Case Number: 2305694/2019

EMPLOYMENT TRIBUNALS

Claimant: **Mr Intars Logins**

Respondent: **dnata Limited**

Heard at: London South Employment Tribunal

On: 18th January 2021

Before: Employment Judge Beale

Representation
Claimant: In Person
Respondent: Mr D. Robinson-Young (Counsel)

RESERVED JUDGMENT

The Claimant's complaint of unfair dismissal is dismissed.

REASONS

INTRODUCTION

1. By an ET1 presented on 27 December 2019, the Claimant brought complaints of unfair dismissal, race discrimination and disability discrimination. Prior to this final hearing, the Claimant's complaints of race and disability discrimination were dismissed upon withdrawal, leaving his unfair dismissal complaint as the only matter to be determined.

2. The hearing was conducted by CVP. At the outset there were some technical difficulties which prevented the parties accessing the virtual hearing room, but these were resolved, and all parties and witnesses were able to be present throughout.

3. The issues to be determined had previously been set out for the parties in the case management order. At the outset of the hearing those general legal issues were augmented by the specific factual points included in the list below.

3.1 What was the reason or principal reason for the Claimant's dismissal?

3.1.1 The Respondent alleged that the reason was a reason relating to the conduct of the Claimant (ERA s. 98(2)(b)), namely that the Claimant had failed to respond to or act upon an email dated 10 August 2019 regarding disruption to a scheduled flight. The Respondent alleged in the alternative that there was some other substantial reason for the dismissal (s. 98(1)(b)).

3.1.2 The Claimant alleged that he was dismissed because of one or more of the following reasons: he had raised a grievance; he had had an accident at work; he had made a personal injury claim against the Respondent arising from the accident at work and/or because of an email he had sent to Andrew Saunders dated 4 August 2019.

3.2 If the reason for the dismissal was conduct, did the Respondent hold a genuine belief that the Claimant had committed the act of misconduct alleged?

3.3 Did the Respondent have reasonable grounds for its belief?

3.4 Did the Respondent reach that belief having carried out as much investigation as was reasonable in all the circumstances of the case? In relation to this issue, the Claimant alleged specifically:

3.4.1 that his dismissal was predetermined; and

3.4.2 that the Respondent failed to take into account his explanations for the allegations made against him.

3.5 Did the Respondent follow a fair procedure in dismissing the Claimant, in the sense that the procedure fell within the range of reasonable responses?

3.6 Did the decision to dismiss the Claimant fall within the range of reasonable responses?

3.7 If the dismissal was unfair:

3.7.1 Did the Claimant cause or contribute to his dismissal by means of his own culpable or blameworthy conduct? If so, what if any reduction should be applied to the Claimant's basic or compensatory award to reflect that conduct?

3.7.2 If the Respondent is found to have failed to follow a fair procedure, should the compensatory award be reduced to reflect a chance that the Claimant would have been fairly dismissed in any event had a fair procedure been followed?

DOCUMENTS

4. I was provided with a bundle numbering 257 pages, which had been sent to the Tribunal by the Respondent's solicitors, without apparent reservation, on 15 January 2021. At the outset of the hearing, Mr Robinson-Young indicated that the Respondent objected to the inclusion of the pages appearing from p. 207 onwards, as these were documents that were disclosed by the Claimant's solicitors (who remained on record for him at the date of the hearing, although he represented himself) on 8 January 2021. Mr Robinson-Young also contended that the documents were irrelevant.

5. I asked the Claimant whether he wished to rely on and refer to the documents from p. 207 onwards in relation to his unfair dismissal claim, as opposed to his discrimination claims, which had been dismissed upon withdrawal and to which, on first sight, they appeared more relevant. The Claimant confirmed that he did wish to rely on the documents in connection with his unfair dismissal claim. In order to progress the hearing, I informed both parties that, should the Claimant wish to refer to any specific document in this section of the bundle, I would give consideration to its relevance and admissibility at that point, if its inclusion was opposed by the Respondent. Both parties were content to proceed on that basis. In the event, the Claimant did not seek to refer to any particular document. I have read and considered the references to documents made in in the Claimant's witness statement.

WITNESSES

6. On behalf of the Respondent, I heard evidence from Darren Alderman, Cargo Business Manager, who dismissed the Claimant, and Andrew Saunders, Operations Director for London Gatwick Airport and business projects, who heard the Claimant's appeal. I heard evidence from the Claimant on his own behalf.

7. English is not the Claimant's first language and this, combined with the occasionally poor sound quality during the remote hearing, meant that sometimes it was difficult for the parties to understand or hear each other. I am grateful to the Claimant, Mr Robinson-Young and the Respondent's witnesses for persevering, repeating evidence or questions, and thereby ensuring that everything said could be heard and understood.

FACTS

8. The Respondent is a company that provides ground-handling agents to a number of airports throughout the UK, including London Gatwick, where the Claimant was based.

9. The Claimant was employed by the Respondent as a Ramp Team Leader. In this role, he was responsible for the safe, on-time performance and turn-around of aircraft, and the allocation of ramp agents within the team to the areas of the turn-around where they were needed.

10. Following a disciplinary hearing on 16 October 2018, the Claimant was issued with a Final Formal Warning by the Business Manager, LGW Ground Operations, Gavin Berryman, for causing a delay to flight EK16 on 5 August 2018 (p. 61). Mr Berryman concluded that the Claimant's conduct on this occasion was so serious as to constitute gross misconduct, as the Claimant had brought the company into disrepute and occasioned damage to the Respondent's brand. The letter to the Claimant informed him that the Final Formal Warning would remain on his file for twelve months, and that any proven allegations within this timescale may result in further disciplinary action being taken against him. The Claimant understood the twelve month period to have commenced on 16 October 2018, although the written confirmation of the warning was not sent to him until 22 November 2018.

11. The Claimant suffered an injury at work in June 2019, and he has raised a personal injury claim in connection with that injury. I accept the evidence given by Mr Alderman and Mr Saunders that neither of them was aware that the Claimant had raised a personal injury claim against the Respondent at the time of the respective disciplinary and appeal hearings. Mr Saunders was aware that the Claimant had had an accident, as he was informed of all accidents as part of his role, but he was not aware of the details of the Claimant's accident.

12. On 4 August 2019, the Claimant sent an email to Andrew Saunders (the content, although not the address line, of the email appears at p. 117), into which he says, and I accept, that his manager Kelly Palmer was copied. The email raised, in polite and measured terms, concerns about short-staffing on that day. The following day, Ms Palmer spoke to the Claimant about the email. On her own written account (p. 118), she "reminded him that [Mr Saunders] is Ops Director, he needs to report to myself and Gavin [Berryman] first."

13. On 10 August 2019, the Claimant was one of two Ramp Team Leaders on duty in the morning. The other was Simon Bromige.

14. At 07:26 a.m. on 10 August, Mr Berryman sent an email to various email addresses, including the "LGW NT Ramp Team Leader" address. There is no dispute that it was the role of the Claimant and his fellow Ramp Team Leaders to monitor and pick up emails at that address.

15. The email forwarded on to the addressees an email sent from the London Gatwick Station Representative of China Eastern Airlines, sent at 21:25 on 9 August 2019. This email read:

    "Pls be informed that due to Typhoon impact, MU201/MU202/11AUG will be rescheduled as below:

    MU201/11AUG arrival time will be adjust to 18:20 Local time

MU202/11AUG departure time will be adjust to 20:20 Local time.

Pls arrange sufficient manpower in advance."

16. Above this was Mr Berryman's own email, which commenced: "An update for you. Currently the operating aircraft is in YVR and being held due to the typhoon in PVG. This may delay our operation further. CI have requested a delayed check-in of around 16:00 dependent on desk availability, but currently have not advised any passengers." The email continued by setting out a plan addressed to various roles, including:

"Ramp - Please confirm if the team can re-roster to accommodate the ARR/DEP."

17. A read receipt on the email shows that it was read at 07:31 on 10 August 2019 (so around five minutes after it was sent) by "LGW NT Ramp Team Leader".

18. Later that day, Mr Berryman sent an email to Ms Palmer in which he stated that he had spoken to the Claimant regarding the delayed flight, and asked whether he had seen the email regarding the delay. He went on "[the Claimant] advised he had glanced at it and dismissed it as it is Joao's shift and for tomorrow. So basically said he has not done anything with it." There is a further email in the chain from Ms Palmer in which she expresses dissatisfaction at the Claimant's attitude towards the delay, and sets out the actions she and other Team Leaders have taken to cover the delay (p. 116 – 117).

19. In his oral evidence, the Claimant agreed that at the time the email had come in, his fellow Ramp Team Leader, Mr Bromige, had probably been out on the tarmac dealing with an aircraft. The Claimant also agreed in his oral evidence that there had been a phone call from Mr Berryman in which the email regarding the delayed flight had been mentioned, but disputed Mr Berryman's account of the conversation. He said that he had told Mr Berryman that he had seen the email, but not read it. The Claimant also said that the only thing Mr Berryman had asked him to do was to provide his colleague Joao's mobile telephone number, which he had done.

20. On 3 September 2019 at 13:22, the Claimant was suspended from his duties as a Team Leader by Ms Palmer (p. 248). The "outline allegation" given for the suspension was "Attitude, Conduct and behaviour". The Claimant did not agree to sign the form because he did not have a witness of his choice present on his behalf, which he believed was his entitlement under the Respondent's policy. Louise Brown, Administration Resource Planner LGW, was present when the Claimant was suspended. On 9 September, the Claimant was sent a letter confirming his suspension from his Team Leader duties on full pay (p. 78). The Claimant continued to carry out Ramp Agent duties throughout his period of suspension until his dismissal.

21. At 16:02 on 3 September 2019, the Claimant sent an email to Andrew Saunders and Gary Granger stating that he would like to raise a formal grievance (p. 65), and attaching a file with grievance points (p. 66 – 77). Mr Saunders' evidence, which I accept, was that he passed this email on to be dealt with in accordance with the Respondent's grievance policy without reading the grievance in detail, and that he had no contact with the grievance process thereafter.

22. An investigation into the Claimant's attitude, conduct and behaviour was carried out by Karen Thompson, Passenger Service Manager. The Claimant was invited to an investigatory interview on 17 September 2019 by letter dated 13 September 2019 (p. 79). He was informed that he could be accompanied at the interview.

23. On 15 September 2019, Ms Palmer emailed Ms Thompson with a document setting out her concerns regarding the Claimant's attitude, conduct and behaviour (p. 115 – 118).

24. The Claimant attended the investigatory interview with Ms Thompson on 17 September 2019 as planned. He was accompanied by a work colleague, Antonio Correia. Handwritten notes were taken, which the Claimant agreed he had read at the time, and signed at the bottom of each page.

25. Ms Thompson also interviewed four other Team Leaders, including Simon Bromige, who had been the other Ramp Team Leader on shift with the Claimant on 10 August, and Joao de Gouveia, who the Claimant had said would be on duty when the delayed flight arrived. Ms Thompson asked the witnesses about the allegations Ms Palmer had made about the Claimant's attitude, conduct and behaviour. She also asked the Team Leaders questions about what they would do if informed of a delay to a flight as in Mr Berryman's email of 10 August, and whether they were able to re-roster staff in their role.

26. Ms Thompson produced an investigation report on 30 September 2019 in which she detailed the main points of concern as (1) the Claimant sitting in the crew room with his feet up reading a book, not offering help on other teams; (2) the Claimant's reaction to the disruption to the flight as notified on 10 August 2019; (3) reporting procedures in the email to Mr Saunders of 4 August 2019; (4) repeated requests from the Claimant to wear shorts, which were not part of his uniform. All of these points had been discussed with the Claimant during the investigatory interview. Ms Thompson recorded a summary of the Claimant's responses to these allegations and of the evidence given by the Team Leaders. She recommended that the case go forward for a disciplinary hearing (p. 93 – 95).

27. On 1 October 2019, the Claimant was invited in a letter from Mr Alderman to a disciplinary hearing to take place on 4 October 2019. The allegation was again said to be "Attitude, conduct and behaviour in the workplace". The Claimant was informed of his right to be accompanied. He was provided with all the notes

and documentation relating to the investigation, and also with a copy of the Respondent's Disciplinary and Appeals policy (p. 132 – 3).

28. In the event, the hearing was rescheduled twice (the first time at the Claimant's request) and took place on 11 October 2019. The hearing lasted just over 2 ½ hours. The Claimant was accompanied by his union representative, Alan Newton, and Mr Alderman was accompanied by Adel Charles, HR Business Partner, to take notes and provide support. The Claimant again read the notes at the end of the hearing, and signed them at the bottom of each page (p. 135 – 153).

29. At the end of the hearing, Mr Alderman informed the Claimant that he had decided to dismiss him. The reason for Mr Alderman's decision to dismiss was stated to be the Claimant's failure to action the email from Mr Berryman on 10 August. Mr Alderman stated that he took into account the Claimant's existing Final Formal Warning for conduct, and that the Claimant was dismissed for "persistent issues with conduct". The Claimant's dismissal was confirmed in a letter dated 15 October 2019 (p. 157 – 8), in which Mr Alderman wrote:

"After careful consideration of the investigation and discussion of the facts known at the time, I confirmed given the severity of the incident, it was my reasonable belief that you had read an email from a Senior Manager advising of a China Eastern flight disruption the next day and despite a follow up call from the Manager you still failed to act upon the request to make arrangements for the disrupted flight. It is also my reasonable belief that as you were not going to be involved with the disruption the next day then you just left the rearrangements and did not handover to your oncoming colleague. You gave no consideration to the effected [sic] coming shift for the next day. Given the fact that there is a current live Final Formal Warning on file, I made the decision to dismiss you from your role. As per our disciplinary policy, you will receive 4 weeks pay in lieu of notice."

30. The Claimant appealed against Mr Alderman's decision on 17 October 2019 (p. 159). The Claimant put forward five grounds of appeal, namely (1) the decision was unreasonable; (2) the Claimant was not given the right of representation when demoted from team leader to agent; (3) the investigating manager said he was dismissing the Claimant based on his assumption that the Claimant had not responded to the email; (4) other team leaders could have responded to the email but did not and were not investigated or dismissed; (5) one of the witnesses had made a comment to the Claimant a few days prior to his witness statement.

31. The appeal hearing took place on 30 October 2019. The Claimant was accompanied by his union representative, Jamie Mayor, and Mr Saunders was accompanied by Alison Beaney, HR Business Partner. Handwritten notes were taken by Ms Beaney (p. 161 – 175) which were again signed by the Claimant at the bottom of each page. At the end of the hearing, Mr Saunders told the

Claimant that he wished to carry out further investigation, and that he would give an outcome probably in 7 – 10 days.

32. Mr Saunders interviewed Mr Bromige, who was the witness the Claimant said had said something to him, on 4 November 2019. The Claimant alleged during the appeal hearing that Mr Bromige had told him he should start to look for another job prior to the dismissal hearing (p. 167). He argued that there was a conspiracy to "get [the Claimant] out", in which Mr Bromige had played a part. Handwritten notes were taken of the interview with Mr Bromige. Mr Saunders gave evidence that he had also spoken to the HR team about an issue raised by the Claimant about being unable to access his email before his dismissal (WS AS paragraph 34), and to Mr Alderman about the reasons for and independence of his decision (WS AS paragraph 35). I accept that these discussions took place, but although Mr Saunders thought he had taken clarificatory notes on his original papers, he had not retained them.

33. Mr Saunders wrote to the Claimant on 5 November 2019 rejecting his appeal (p. 181 – 182). Regarding the email of 10 August 2019, Mr Saunders concluded that he was satisfied that the Claimant had seen the contents of the email and understood Mr Berryman's request during his telephone conversation with the Claimant. He also concluded that it was reasonable to expect the Claimant to understand and action the request made to look at resources to support the operation on the following day. He found based on the investigation interviews that other Team Leaders routinely undertook this activity. Although Mr Saunders acknowledged that other Team Leaders could also have responded to the email, he concluded it was the Claimant to whom Mr Berryman had spoken, and the Claimant should therefore have considered what steps he could take to ensure the continuity of the operation for the following day. Mr Saunders rejected the allegation of conspiracy. He did not consider that any irregularities in the suspension process had invalidated the disciplinary process, as the situation had been clarified by the letter of 9 September 2019. He concluded that the email to him and others of 4 August 2019 had no influence on the outcome of the disciplinary hearing.

34. On 13 November 2019, Mr Berryman sent the Claimant a letter entitled "Informal Grievance Outcome" (p. 183 – 186). The letter detailed meetings that had been held with the Claimant to deal with his grievance. It outlined that his grievance had been divided into three areas: abusive/derogatory language; issues with Ms Palmer and other/miscellaneous, and stated that the order in which these various concerns had been explored had been determined by the Claimant. The matters grouped under "other/miscellaneous" had been resolved informally, which the Claimant confirmed in his oral evidence. The letter responded to the allegations relating to Ms Palmer, in respect of which the grievance was not upheld. The remaining matters had not been discussed at the date of the Claimant's dismissal.

THE LAW

35. Pursuant to section 98 Employment Rights Act 1996, it is for the employer to show the reason for dismissal, and that it is a potentially fair reason within the meaning of section 98. A reason relating to the conduct of an employee is a fair reason within section 98(2)(b) of the Act.

36. If a fair reason can be shown, section 98(4) ERA 1996 provides that the Tribunal must consider whether the dismissal was fair or unfair, which will depend on whether in the circumstances (including the size and administrative resources of the employer), the employer acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

37. Where the reason for the dismissal is conduct, as is alleged in the present case, it is established law that the guidelines contained in *British Home Stores Ltd –v- Burchell* [1980] ICR 303 apply. An employer must (i) establish the fact of its belief in the employee's misconduct, that the employer did believe it. There must also (ii) be reasonable grounds to sustain that belief, (iii) having carried out such investigation into the matter as was reasonable in all the circumstances of the case. A conclusion reached by the employer on a balance of probabilities is enough. Point (i) goes to the employer's reason for dismissal (where the burden of proof is on the Respondent) and points (ii) and (iii) go to the general test of fairness at section 98(4) (where there is a neutral burden of proof).

38. The Tribunal must further determine whether the sanction imposed by the employer fell within the range of reasonable responses.

39. At the stages set out at points (ii) and (iii) in paragraph 37 above, as well as paragraph 38 above, the Tribunal must consider whether the employer's conduct fell within the range of reasonable responses open to it (*Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439; and see *Sainsbury's Supermarkets Ltd v Hitt* [2003] ICR 111, where it is confirmed that this principle also applies to the investigation carried out and procedure adopted by the employer). It is not open to the Tribunal to substitute its view for that of the employer.

40. In cases where an employer relies on a final warning in reaching its decision to dismiss, it is likely to be legitimate for the employer to do so in circumstances where it was issued in good faith, there were at least prima facie grounds for imposing it, and it was not manifestly inappropriate to issue it (*Davies v Sandwell MBC* [2013] IRLR 374).

CONCLUSIONS

The Reason for the Dismissal and the *Burchell* Test

41. I found it helpful to consider these issues together, as I thought it likely that my findings as to the genuineness and reasonableness of the conclusions reached by the dismissing and appeal officers would be of assistance in determining whether the principal reason for the dismissal was conduct, as alleged by the Respondent, or one or more of the reasons put forward by the Claimant. In analysing these issues, I had in mind the burden of proof in relation to each, as set out at paragraphs 36 and 38 above.

42. The Claimant contends that his dismissal was not by reason of his conduct, but because he had raised a grievance; for reasons connected with his injury at work and/or consequent personal injury claim against the Respondent and/or because of his email to Mr Saunders dated 4 August 2019, regarding short-staffing.

43. Taking those in turn, I am satisfied that the Claimant's grievance did not form any part of Mr Alderman's or Mr Saunders' reasons for dismissal. The Claimant's own cross-examination of Mr Alderman was based on the premise that Mr Alderman was unaware of his grievance, save for a brief comment from the Claimant in the disciplinary hearing. Mr Alderman confirmed this, and said he did not consider the grievance to be relevant. Mr Saunders acknowledged that he had received the email of 3 September 2019 attaching the grievance, which was sent to him and another manager, but he did not read it in detail, forwarded it on to the appropriate manager, and had no further involvement.

44. I accepted Mr Alderman's evidence that he had no knowledge of either the Claimant's accident at work or his personal injury claim; thus neither could have influenced his decision. Whilst Mr Saunders was aware of the Claimant's accident, this was only in general terms and he had no knowledge of the personal injury claim. I can see no reason why this knowledge would have influenced his decision on the misconduct charge against the Claimant.

45. The Claimant's email of 4 August 2019 was in the disciplinary pack provided to Mr Alderman, and it was in fact sent to Mr Saunders, so both were aware of it. I was somewhat surprised to see that this email was included as evidencing poor attitude on the part of the Claimant in Ms Palmer's report, and Ms Thompson's investigation report. The email was in my view polite and contained nothing inappropriate, and as Mr Saunders said in his oral evidence, was exactly the sort of email that he wished to receive if employees had concerns. That said, I am satisfied, based on the evidence given by both of the Respondent's witnesses, the notes of the disciplinary and appeal hearings and the outcome letters, that this email did not ultimately form part of the reason for the Claimant's dismissal.

46. Moving on to look at the reason given by the Respondent for the dismissal, it is clear from the documentation that although initially a number of conduct issues were raised and considered in the investigation, ultimately the reason relied

upon by Mr Alderman in dismissing the Claimant was his inaction in response to Mr Berryman's email of 10 August 2019.

47. The evidence in relation to this incident was considered in some detail at the investigatory, disciplinary and appeal stages.

48. Both Mr Alderman and Mr Saunders found that the Claimant had read the contents of Mr Berryman's email but had failed to act on it, and also that he could have taken steps to review and put in place resources to deal with the delayed flight when it came in the following day.

49. I accept Mr Alderman's evidence that the following points were significant for him in reaching that conclusion:

    49.1 the email sent by Mr Berryman at 07:26 on 10 August 2019 contained a clear instruction to the Ramp Team Leader;

    49.2 the email had been marked as read by the Ramp Team Leader five minutes after it was sent;

    49.3 he accepted the account given by Mr Berryman in his email to Ms Palmer dated 10 August 2019, that the Claimant had told Mr Berryman in a phone call that he had glanced at the email regarding the delayed flight and dismissed it as it was Joao's shift and for tomorrow (p. 117);

    49.4 he concluded that the Claimant must therefore have read the email sent at 07:26, because otherwise he would not have known the scheduled arrival time of the flight and who would be on shift;

    49.5 the Claimant's conduct and responses in the disciplinary hearing indicated that he had simply left the matter to be dealt with by someone else;

    49.6 the Claimant's position that he did not know how to re-roster staff, and could take no action in that respect, was not credible given (i) the witness statements from other Team Leaders indicating the actions they would have taken in the same circumstances and (ii) the fact that the Claimant clearly knew how to escalate matters to his manager if he was not capable of dealing with them himself;

    49.7 the Claimant accepted in the disciplinary hearing that if a Team Leader on the shift before him had been warned of a flight delay, he would have expected that person to ask someone within his team to stay on duty;

    49.8 even after his telephone call with Mr Berryman, the Claimant took no steps to assist with the delayed flight beyond providing a telephone number for his colleague Joao, and provided no handover to the following shift.

50. I find that the central points taken into account by Mr Saunders in reaching his decision were essentially the same. Mr Saunders also noted that the Claimant

had access to the team roster sheets, and could easily have identified which ramp agents were on shift, and what additional resources would be required.

51. It is noteworthy that the Claimant did not in his witness statement, or in his oral evidence, advance any argument that it was not reasonable for Mr Alderman and Mr Saunders to make those findings. Indeed, in cross-examination, the Claimant accepted that Mr Alderman had a reason to think that he had read the email regarding the flight delay.

52. I find that Mr Alderman and Mr Saunders genuinely believed that the Claimant had read and deliberately failed to act upon Mr Berryman's email in circumstances where there were steps he could and should have taken to assist with the delayed flight, and that this conduct was the principal reason for his dismissal. I find that their belief was based on reasonable grounds, as set out at paragraphs 49 – 50 above.

53. I also find that the Respondent had carried out as much investigation as was reasonable in the circumstances. Taking an overall view of the investigation, it was thorough and detailed. Mr Alderman and Mr Saunders gave the Claimant every chance to give his account of events at the disciplinary and appeal hearings, and I reject the Claimant's allegation in his claim form to the contrary. Mr Saunders gave full consideration to the Claimant's appeal points and made his own enquiries of Mr Bromige in relation to the allegation that there was a conspiracy to get the Claimant out of the business. He also made enquiries in relation to the Claimant's inability to access his email immediately before his dismissal. Mr Saunders concluded that the allegation of conspiracy was unfounded, and I agree that there is no evidence to support it, or the Claimant's contention that the decision was pre-determined.

54. In his oral evidence and questioning, the Claimant contended that the investigation was incomplete because Mr Alderman and Mr Saunders did not take into account the matters raised in his grievance. Mr Alderman and Mr Saunders gave evidence that they considered the grievance and the disciplinary to be two separate processes. Having reviewed the contents of the Claimant's grievance, I agree that it was reasonable for the Respondent to treat the two processes separately. Most of the matters raised by the Claimant were historic and wholly irrelevant to the conduct issue for which he was dismissed. The grievance did raise some issues about the previous Final Formal Warning (which I consider further in relation to sanction below), but that process had concluded almost a year before the disciplinary hearing with Mr Alderman, and there had been no appeal against the outcome.

Did the Respondent follow a fair procedure?

55. The only specific allegation of procedural unfairness raised by the Claimant is that he was not given the opportunity to have a witness of his choice present

when he was suspended from his Team Leader duties by Kelly Palmer on 3 September 2019.

56. I agree with the Respondent that there is no statutory right to be accompanied at the point of being suspended under section 10 of the Employment Relations Act 1999. However, I did not understand that to be the Claimant's argument. He based his position on the Respondent's Disciplinary Policy and Procedure (bundle p. 37) which states that wherever possible, employees will be suspended in person and will be given the right to have a witness present. I note that the policy does not state that the witness has to be one chosen by the employee, and that there was in fact a witness (Ms Brown) present at the time of suspension. However, even if the Claimant's interpretation is correct, I do not consider that the failure to allow him to have a witness at the point of suspension can be regarded as rendering the dismissal procedurally unfair. The Claimant understood the terms of his suspension and was indeed permitted to continue to work as a ramp agent, on full Team Leader pay. The limited suspension did not in any way affect his ability to respond to the charges against him.

Did the sanction of dismissal fall within the range of reasonable responses?

57. I have given careful consideration to the question of whether the sanction of dismissal fell within the range of reasonable responses, particularly because the Claimant was suspended only from his Team Leader duties, and because the Respondent's Disciplinary Policy and Procedure explicitly states that demotion or downgrading is a potential alternative to dismissal (p. 42 – 3).

58. I have, however, reached the conclusion that in all the circumstances of this case, dismissal fell within the range of reasonable responses.

59. The Claimant was subject to an unexpired Final Formal Warning at the date of dismissal. Although the Claimant raised concerns about this warning in his grievance and witness statement, I have reviewed those concerns, and they do not provide any basis on which I could conclude that the warning was issued in bad faith, or was manifestly inappropriate. The notes of the disciplinary hearing which resulted in the Final Formal Warning are contained in the bundle (p. 48 – 60). They show that the Claimant admitted a degree of culpability in causing the delay of a flight, and that his actions had resulted in a financial penalty for the Respondent. There were clearly at least prima facia grounds for taking disciplinary action.

60. The Respondent reasonably found that the Claimant had deliberately disregarded a reasonable management instruction on 10 August 2019. Refusing to carry out a reasonable instruction, providing the employee has been appropriately trained, is listed as an act which may warrant consideration as gross misconduct under the Respondent's Disciplinary Policy and Procedure (p. 44 – 45). As the act was committed in the currency of a Final Formal Warning

in respect of similar conduct, dismissal was certainly potentially capable of being a reasonable response.

61. Mr Alderman and Mr Saunders gave oral evidence that they had considered and rejected alternatives to dismissal. Mr Alderman was of the view that demotion would not be appropriate because the Claimant had repeatedly shown problems with his attitude towards senior managers and other team leaders, to whom he would be reporting if demoted. He said (and the Claimant did not dispute) that there were no vacancies in alternative departments at the time. He did not consider that it would be appropriate to extend the Final Formal Warning as the Claimant had already been given the chance to improve his attitude, behaviour and conduct, and had not done so. Mr Saunders gave the same reasons for his decision not to apply an alternative sanction. I find that in all the circumstances, their decision to dismiss the Claimant fell within the range of reasonable responses.

62. The Claimant's unfair dismissal complaint therefore fails, and it is unnecessary to address the issues relevant to remedy.

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Employment Judge A. Beale

Date: 27th January 2021