



EMPLOYMENT TRIBUNALS

Claimant: Ms D Grisina

Respondent: Torque Retail Services Limited

Heard at: Manchester (by CVP)

On: 18 January 2021
25 February 2021
9 April 2021
(in Chambers)

Before: Employment Judge Ainscough
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr J Robinson, Solicitor

JUDGMENT

The judgment of the Tribunal is that the claim of unfair dismissal is unsuccessful and is dismissed.

REASONS

Introduction

1. The claim was brought by way of a claim form dated 5 July 2020 in which the claimant complained of unfair dismissal from her role as a Team Leader for the respondent, an end-to-end supply chain specialist. The claimant was employed by the respondent at their Wigan branch from 13 July 2015 until her summary dismissal on 1 May 2020.

2. The response form dated 7 August 2020 denied that the claimant had been unfairly dismissed. The respondent contended that the claimant had been fairly dismissed because of her conduct.

Issues

3. The issues to be determined by the Tribunal are as follows:
- (1) Was the claimant dismissed?
 - (2) If the claimant was dismissed, what was the reason or principal reason for the dismissal?
 - (3) Was it a potentially fair reason?
 - (4) If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will decide in particular whether:
 - (a) there were reasonable grounds for that belief;
 - (b) at the time the belief was formed the respondent had carried out a reasonable investigation;
 - (c) the respondent otherwise acted in a procedurally fair manner;
 - (d) the dismissal was within the range of reasonable responses.

Evidence

4. The parties agreed a bundle of documents of some 114 pages. On the first day of the hearing I heard evidence from Stuart Mallinson who took the decision to dismiss the claimant, and from Steven Foster, who heard the claimant's appeal against dismissal. On the second day of the resumed hearing I heard evidence from the claimant and was asked to read two witness statements of Kirsty Catterall and Paul Railton who were not in attendance at the Tribunal. I was also asked to view CCTV footage of the respondent's floor at Wigan on 1 April 2020. I then heard submissions from both parties.

Relevant Legal Principles

5. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996.

6. The primary provision is section 98 which, so far as relevant, provides as follows:

- “(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –
 - (a) the reason (or, if more than one, the principal reason) for the dismissal and

- (b) that it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this sub-section if it ... relates to the conduct of the employee ...
 - (3) ...
 - (4) Where the employer has fulfilled the requirements of sub-section (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".

7. If the employer fails to show a potentially fair reason for dismissal (in this case, conduct), dismissal is unfair. If a potentially fair reason is shown, the general test of fairness in section 98(4) must be applied.

8. In a misconduct case the correct approach under section 98(4) was helpfully summarised by Elias LJ in **Turner v East Midlands Trains Limited [2013] ICR 525** in paragraphs 16-22. The most important point is that the test to be applied is of the range or band of reasonable responses, a test which originated in **British Home Stores v Burchell [1980] ICR 303**, but which was subsequently approved in a number of decisions of the Court of Appeal. The "**Burchell test**" involves a consideration of three aspects of the employer's conduct. Firstly, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case? Secondly, did the employer believe that the employee was guilty of the misconduct complained of? Thirdly, did the employer have reasonable grounds for that belief? If the answer to each of those questions is "yes", the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was within the band of reasonable responses, or whether that band falls short of encompassing termination of employment.

9. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer. The focus must be on the fairness of the investigation, dismissal and appeal, and not on whether the employee has suffered an injustice.

10. The band of reasonable responses test applies to all aspects of the dismissal process including the procedure adopted and whether the investigation was fair and appropriate. The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613**.

Relevant Findings of FactClaimant's employment

11. The claimant began work with the respondent on 13 July 2015 as an administrator. This role required the claimant to pick products for distribution. The claimant was promoted to Team Leader and was required to manage a team of administrators. In the last year of her employment, the claimant was a Company Ambassador and was involved in the organisation of charity events.

12. The contract of employment signed by the claimant on 18 October 2017 stated that the disciplinary dismissal and grievance procedures were contained within an employee handbook.

13. The respondent operates a company equipment email and internet policy dated 1 December 2017, which at paragraph 12 states that staff who are provided with a locker must keep their mobile phone within that locker until a break or until the end of a shift. The claimant was provided with a locker at the respondent's site in Wigan.

14. The respondent also operated a disciplinary and poor performance procedure dated 1 June 2016. At paragraph 5, provision is made for an investigation meeting when there is a belief that there has been a contravention of the respondent's policies. There is also a right to suspend an employee. The policy provides that where the respondent has reasonable grounds to believe that there has been misconduct, the employee will be invited to a disciplinary hearing. Prior to any such hearing, the employee should be provided with relevant information which can include any statements on which the respondent intends to rely.

15. At paragraph 8, the disciplinary policy provides that the employee should be given a full explanation of the case against them, including the content of any statements provided by witnesses. The employee should also be given the right to set out their own case, answer allegations and reasonable opportunities to ask questions, present evidence and call witnesses. The respondent has a right of adjournment after which the outcome, which can include dismissal for gross misconduct, is confirmed.

16. Paragraph 10 of the policy sets out that gross misconduct includes a serious breach of the respondent's rules including, but not restricted, to health and safety rules and rules on computer use and conduct that brings the company's name into disrepute. An employee is given a right of appeal. Grounds of appeal include inconsistent treatment and the severity of the sanction imposed. The appeal handler will consider the grounds of appeal together with any representations from the employee or their companion.

Prior to 1 April 2020

17. Prior to 1 April 2020, and in response to the COVID-19 pandemic, the respondent issued a document entitled "Important update Coronavirus – your health is our priority". The claimant received a copy of this document and printed it out and

placed the pages on the wall by the desks in Wigan. Page 6 of that document advises employees to observe social distancing guidelines and stay two metres apart.

18. On 26 February 2020, the claimant's second line manager, Pauline Lancaster, sent an email to the claimant's first line manager, Kirsty Catterall, and copied the claimant and her colleague, Hayley Dermot (another team leader) into that email. The email subject dealt with the topic of everyday tasks, the last of which contained the following sentence:

"Team leaders and admin should not have their mobile phones on them, please leave these in your lockers with immediate effect."

1 April 2020 and subsequent investigation

19. On 1 April 2020, prior to the claimant starting her shift, an administrator on the claimant's team took pictures of the staff not observing social distancing guidelines. That employee forwarded those pictures to a journalist at Granada Reports who published the photographs and interviewed the same employee. The news report recorded that the employee was concerned about whether the respondent had safe working practices during the pandemic.

20. The claimant joined her team minutes after those photographs had been taken.

21. On 3 April 2020 the respondent received an anonymous email that had been copied to the Manchester Evening News, in which it was alleged that the respondent was a non-essential business and was not providing safe working practices for its employees.

22. The respondent appointed Oliver Winstanley, to investigate the matter. As part of the investigation Oliver Winstanley viewed CCTV footage of the Wigan site and established that the photographs had been taken at 7.00am on 1 April 2020. The person responsible was identified as Natasha Ford, an administrator in the claimant's team.

23. On 6 April 2020 the claimant was suspended from her role following allegations that she had:

- (a) misused the respondent's name;
- (b) breached the respondent's COVID-19 social distancing guidelines;
- (c) brought the respondent's name into disrepute; and
- (d) breached the respondent's equipment, email and internet policy.

24. The letter informed the claimant that this could amount to gross misconduct and she was invited to attend an investigation meeting on 8 April 2020.

25. The claimant attended that meeting unaccompanied and it was led by Oliver Winstanley. CCTV footage was shown to the claimant during that meeting. The claimant was asked whether she was aware that photographs had been taken, and she denied this. The claimant also denied that she knew that those photographs would be sent to the media.

26. It was acknowledged that the claimant was not on the floor when the photographs were taken. However, the claimant was asked to explain what content had been shown to her from the phone of her colleague Hayley Dermot and why Hayley pointed towards Natasha. The claimant stated she was looking at the COVID news death toll. The claimant denied that Hayley Dermot simultaneously pointed towards Natasha Ford. It was also pointed out to the claimant that people were stood less than two metres apart in breach of social distancing guidelines.

27. When asked why the claimant did not challenge Natasha Ford over the use of her phone, the claimant explained that she did not see it. It was put to the claimant that she could be seen using her phone, to which she responded that she was allowed to use her phone on the floor so that staff could contact her about sickness and shift start times.

28. The claimant was also shown the email that was sent on 3 April 2020 and commented that it was childish. The claimant again denied seeing any photographs on Hayley Dermot's phone.

29. At the end of the meeting the claimant was informed that as a result of the use of her mobile phone on the floor she would be invited to a disciplinary hearing.

Disciplinary hearing and dismissal

30. On 17 April 2020 the claimant was invited to a disciplinary hearing for the same reasons given in the letter of suspension. The claimant was provided with the disciplinary procedure, the company equipment email and internet policy, the note of the investigation meeting, a document entitled "Guidance", the anonymous email and the CCTV footage.

31. The claimant attended the disciplinary hearing on 21 April 2020 and was accompanied by her line manager, Kirsty Catterall. The meeting was chaired by Stuart Mallinson, an Implementation and Continuous Improvement Manager for the respondent.

32. During that hearing the claimant was shown the CCTV footage. Stuart Mallinson was able to zoom in on the footage. The claimant was asked what Hayley Dermot had shown the claimant on her phone, and why Hayley Dermot had pointed towards Natasha Ford. The claimant denied that she had been shown the picture that had been taken by Natasha Ford and suggested Hayley was merely being expressive when moving her arms. The claimant was shown the anonymous email and repeated that she considered it to be childish.

33. The claimant was asked whether her team were allowed mobile phones on the floor. The claimant said if they had permission, it was allowed. The claimant

was also asked whether she was aware of social distancing guidelines in light of the close proximity of colleagues when looking at phones. The claimant informed Stuart Mallinson that she had printed the guidelines and put them on the walls. The claimant was asked if she had permission to bring her phone onto the floor, and she said that because she was team leader she was allowed.

34. Prior to an adjournment Kirsty Catterall asked if she could add a comment, and she was allowed to do so. Kirsty Catterall informed Stuart Mallinson that if the claimant had known about the photograph she would have informed Kirsty Catterall. Stuart Mallinson informed the claimant that the meeting would be adjourned and reconvened following further investigation.

35. On the same date Natasha Ford was subject to a disciplinary hearing, during which she admitted taking the photographs and resigned from her role.

36. On 22 April 2020 Hayley Dermot was subject to a disciplinary hearing and informed Stuart Mallinson that she had shown the claimant the news on her phone.

37. On the same date the claimant's colleague, Lee Bradshaw, was subject to a disciplinary hearing at which he was accompanied by a trade union representative. During that meeting Lee Bradshaw admitted having his mobile phone on the floor but stated he had permission to do so because of illness in the family. No further action was taken against Lee Bradshaw.

38. On 24 April 2020 Hayley Dermot was summarily dismissed from her role.

39. On the same date the claimant attended the adjourned meeting and was informed that as a result of her answers in the first meeting, the respondent was adding a fifth allegation of breach of trust. The respondent alleged that the claimant did not have permission to use her phone on the floor. The claimant was asked to attend a further disciplinary hearing on 28 April 2020. That meeting eventually took place on 1 May 2020.

40. On 1 May 2020 the claimant was asked to account for her answers about whether she had permission to use her phone on the floor. The claimant was provided with a copy of the email of 26 February 2020 from Pauline Lancaster. It was the claimant's contention that she had permission because all managers used phones and showed each other information on their phones. It was put to the claimant that she had lied to both Oliver Winstanley and Stuart Mallinson about this issue. The claimant denied that she had lied. The claimant believed she had missed the email sent from Pauline Lancaster.

41. The claimant alleged that the first four allegations had not been properly explained to her. Stuart Mallinson informed the claimant that a full explanation would be set out in his decision.

42. Following an adjournment Stuart Mallinson informed the claimant that her failure to prohibit the activities of her team on being made aware of the photographs, brought the company name into disrepute and amounted to a clear misuse of the company's name. The claimant was also informed that failing to socially distance

put her colleagues at risk of infection, the use of a phone on the factory floor was a breach of the company's equipment email and internet policy, and her insistence that she had permission to use her phone was a breach of trust. The claimant was informed that as a result her employment had been terminated on the grounds of gross misconduct.

43. The claimant's dismissal was confirmed in a letter on 5 May 2020, and the claimant was notified of her right to appeal.

Appeal

44. On 6 May 2020 the claimant submitted her appeal on the following grounds:

- that the decision was unfair;
- the evidence provided was unreliable;
- she was not treated fairly compared to other employees;
- there had been insufficient consideration of her explanation;
- she had been victimised and penalised;
- dismissal was too harsh;
- her previous record had not been properly considered.

45. The claimant was invited to an appeal hearing with Steven Foster, Courier Manager, on 14 May 2020.

46. At the outset of the appeal hearing the claimant read a three page document citing her grounds of appeal. The claimant alleged that the disciplinary hearing was prejudged, that the respondent had failed to follow its own procedure because a full explanation had not been given of the allegations and she did not receive any relevant evidence prior to the start of either hearing. The claimant maintained that she had permission to use her mobile phone. The claimant stated that Hayley Dermot was never accused of unauthorised use of mobile phone.

47. After the claimant had been given the opportunity to read the three page document she stated that she did not want to discuss the grounds because everything was in the notes. Steven Foster informed the claimant that he still had to review her appeal and ask her some questions. The claimant was again taken through the CCTV footage and asked about her knowledge of the respondent's policies. At the end of the meeting the claimant was informed that Stuart Mallinson's decision had been upheld. This was confirmed by way of a letter on 20 May 2020.

Submissions

Claimant's submissions

48. The claimant submitted that the respondent had not done a thorough investigation, and had failed to take witness statements from relevant people such as her line manager. It is the claimant's case that the respondent only conducted an investigation to support its own suspicions.

49. The claimant alleges that the respondent did not follow ACAS or its own procedure, and she was denied the opportunity to call relevant witnesses.

50. The claimant believes that the other employees involved were not disciplined in the same way and she was treated less favourably.

51. The claimant also asserts that the appeal hearing did not follow the ACAS procedure and her questions were not answered. The claimant alleges that she was not able to put her case and the outcome was prejudged.

Respondent's Submissions

52. The respondent submits that the fair reason for the claimant's dismissal was conduct about which it had a genuine belief. The Tribunal was asked to consider whether the respondent had acted reasonably in dismissing the claimant for this reason. The Tribunal was asked to look at the ACAS procedure and the test set out in the case of **Burchell**.

53. The respondent asserts that the reasons given for the claimant's dismissal were genuine. The claimant was a team leader in a position of trust and her actions had undermined their trust and confidence in her. The respondent was concerned that the claimant did not show any contrition or understanding as to the seriousness of her actions, and her admission that she had received the email telling her not to use her phone was sufficient. The respondent relies on the claimant's evidence that she had disciplined others for phone use but did not think she should be disciplined herself. The respondent was concerned that on 1 April 2020 the claimant did not challenge Natasha Ford about the use of her phone on the floor.

54. The respondent maintains that had the claimant challenged Natasha Ford about her phone, she would have found out what had happened and could have prevented the pictures being sent to the media. The respondent was also concerned that the claimant was less than clear about what she had looked at on Hayley's phone and further, that she did not consider it to be a problem to stand within less than 30 centimetres of Hayley to look on her phone. The respondent did not accept the claimant's explanation as to why Hayley pointed in the direction of Natasha Ford.

55. The respondent believes the claimant had a chance to report the matter and stop the damage to the business but did nothing and condoned the behaviour as well as breaching the phone and social distancing guidelines.

56. The respondent seeks to substantiate the genuine belief on the basis that it could zoom in to the CCTV and it was clear that the claimant had her phone on her desk and the claimant almost accepted this when pressed. The respondent

contends that all those involved were dismissed or resigned, save for one employee who had mitigating circumstances.

57. It is the respondent's case that it adopted a fair procedure with a proper investigation, and because it had unequivocal CCTV evidence there was no need to take additional witness statements – they would have made no difference. The respondent contends that the hearings were convened properly and the claimant was given an opportunity to state her case.

58. The Tribunal was reminded that the case must be viewed objectively as to whether the claimant's dismissal fell within the range of reasonable responses. The respondent contends that it did. In the alternative the respondent contends that if the Tribunal finds that there was an unfair dismissal, contributory fault would reduce the claimant's compensation to zero.

Discussion and Conclusions

Reason for the claimant's dismissal

59. The claimant was dismissed on 1 May 2020 for gross misconduct. Section 98(2) of the Employment Rights Act 1996 provides that conduct is a fair reason for dismissal.

60. The claimant asserted that the real reason for her dismissal was because her role was redundant following the respondent losing the Trespass contract. During his evidence Stuart Mallinson admitted that the respondent had lost the Trespass contract at some point in 2020. Stuart Mallinson also admitted that staff were allocated to particular contracts but would often move around depending on demand. It was admitted that the claimant worked for Trespass, but Stuart Mallinson did not know where the Trespass team had moved to within the respondent's company following the loss of the Trespass contract.

61. There is no evidence to suggest that the Trespass team have been made redundant following the loss of the contract, and I therefore accept the evidence of Stuart Mallinson that that team was deployed elsewhere within the business. I find that the reason for the claimant's dismissal was conduct.

Was the dismissal fair in all the circumstances?

Did the respondent carry out a reasonable investigation?

62. The respondent operated a disciplinary policy that provided for an investigation stage, a disciplinary hearing and an appeals process. In order to establish whether the respondent conducted a reasonable investigation I have considered the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015).

63. I have considered the size and resources of the respondent and note that it had the resources to devote to the disciplinary process outlined.

64. In this case the respondent carried out a separate investigation prior to making the decision to convene a disciplinary hearing.

65. Following the publication of the photographs, the respondent conducted the investigation within a matter of days and the claimant was notified of her suspension and the allegations by 6 April 2020. Two days later the claimant was invited to an investigation meeting with Oliver Winstanley.

66. The ACAS Code provides that if an employee is to face a disciplinary hearing, they should have sufficient information to answer the case at that disciplinary hearing. This can include the provision of witness statements. However, the respondent relied upon what it could see on the CCTV footage. The respondent was able to zoom in on that footage, and says it clearly shows the claimant on her phone on the floor.

67. In evidence, Stuart Mallinson said that he was unable to provide any witness statements because all those questioned about the incident denied that there had been sharing of a photograph. Nobody had implicated or exonerated the claimant. Stuart Mallinson was clear that the respondent relied upon his view of the CCTV footage, which was that a phone was passed to the claimant by Hayley, as Hayley gesticulated towards Natasha Ford.

68. It was Stuart Mallinson's evidence that after all involved had denied their role, he had to watch the CCTV again. It was his view that Hayley's phone was a hot topic and people were looking at the screen. Stuart Mallinson said he could not doubt what had happened – that there had been a sharing of the photograph from Natasha Ford to Hayley and then to the claimant.

69. Following the initial disciplinary hearing on 21 April 2020 the claimant was invited to a second meeting on 24 April 2020 to be told that she faced a further allegation of a breach of trust. This allegation was added following the claimant's response to a question as to whether she was authorised to have her phone on the floor.

70. At the reconvened disciplinary hearing on 1 May 2020 the claimant was provided with a copy of the email from Pauline Lancaster of 26 February 2020 dealing with the use of mobile phones on the floor. The claimant confirmed she was content to continue with the hearing.

71. The claimant alleges that she did not fully understand the allegations that had been brought. However, I can see from the transcripts of the investigation and disciplinary meeting that the allegations were explained to the claimant and she was given an opportunity to answer each one.

72. Stuart Mallinson agreed to adjourn the meeting to investigate the claimant's answers about using her mobile phone further. Stuart Mallinson did not reach his decision about the claimant's dismissal until after that further investigation.

73. Following the claimant's dismissal, she was given the right of an appeal, and the appeal hearing took place within eight days of submitting her grounds of appeal.

The claimant was given an opportunity to read out the grounds of her appeal but then immediately told Steven Foster that she did not want to discuss those grounds further.

74. As a result, Steven Foster took the claimant through the CCTV and gave her a further opportunity to respond to the allegations. The claimant was informed at the end of the meeting that her appeal had not been upheld, and this was confirmed promptly in a letter on 20 May 2020.

75. I find that the respondent did conduct a reasonable investigation into the alleged conduct. The respondent followed its own procedure which was in line with the ACAS Code of Practice. The investigating officer was different to that of the disciplinary officer and the appeals officer. All those involved in the incident were spoken to.

76. The respondent had formed a view of the CCTV footage following an investigation of all those involved. It is not mandatory, either in the respondent's policy or the ACAS Code, that witness statements are provided, and the invitation to the disciplinary hearing gave the claimant four days to prepare.

77. The disciplinary hearing was adjourned so that the respondent could carry out further investigations. The claimant had a period of ten days within which she could have obtained any supportive evidence to put to the disciplinary officer on 1 May 2020. Similarly, the claimant had approximately two weeks to collate any supportive evidence before her appeal hearing but chose not to do so.

Respondent's belief

78. The claimant asserts that the respondent could not have genuinely believed that she was guilty of the misconduct because it was not possible to see her phone or the screen on her phone, on the CCTV footage. The claimant maintained that although she had her phone on the floor, she was looking at news that had been shown to her by Hayley. The claimant denied that she had any knowledge that photographs had been taken or that they would be shared with the media.

79. The claimant faced five allegations, two of which related to the publication of the photographs in the media and the other three which related to the respondent's policies and procedure in the workplace.

80. At the meeting on 1 May 2020 and in the subsequent letter of 5 May 2020, the claimant was informed that the claimant contributed to bringing the company name into disrepute and misusing the company's name. When asked about this in evidence, Stuart Mallinson said his view of the CCTV footage was such that the information on Natasha Ford's phone had been shared with Hayley, who subsequently shared it with the claimant. He reiterated that he was able to slow the footage down and zoom in to see what was happening. He formed the view that the claimant was in a position to stop the photographs from being shared with the media and should have done so as a team leader. For this reason, he said the claimant was complicit in the misuse of the company's name and brought the company into disrepute.

81. As the respondent was able to zoom in and slow down the CCTV footage and saw the interaction between the employees, minutes after the photographs had been taken, this belief and conclusion was reasonable. As a result of the sharing of that footage, the respondent's name was misused and brought into disrepute. The only evidence put forward in defence of the claimant was from her line manager who said that had the claimant known about the photograph, she would have told her. This was not enough to dissuade the respondent from this reasonable belief.

82. It was Stuart Mallinson's evidence that it was clear from the CCTV that the claimant did breach the two metre distancing required for COVID purposes. I was able to view the CCTV footage and noted this fact. The claimant admitted that she was aware of the need to socially distance and had herself printed off the policy and placed it on the wall. Despite this, the claimant is seen breaching the two metre rule.

83. The claimant was asked whether she had permission to have her mobile phone on the floor by both Oliver Winstanley and the Stuart Mallinson. On both occasions the claimant submitted that she did have such permission, and this was the reason for the adjournment of the first disciplinary hearing.

84. When the claimant was shown the email from Pauline Lancaster, she commented that she might have missed it. The email was copied specifically to the claimant and when asked about it in evidence she said that because it was not addressed to her, she would not have opened it. It was put to her that she would have to open the email to see that it was not addressed primarily to her but to somebody else. The claimant conceded that she did remember the email, but did not scroll down to see the last line about the non-use of mobile phones on the floor.

85. In light of the fact that the claimant was copied into this email the respondent had reasonable grounds to believe that she had received it, seen it and was aware of it. There was no evidence from the claimant's line manager that the claimant had authority to have her phone on the floor.

86. Therefore, in light of Stuart Mallinson's understandable view of the CCTV footage, the claimant's breach of the social distancing rules, the phone policy and insistence that she had authority to use her phone despite receipt of the email, the respondent did have reasonable grounds for the belief that the claimant was guilty of misconduct.

Was the claimant's dismissal within the range of reasonable responses?

87. It has been established that a Tribunal must not substitute its own view of what it would have done faced with this scenario. Instead, the Tribunal has to look at the matter objectively and decide whether the employer's actions were within the range of reasonable responses.

88. The claimant asserts that despite the respondent's findings, she should not have been dismissed. The claimant pointed to the fact that she had been a company ambassador and had had no previous disciplinary matters with the respondent.

89. However, it appears to be for that very reason that the claimant was dismissed. Stuart Mallinson was clear that as a team leader and, in particular a company ambassador, the claimant should have stopped Natasha Ford from forwarding the photographs to the media and chose not to do so.

90. Similarly, Stuart Mallinson was of the view that as the team leader the claimant should lead from the front and should insist on social distancing and stop team members using mobile phones, and at the very least should not use a mobile phone in front of team members.

91. Stuart Mallinson's decision to dismiss for these acts of gross misconduct was in accordance with the respondent's policy. Stuart Mallinson admitted in evidence that he had lost trust and confidence in the claimant because she had lied in a number of meetings and from that point had nowhere to go but dismissal. The decision to dismiss was therefore, within the range of reasonable responses.

92. Hayley Dermot, who was also a team leader and played the same part in the incident on 1 April 2020 as the claimant, was also dismissed. Natasha Ford, who took the photographs resigned before she was dismissed.

93. The only employee treated differently was a colleague called Lee who can also be seen on the CCTV breaching social distancing, using a phone, and discussing the matter. The reason Lee was not dismissed was because he was allowed to have his phone on the floor because of illness within his family and the need to be contacted urgently. Lee was also not a team leader or a company ambassador, or in a position of authority to stop a peer sharing photographs with the media.

94. The respondent's appeal procedure provides for a review of the decision making process that led to a dismissal. The ACAS Guide to Discipline and Grievances at Work (2019) provides that a decision should only be changed on appeal if it is not soundly based. Steven Foster was clear he was focussed on the fairness of the claimant's dismissal, not how other employees had been treated.

95. I do not find that Steven Foster prejudged the outcome of the appeal. Steven Foster went beyond reviewing what Stuart Mallinson had done. Steven Foster took the claimant through the CCTV footage again and gave her a further opportunity to explain her behaviour. The claimant's answers did not change. For this reason, Steven Foster upheld the decision to dismiss. Steven Foster's decision was also within the range of reasonable responses.

96. The respondent was entitled to take the view it took of the CCTV footage, having looked at it in more detail. In addition, the respondent subsequently conducted an investigation and spoke to all concerned before confirming that view. The respondent adjourned the process to further investigate what was being said by the claimant before reaching the decision to dismiss.

97. The respondent said the CCTV spoke for itself and took a view that the claimant had been complicit in damaging the respondent's reputation, breached the social distancing guidelines and had a phone on the floor. The respondent's

disciplinary policy provides that such behaviour amounts to gross misconduct. As a team leader and company ambassador, the respondent expected more from the claimant. In light of the respondent's views, it was entitled to dismiss the claimant.

98. Therefore, the claimant's claim of unfair dismissal is unsuccessful and is dismissed.

Employment Judge Ainscough

Date 2 June 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

7 June 2021

FOR THE TRIBUNAL OFFICE

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