Case No: 2411331/2019

EMPLOYMENT TRIBUNALS

Claimant : **Peace Ndugba**

Respondent: **Royal Mencap Society**

Heard at: **Manchester Via CVP** **On:** **8 and 9 April 2021**

Before: Employment Judge Serr

Representation
Claimant : Mr Ndugba (Claimant's husband)
Respondent: Mr O Lawrence of Counsel

JUDGMENT

1. The Claimant's Claim for Unfair Dismissal is not well founded and is dismissed.

2. The Respondent did not act in breach of contract in dismissing the Claimant without notice with effect from 9 August 2019.

REASONS

By a Claim form issued on 5 September 2019 the Claimant claims unfair dismissal. Following a Preliminary Hearing before EJ Feeney on 7 October 2020 the Claim was amended to also include a claim for wrongful dismissal. Claims for unlawful deduction of wages were dismissed on withdrawal. The claim originally pleaded the dates of employment as a start date of 14 August 2017 but the Claimant sought to amend shortly after to give an earlier start date in July.

The Issues

At the outset of the hearing the Tribunal endeavoured to identify the issues to be adjudicated upon. These were as follows:

1. Continuity of employment. The amendment was no longer in issue but the dispute about continuity remained. The Claimant was dismissed without notice with effect from 9/8/19. The Respondent states that the Claimant 's start date was 14 August 2017 and that by reason of s.108(1) the Tribunal does not have jurisdiction to hear the Claimant s claim for unfair dismissal. The Respondent accepts that if the Claimant was wrongfully dismissed then by virtue of s.97(2)(b) the Claimant would have the requisite period of continuous employment (or at least the Tribunal would have jurisdiction to hear the claim). The Claimant states that her period of employment began on 17 or 24 July when she began doing paid 'shadow shifts' for the Respondent. She in effect relies on s.211 ERA. The Respondent's fall back position is that if the Claimant is correct continuity is broken by a period between 7 August -13 August 2017 when she did no work at all.

2. Unfair dismissal- the reason for the dismissal is not disputed, that is conduct. The Respondent dismissed the Claimant having concluded that she neglected a service user in her care by leaving her covered in her own faeces. The Claimant states that her dismissal was procedurally unfair in that (i) the Claimant was not shown a video taken purportedly by a care worker showing the state of the service user that day (ii) allowing the disciplinary hearing to continue without her (iii) failing to permit her to have an appeal against her dismissal. This is all disputed by the Respondent who state that every aspect of the decision was reasonable.

3. Wrongful dismissal- the Claimant denies that she is in fact guilty of the misconduct alleged.

The Facts

4. The Tribunal had before it a 327 page bundle. It heard from 3 witnesses for the Respondent, Ms Kinnear who is the Respondent's employment law adviser, Mr Peter Walker who undertook the disciplinary investigation and Ms Sue Battin who undertook the respondent's disciplinary hearing and made the decision to dismiss the Claimant. The Claimant gave evidence on her own behalf. The Respondent was represented by Mr Lawrence of Counsel, the Claimant was represented by her husband.

5. The Tribunal makes the following findings of fact based on the balance of probabilities.

The Claimant 's Engagement

6. Royal Mencap society operates in the charitable sector providing support for people with learning disabilities their families and carers. Mencap provides direct services in housing care and support employing approximately 7 and a half thousand employees throughout England and Wales.

7. On the 7th of July 2017 the Claimant was written to by the respondent offering her the role of a support worker. The letter stated inter alia:

   Dear Peace
   Following your recent interview, I am pleased to be able to conditionally offer you the position of Support Worker. This position is for 30 hours per week at an annual salary rate of £11,700. This position is subject to the successful completion of a six month probationary period. If you would like to discuss any aspects of this offer please contact Lorna Jump on 01706 714 526.
   Please note, this offer remains open for two weeks from the date of this letter. If we have not heard from you during this period, we shall assume that you are not interested in joining Mencap and the offer will expire.
   This offer is subject to the receipt of:
   1. References satisfactory to us
   2. A Disclosure and Barring Service check ('Disclosure') or Access NI Criminal
   Records check
   3. Proof of your right to work in the UK (under the Immigration, Asylum and Nationality Act 2006)

8. The Claimant accepted the offer on 27 July (the fact it was outside of the two weeks does not appear to have been an issue). She then began what the Respondent terms 'shadow shifts'. The number and duration of these shifts are agreed between the worker and manager. They are rostered informally by phone or email. The purpose of shadow shifts at this stage of recruitment is to confirm the Applicant's compatibility with the vulnerable adults they will be required to support, and to ensure the applicant fully understands the demanding nature of work that the role entails.

9. The Tribunal finds as a fact that the Claimant undertook these shadow shifts on Monday the 31st of July Tuesday the 1st of August Friday the 4th of August and Sunday the 6th of August. The shifts are recorded at p.73. They varied in terms of time of the day. Each shift was at least 8 hours long and the shift on 1 August appears to be 15 hours long. The Tribunal finds that while the Claimant had not undertaken her DBS cheques prior to 3 August (and so could not work on her own on) she did undertake all of the functions of a support worker albeit in a supervised capacity. It seems the 2 shifts that post-dated 3rd August were still supervised. The shadow shifts were all paid. As the Claimant was not on payroll- pay was requested through a pay advance request form. The Tribunal was told by Ms Kinnear, and accepts, that once the Claimant was on payroll then the shadow shifts would be paid in arrears through that payroll system. On the question to Ms Kinnear as to what would have happened had the Claimant not been approved in post because for example the DBS check were held to be of concern it was said that the Claimant would have been paid for the shadow shifts by direct bank transfer into her account. This is accepted by the Tribunal.

10. While there may have been flexibility as to when the shadow shifts were undertaken the Tribunal finds that they were mandatory. The Respondent expected the Claimant to undertake these shadow shifts and the Claimant was aware of that fact that she was required to undertake them.

11. On the 31st of July 2017 Ms Lorna jump of the respondent wrote an email internally to another member of staff stating can you go through this with peace today while she is on shift she still hasn't completed a DBS application for Mencap and until this is submitted I can't get an employee number so she can't start training.

12. The Claimant did not undertake any shadow shifts following the 6th of August 2017.

13. On 8 August 2017 a new hire notification was sent to the Respondent's HR team.

14. On the 10th of August 2017 the Claimant was written to by the Respondent with a heading re permanent appointment as support worker. That letter states "I am pleased to confirm our offer of employment to the position of support worker with effect from the 14th of August 2017". It goes on to say where the Claimant was to be employed at and that the statement of individual terms and conditions that apply to you personally can be found at the end of this letter ready for you to review & sign. The statement of individual terms and conditions is contained at page 68 of the bundle. Amongst other details it indicates that the date the employment begins was the 14th of August 2017 and the date of continuous employment is also said to be the 14th of August 2017. From that date the Claimant worked regularly 30 hours a week.

15. The Claimant signed her acceptance of the document individual terms and conditions through a digital signature. The Tribunal was given another document which the Claimant completed by hand, also headed individual terms and conditions of employment. On that document the date employment begins is indicated as the 24th of July 2017 although the date continuous employment began still states the 14th of August 2017. the Tribunal accepts that this document was completed by the Claimant herself and then sent to the Respondent.

The Claimant's Dismissal

16. The Claimant was employed at the Respondent's Earlham Rd property. Earlham Rd consists of two separate bungalows (a and b) that are separated by a short enclosed back garden. The Service User she cared for (SU1) is a vulnerable adult who lives in bungalow bungalow a. The office is located approximately 3 to 4 feet across the hallway from SU bedroom.

17. The service user has complex support needs and will often display challenging behaviour. she has limited ability to communicate using a macaton. The service user had an evening routine support plan that had been put in place since 2017 and regularly reviewed. Under toileting the Tribunal notes that plan stated

    SU1 is doubly incontinent and wears a night time pad in bed and often will not need changing until morning. Staff should prompt to SU1 go to the toilet before bed. SU1 can get up through the night if she is not already awake; staff should prompt her to go to the toilet when she wakes up and then to go back to bed. Staff should check on SU1 throughout the night and change her pad if she has had a bowel movement or urinated. If bed sheets are soiled staff must change them before getting back into bed.

18. The Claimant was rostered to work with SU1 on the night of the 9th of February 2019. The shift began at 10:00 PM and concluded at 7:00 AM on the morning of the 10th of February 2019. The Claimant completed a log of her activities with the SU seen at p.160. It records the SU1 incontinence pad was changed at 4am and at no other time. It does not record the SU1 being toileted at any time by the Claimant.

19. On the 10th of February 2019 Sarah Creswell well the service manager received a complaint from Esther Sanni a carer for SU1 who reported that when she came on duty at 7:00 AM she found service user one covered in faeces.

20. Esther Sanni completed a menak form reporting the incident. The Tribunal has had sight of this form. It states

    I Esther took over from nightstaff piece. She gave the handover said service user was not sleep throughout the night. This made me worried that something was not all right. I said service user to go to the toilet checked her pad. It was dry . Then went her bedroom. Bedroom was smelling of bowel movement and the floor was stained of bowel. I Rang night staff immediately. She picked the phone but once I mentioned the issue she hung up the phone. Even when she came back at night she ignored the handover because she did not want to discuss.

21. Ms Sanni made a video on her mobile phone of SU1 bedroom when she arrived on shift. The video seen by the Tribunal is highly distressing. It contains clear footage of faeces on SU1 bed, on sheets, on clothes and on other items within the bedroom. She sent the video by email to Sarah Cresswell. The Tribunal finds as a fact that Ms Sanni also telephoned the Claimant that morning. She tried to ask the Claimant why the service user had been left in that condition. The Tribunal finds that the Claimant did not respond to Miss Sani, refused to discuss the matter and hung up the phone.

22. On the 15th of February 2019 the Claimant was suspended from duty with effect from that day. The Tribunal has seen the suspension letter which

makes clear that the reason why the Claimant had been suspended was due to an allegation that she had neglected the needs of a person the respondent supported by leaving them covered in faeces.

23. Following the Claimant's suspension the Respondent endeavoured to investigate the matter giving rise to that suspension as well as various other matters. The investigation was begun by a Mrs Dunease who purported to complete an investigation on the 5th of April 2019. The Respondent was not content with the nature and quality of the investigation undertaken by Ms Dunease and on 30 April 2019 it was determined that it would be reinvestigated. The matter was decided to be re investigated by Mr Walker who is an investigations and hearing manager with the Respondent. The aborted investigation meant that the Claimant was suspended for a period longer than should have been necessary.

24. Mr Walker determined the only matter that would be investigated was that in respect of the 10th of February 2019. The Claimant was written to inviting her to attend an investigation interview on the 17th of June. The invite letter indicates that as well as the 10th of February 2019 incident other matters would be looked into but it is clear to the Tribunal that in fact these additional concerns were not proceeded with.

25. The Tribunal has seen the investigation interview notes dated the 17th of June 2019 which were contained at pp201-209. The Tribunal accepts that the notes contained in the bundle are broadly an accurate record of the interview. The Claimant was written to on the 17th of June by Mr. Walker after the interview with the notes. He asked for her to check them and confirm back to him by email that she was happy with them. He said that if he did not receive a response he would assume that she was happy with the record of interview and submit it as part of his report. no response was received by the Claimant .

26. Mr Walker did have a copy of the video created by Ms Sanni during the interview. He did not show it to the Claimant .

27. As well as interviewing the Claimant Mr Walker also conducted a fact finding interview with Ms Sanni on the 24th of June 2019. Again the Tribunal finds that those notes are a broadly accurate record of what was said during that interview.

28. Mr. Walker produced an investigation report on the 27th of June 2019. Within that report he records accurately that in interview the Claimant said that she came onto shift to find SU1 had an accident and that she cleaned it up. The Claimant said throughout my shift I had to keep changing her I don't think there was any accident. If she peed a lot or something. I know I change her the times I'm supposed to. I finished my shift she was fine and sleeping when ester took over from me. When asked the last time she checked on the service user she replied I don't know but I know I checked her the last time I was supposed to but we don't normally check the pad

unless there is something unusual so I last changed the pad at 11 at night and if she was still awake you have to cheque I kept checking her.

29. On the 17th of July 2019 the Claimant was written to by Charmaine Dance the assistant to miss Sue Battin of the respondent. The email attached an invite to the Claimant to a disciplinary hearing from Ms Battin. The email appendix the video. The report of Mr. Walker and the appendices to it was also digitally attached to that email and sent in hard copy to the Claimant by post.

30. On the 25th of July the Claimant rang Ms Dance to say she would not be attending the hearing as she did not feel well. She asked to rearrange the hearing. Ms Dance said that she would pass on the message to Ms Battin and indeed she did.

31. The Claimant was written to again on the 1st of August 2019. The letter dated the 31st of July from Ms Battin rearranged the disciplinary hearing to a new date being the 9th of August 2019. The letter stated that unless there were exceptional circumstances should you fail to attend the above hearing this will be held in your absence.

32. On the 5th of August 2019 Ms Dance wrote again to Ms Battin. The email stated that miss dance had spoken to the Claimant who said that she was being harassed and she did not see why she had to come into a hearing when she had already had the meeting with Peter Walker. the email finished by saying I will be reluctant to call her again about her attendance to Friday's hearing as she said we are harassing her she did say she wouldn't be attending but I'm not sure she's reading the letters or understanding the process.

33. Ms Battin wrote to the Claimant on the 5th of August by email . The email stated that if as you stated this morning you still do not feel well enough to attend the hearing on Friday you can make a written submission or attend by telephone or skype but as stated above the hearing will proceed and we will notify you of the outcome in writing.

34. There was no further contact from the Claimant and the disciplinary hearing did proceed on the 9th of August. The decision taken by Ms BattIn was that the Claimant should be dismissed. The reasoning is set out in that letter in particular at page 234 of the bundle. The letter states inter alia

    There were inconsistences in the night log and what you said in your statement regards times you changed pad. The night log states you changed pad at 4.00am but in your statement you say you last changed pad at 11.00pm at night, but you also say earlier in your statement that 'throughout my shift I had to keep changing her' but the night log clearly shows you recorded 'pad changed' 4.00am. As you chose not to attend your hearing, I could not ask you for clarification of these inconsistencies.

I watched the video Esther had made on the morning of the 10th February 2019 following you leaving shift, when Esther had found SU in the lounge watching TV and there was a strong smell of faeces. Esther supported SU to the bathroom and found her to be covered in dried on faeces on her bottom, legs and back, which Esther felt had been there a considerable time. Esther says she rang you once she had supported to get cleaned up and fresh cloths on and you refused to speak to her and put the phone down.

Esther then went into bedroom and found her bed, bedding, floor and white furry beanbag to be covered in faeces that was also dried on so would appear to have been there for considerable, time.

This video was sent to you along with all other documentation relating to your Disciplinary Hearing, however as you failed to attend or submit any further evidence or explanation at your hearing, I was only able to go by the information available to me on the day.

I feel your actions on that shift by neglecting the needs of the person you were supporting constitutes gross misconduct and therefore my decision is summary dismissal.

35. The letter went on to state:

If you wish to appeal against this decision, you should do so by writing to Mark Crouch, Regional Operations Manager at 4th Floor St Hughs, Stanley Road, Bootle, Liverpool, L20 3QQ. Your letter must be received by 14 calendar days from date of this letter and clearly state the grounds for your appeal. You may if you wish also copy any appeal to AskHR, Business Support Centre, Mencap, 6 Cyrus Way, Hampton, Peterborough PE7 8HP askhr@mencap.org.uk .

36. The decision letter was sent in hard copy and by email on 12 August 2019. The Tribunal has seen the email receipt and finds as a fact that the Claimant received the decision letter on 12 August 2019.

37. On the 29th of August 2019 the Claimant wrote to the respondents HR team saying "based on my telephone conversation with the HR department, due to receiving a dismissal letter very late closer to the time I was given to appeal against, which I just want to bring to your attention that I will still appeal against the unfair judgement given to me".

38. On the 31st of August 2019 the Claimant purported to appeal the decision to dismiss her. It set out what could be considered as certain grounds of appeal although the exact basis of that appeal is not clear from the letter.

39. On the 12th of September 2019 the Claimant was written to by Mr Mark Crouch of the respondent the regional operations manager. That letter indicated that as that the decision letter had been emailed on the 12th of August and as there was 14 working days from that date to appeal the

Claimant s appeal was out of time and he was unable to grant an appeal therefore against the decision to dismiss.

The Law
Continuity of Employment

40. S. 108 (1) of the ERA states
Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination

41. S.210 (5) ERA states
A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

42. S.211 ERA states
Period of continuous employment.(1)An employee's period of continuous employment for the purposes of any provision of this Act—
(a)(subject to subsection (3)) begins with the day on which the employee starts work, and

(b)ends with the day by reference to which the length of the employee's period of continuous employment is to be ascertained for the purposes of the provision

43. In *O'Sullivan v DSM Demolition Ltd* (2020) IRLR 840 the EAT held applying the earlier case of Koenig v Mind Gym Continuity of employment, and when it starts and ends, for the purposes of an unfair dismissal claim(and other statutory purposes), is a statutory construct. The question of when it starts must be decided by a Tribunal properly applying the words of s 211(1)(a), guided by the authorities, to the facts properly found. Koenig draws a distinction between work done under a contract of employment, and work that is merely collateral to it. The distinction is simply between work done under the contract relied upon, and work not done under that contract, though that work may, in the ordinary linguistic sense, be collateral to it, or, as it was put in Koenig, be 'outside of a contract of employment, though it might have some relationship to it'. Common sense should be applied to the distinction between work done under the contract of employment and word collateral to it.

Unfair Dismissal

44. The Claimant 's unfair dismissal claim was brought under Part X of the Employment Rights Act 1996. Section 98(1) places the burden on the employer to show the reason or principal reason for the dismissal and that it is one of the potentially fair reasons identified within Section 98(2), or failing that some other substantial reason.

45. The potentially fair reasons in Section 98(2) include a reason which (b) relates to the conduct of the employee.

46. Where the Respondent shows that dismissal was for a potentially fair reason, the general test of fairness appears in section 98(4): "…the determination of the question whether the dismissal is fair or unfair (having regard to the reasons 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". the starting points should be always the wording of section 98(4) and that in judging the reasonableness of the employer's conduct a Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer. In most cases there is a band of reasonable responses to the situation and a Tribunal must ask itself whether the employer's decision falls within or outwith that band.

47. The starting point in most cases where misconduct is found to have been the reason for dismissal is the approach formulated by Arnold J in *British Home Stores Ltd v Burchell* *[1978] IRLR 379*. At 304 he stated:

48. "What the Tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the grounds of misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case."

49. In *Boys and Girls Welfare Society v McDonald* *[1997] ICR 693*, the EAT pointed out that *Burchell* had been decided when the burden of proving reasonableness rested with the employer, rather than neutrally as is the position today.

Wrongful Dismissal

50. An action for wrongful dismissal is a common law action based on breach of contract. It is very different from a complaint of unfair dismissal. The reasonableness or otherwise of an employer's actions is irrelevant: all the Tribunal has to consider is whether the employment contract has been breached. If it has, and dismissal is the result, then it is wrongful *Enable Care and Home Support Ltd v Pearson* EAT 0366/09.

Conclusions

Continuity of Employment

51. The Tribunal addresses the first point in issue that of continuity of employment. What is the correct start date for the Claimant's employment with the Respondent. The question for the Tribunal is on what date did the Claimant work under the contract of employment. The Tribunal has found this a somewhat difficult issue to resolve. The Respondent not unnaturally relies on the documentation which gives a start date of 14 August 2017. That was the date agreed by the Claimant in writing through her electronic signature. Prior to this the Respondent says she did not have DBS clearance so could not undertake the duties of a support worker which she was engaged to perform- although in fact DBS clearance was obtained on 3 August.

52. But what of the shadow shifts undertaken from 31/7/17? The Respondent categorises them as casual work with no mutuality of obligation to offer or undertake them. The Tribunal does not agree. Not all activities undertaken by an employee at the request, but not the requirement, of an employer prior to the date on which it has been agreed between them work under a contract of employment will be begin, will be work under that contract for the purposes of s.211. But the activities in the present case were not a short opportunity to meet a service user or an unpaid chat with a manager over coffee in advance of a start date. They were substantial periods of mandatory paid employment undertaking all the duties of a support worker albeit in supervised capacity at that stage. It is simply artificial to refer to over 28 hours of paid work as collateral or ancillary to the contract of employment with the Respondent. The Tribunal therefore finds that the Claimant 's continuous period of employment began on 31st July 2017 with her first shadow shift and therefore the Tribunal does have jurisdiction to adjudicate on her unfair dismissal claim. The Tribunal rejects the argument that there was a break in continuity between 7-13 August. This was a short period during which the Respondent continued to correspond with the Claimant. Applying s.210 (5) the Tribunal finds that continuity was continuous from 31 July 2017 until 9 August 2019.

Unfair Dismissal

53. Turning then to the unfair dismissal claim. The reason for the dismissal is not disputed, it is that of conduct. The Tribunal finds that Ms Battin genuinely believed that the Claimant had neglected SU1. She believed she had been left in an appalling state by the Claimant at the end of her shift and had not checked on her as required. Did she have reasonable grounds to sustain that belief? She clearly did. Ms Battin had the video which showed dried faeces over SU1 room. She had the evidence of the co-worker Esther Sanni including evidence of the Claimant's reaction during the phone call and the

contemporaneous accident report. She also had the inconsistencies identified in the Claimant's evidence to Mr Walker and in the contemporaneous logs. She finally had SU1 care plan particularly in relation to toileting.

54. Did the Respondent undertake a sufficient investigation? The Tribunal addresses the three particular grounds raised by the Claimant. Firstly in respect to the issue of not being shown the video. It is correct to say that Mr. Walker did not show the Claimant the video produced by Ms Sanni. Some criticism can be fairly labelled at this decision. Many employers would have shown the Claimant the video at this interview stage and allowed them to comment on it. This is more so given the aborted initial investigation and how long the Claimant had been suspended for at this point. It is not entirely clear to the Tribunal why he chose not to. That said, the question is whether in totality the Respondent's actions fall within a band of reasonable responses open to it. The video was sent to the Claimant in advance of the disciplinary hearing at which, had she attended, she would have had a chance to fully comment on it. The Respondent's actions did not fall outwith those of a reasonable employer.

55. Secondly the Tribunal considered the decision to go ahead with the disciplinary hearing in absence of the Claimant. The Tribunal is quite satisfied on the facts as found the Respondent acted within a range of reasonable responses open to it. The Respondent had already adjourned the hearing once already. The Claimant had been suspended for a considerable period of time at this point. The matter to be determined was extremely serious. The Claimant was told that there would be no further adjournment but was invited to attend by skype, phone or put submissions in writing. She did none of these things and did not engage with the Respondent.

56. Finally, the Tribunal turns to the issue of the appeal and whether the decision to not permit the employee to appeal out of time rendered the dismissal unfair. It must be observed that many employers would have allowed this appeal to go forward and in the Tribunal's view the decision to not permit the appeal to proceed was harsh. That said the evidence against the Claimant was extremely strong, she had arguably not fully engaged with the process up to this point, her grounds of appeal did not on the face of them seem to reveal any seriously arguable points and she had been clearly told how long she had to appeal and had exceeded that time without any good reason. The Tribunal cannot say the decision was outside the band of reasonable responses open to the Respondent.

57. The Claimant's claim for unfair dismissal is therefore not well founded and is dismissed.

<u>Wrongful Dismissal</u>

58. The question for the Tribunal is whether on the balance of probability the Claimant was guilty of gross misconduct. The Tribunal finds on the evidence that the Claimant was guilty of gross misconduct and was not wrongfully dismissed. The evidence that the Claimant failed to check on SU1 in accordance with the care plan is extremely strong. The Tribunal having heard the Claimant give evidence and be cross examined was not satisfied with her account which was vague and inconsistent. In addition, the Tribunal relies on the evidence of Ms Sanni, the inconsistencies in the Claimant's own accounts given to the Respondent and perhaps most powerfully of all the video evidence. Put simply, it is impossible to understand how the video evidence is consistent with the Claimant having looked after SU1 in accordance with her care plan. The Tribunal finds that the Claimant neglected a highly vulnerable Service User in her care, allowing herself and her belongings to be soiled in her own faeces for a period of time such that it was dry. This was clearly misconduct justifying dismissal without notice.

Costs

59. At the conclusion of the hearing and having given judgment orally the Respondent applied for costs. The Tribunal has given case management orders in respect of any costs application that the Respondent wishes to pursue.

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Employment Judge Serr

Date: 9 April 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

14 April 2021

FOR THE TRIBUNAL OFFICE