34 The claimant submitted that the dismissing officer had departed from the findings of the investigation report and that Mr Lawlor did not therefore have a genuine and honest belief that the claimant had committed an act of gross misconduct. It was also submitted, on behalf of the claimant, that Mr Lawlor was not clear whether the misconduct was serious or gross and there was considerable delay between the house and lock-up move and the investigation. I was reminded that the "reconstituted" Cyprus accounts had not been shared with the claimant. The claimant pointed to inconsistency of treatment as between Ms Keeton and himself, citing *Post Office v Fennell [1981] IRLR 221*. It was submitted that the dismissal was outside the band of reasonable responses. As for the breach of contract claim, the claimant submits that the conduct was not sufficiently serious to amount to a repudiatory breach, stating that a warning was the appropriate sanction. Although there were submissions on the holiday pay claim, this seemed to relate to a comparison to Ms Keeton on her return after reinstatement. It was not a claim which I was able to understand.

## Conclusions

35 This is a difficult case. An employee with a very good service record was dismissed for gross misconduct for a matter which is not as clear cut as it might be. His colleague, Ms Keeton, with whom he lived and to whom he is now married, was involved in all these matters, and was reinstated on appeal. She resigned from the respondent some time after that reinstatement.

- 36 First, I need to consider whether I am satisfied that there has indeed been misconduct and if there was, whether it was repudiatory conduct such as to allow the respondent to dismiss the claimant summarily. I am satisfied that the conduct complained of was serious misconduct. It is not argued by the claimant or those representing him that it was minor misconduct.
- 37 Although it is said by him, and on his behalf, that it was not clear what rule had been broken, I am not satisfied that the claimant did not understand that he had an obligation to act with honesty and integrity as set out in the code. This obligation covered this situation where he was moving his own personal items in military vehicles with the use of staff during worktime. Clearly that is a use of the respondent's resources and public funds for personal benefit.
- 38 I have considered this matter with some care and it seems to me that it is a difficult balance. I have taken the view that what the claimant did amounts to serious rather than gross misconduct. This is partly because the respondent itself has allowed the mixing up of military and private property to occur. It is not suggested that it was not known that it was in the claimant's possession and stored on his private property. Where there was such a blurring of private and work life it seems to me that it is difficult to expect the claimant to properly understand the distinction. I find that particularly in relation to the house move and the lock-up move that the claimant's actions in using vehicles and staff does amount to serious misconduct. It was a significant breach of the standards expected as set out in the respondent's procedure.
- 39 What is less clear to me is where the misconduct is around the Cyprus funds. The claimant's case is that responsibility is the Camp Commandant, rather than himself, but having seen the documents the claimant signed to accept responsibility, and the title Officer Commanding certainly indicates a high level of responsibility. I do believe that he had a lax attitude to those accounts and because it is a mixture of people's own private money and public money, that does amount to serious misconduct. However, I cannot find that it amounts to gross misconduct because, in line with Ms McCafferty's view, it really relates to negligence and poor record keeping.
- 40 Having found that the misconduct was serious rather than gross, the claimant was entitled to notice of dismissal.
- 41 I now turn to the unfair dismissal claim. The respondent has shown the reason for dismissal related to the claimant's conduct. The next question is whether that dismissal was fair or unfair. There is no question that the investigation was a fair one. It was extremely detailed and set out who was spoken to, giving the claimant a full opportunity to give his version of events and those lines of enquiry were followed up. I do not find there was any particular difficulty with the suggestion that

there was no case to answer on the house move being considered by Mr Lawlor with the claimant and the answer he gave there having failed to convince Mr Lawlor. I find that Mr Lawlor was entitled to consider all allegations, taking into account what was said in the investigation report but also what the claimant said at the hearing.

42 The question then is whether the respondent had a genuine and honest belief that the claimant had committed acts of misconduct. Although the list of issues suggests that I need to consider gross misconduct at this stage, I do not accept that. The question for me at this stage is whether the respondent had an honest belief in acts of misconduct. The investigation report clearly suggested at least two such cases to answer. By the time Mr Lawlor had reconsidered it, it amounted to three acts which I agree amounted to serious misconduct. There is really little or no criticism that can be raised in the question of genuine and honest belief in that. Turning then to the question about whether the respondent had reasonable grounds to sustain that belief, there is certainly sufficient in the answers supplied by the claimant to sustain such a belief.

43 The question therefore is whether dismissal was fair or unfair bearing in mind the administrative resources of the respondent and whether it was within the band of reasonable responses. I find that dismissal was a reasonable sanction in all the circumstances. There are a number of reasons for this. I have accepted that it was serious misconduct. Although it might not be always appropriate to dismiss for serious misconduct it might, in some circumstances, be reasonable and fair in all the circumstances. The circumstances of this are that there was a breach of the standards of conduct and there were three matters which were of concern.

44 I find that the respondent was entitled to take into account the claimant's attitude to the proceedings, including his attempts to construct a narrative around conspiracies concerning people trying to get him out of the CCF. Although I appreciate this is something that sometimes people are inclined to suggest when faced with serious allegations, it is not sustainable on the evidence in this case at all. The problem was that the claimant had shown that he was not inclined to accept responsibility and provided no sense that he would change the way he did anything. The respondent was entitled to think that his conduct, being serious, was sufficient to mean that his dismissal was the correct sanction. I cannot say that decision fell outside the band of reasonable responses even though I appreciate that it is not a decision some employers would have taken. I must not and do not substitute my view for that of the respondent. The respondent has adequately explained the difference in treatment between the claimant and Ms Keeton. The dismissal fell within the range of responses of a reasonable employer and I cannot find it was unfair.

- 45 Although there was a suggestion that there were breaches of the ACAS code, I heard no evidence which leads me to that conclusion.
- 46 Finally, as indicated in the summary of the claimant's submissions at paragraph 34, the claimant has failed to show that he is entitled to further payments for untaken holiday. That claim must fail.

Employment Judge Manley

Date: 5 April 2021.....

Sent to the parties on: ....

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For the Tribunal Office