EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms P Uppal	**v**	**Coca-Cola European Partners Great Britain Limited**

Heard at: Watford by CVP **On**: 2, 3 and 4 June 2021

Before: Employment Judge Manley

Appearances

For the Claimant: Mr J Jotangia, counsel
For the Respondent: Ms L Bell, counsel

JUDGMENT

1. The claim for unlawful deduction of wages was presented out of time and the claimant has not shown that it was not reasonably practicable to bring that claim in time. The tribunal therefore has no jurisdiction to hear that claim. If that claim had been heard, the claimant could not have shown that she was contractually entitled to the sums claimed.

2. The respondent has shown that the reason for the claimant's dismissal related to her conduct.

3. That dismissal was not unfair,

REASONS

1. By a claim form of 10 July 2019, the claimant brought claims for unfair dismissal in relation to dismissal on 12 March 2019 and unlawful deduction of wages for unpaid company sick pay between 12 January and 7 February 2019.

2. The claimant referred the matter to the ACAS early conciliation procedure on 11 May 2019 with the certificate being dated 10 June 2019.

3. At a preliminary hearing on 8 April 2020, a list of issues was agreed and appears in the bundle between pages 62 to 64. Apart from those relevant to remedy (and excluding reference to the particulars of claim) they read as follows:-

Unlawful deductions

1) It is accepted that C was not paid enhanced company sick pay for the period between 25.1.19 and 7.2.19 ('the Enhanced Company Sick Pay').

2) Was C contractually entitled to receipt of the Company sick pay under the rules of the Company sick pay scheme?

3) Were the rules of the Company Sick Pay Scheme contractually binding on the C?

4) if so, was R entitled under C's contract of employment to deduct (or not pay) Enhanced Sick Pay?

5) Was C's unlawful deductions claim brought within three months (adjusted for Early Conciliation) of the date on which the alleged deduction (or final deduction) was made?

6) If C's claim was not brought within the period specified at (4):

a. Was it not reasonably practicable for C's claim to be brought within that period; and

b. Was it brought within such further period as the Tribunal considers reasonable?

Unfair dismissal — liability

7) Was C dismissed for a potentially fair reason? R relies on a conduct reason; the claimant does not positively assert any alternative reason.

8) Did R have a genuine and reasonable belief C had committed acts of misconduct?

C alleges:

a. The outcome was predetermined;

b. R failed to identify what actions by C amounted to gross negligence and/or gave rise to a loss of trust and confidence;

c. R did not genuinely or reasonably believe C had committed acts of gross misconduct.

9) Was R's belief based on a reasonable investigation?

C alleges:

a. R failed to obtain evidence from relevant witnesses;

b. R failed to provide C with prior notification or warning of the investigation or a proper opportunity to consider the allegations against her;

c. R failed to provide for C to be accompanied to investigatory meetings;

c. R did not provide C with sufficient particulars of the allegations against her

10) Did summary dismissal fall within the range of reasonable responses open to R in light of C's conduct?

C alleges:

a. R failed to take into account C's clean employment record:

b. C was not treated consistently with other employees;

c. It was not reasonable to regard C's conduct as gross misconduct, deliberate wrongdoing or gross negligence;

d. R should instead have imposed a final written warning.

11) Did R follow a fair process in reaching the decision to dismiss:

C alleges:

a. The investigation was procedurally flawed (see (8). above); and

b. The appeal manager:

i. Failed to interview the dismissing manager;

ii. Failed to address the alleged lack of clarity about the reasons for dismissal;

iii. Failed to address grounds of appeal raised by;

iv. Reached her decisions on substantively different grounds to the dismissing manager.

4. In summary, the claimant's first claim is for unlawful deduction of wages for 10 days in January/February 2019. That raises questions about whether she was contractually entitled to enhanced company sick pay and as indicated, whether the claim was presented in time.

5. The unfair dismissal issues require determination of the reason for dismissal, which is for the respondent to show. Because the reason

provided is conduct, the standard questions likely to be raised are those related to the respondent's belief in the claimant's conduct; whether that was based on a reasonable investigation, whether summary dismissal fell within the range of reasonable responses and whether the respondent followed a fair process.

6. This hearing was by CVP. There was an initial problem with the claimant's representative which was fairly quickly resolved. I was sent an electronic joint bundle of over 600 pages, a chronology and four witness statements. There were three for the respondent - from the investigation officer; the dismissing officer and the appeal officer. There was also a statement from the claimant. I read those statements and then some of the essential documents. I heard from the three respondent's witnesses on the first day and the claimant on the second day. I then heard submission in the afternoon of the second day, had time to deliberate and give oral judgment on the third day. Written reasons were requested after I gave oral judgment.

7. I would like to thank everyone for their co-operation at the hearing, not least because we do have to manage things slightly differently by CVP and everybody co-operated to ensure the hearing progressed properly.

The facts

8. These then are the relevant facts of my determination of the issues.

9. The claimant commenced employment on 7 February 2009. In cross examination the claimant said that she thought it was December 2009, but it is unclear why she thought that, and nothing very much turns on it.

10. Her job changed a couple of times and most latterly, in 2016, when she became a Category Planning Executive. At that point, she became entitled to a company car.

11. The claimant had an arrangement that she work from home, which was in Slough, for half her time alternating three and two days in the office and at home. The arrangement was that she might be required to attend the office which was in Uxbridge for work meetings. She also travelled to meet clients at offices and in retail and distribution stores.

12. The rules about the use of the company car and fuel use are set out in writing. The employment contract refers to the Car Policy which was also in the bundle. In summary, the claimant was entitled to use a Fuel Card for business travel and was required to reimburse the respondent for any private mileage used. She was also allowed to have authorised alternative drivers. The claimant was required to submit monthly mileage data from the odometer. Private mileage was calculated and was deducted from her salary.

13. Employees were entitled to nominate two additional authorised drivers under the policy. It seems the claimant had managed to get three such additional drivers, her husband, father and sister. For this a form had to be completed and signed by both the employee and the additional driver. It

stated that the company car "*must always be available for business use*" and that the employee "*is the only person who may obtain company funded fuel*". It also says that "*breach of the rules regarding alternative drivers is a disciplinary offence".*

14. The claimant's employment agreement contains a section on company cars (page 110 of the bundle). Under "*Funded Fuel*", it reads, "*The use of a Fuel Card… by anyone other than the employee to whom the card is issued is a serious disciplinary offence and may result in your dismissal."*

15. There are other written rules for those employees with company cars. The Car Policy states that parking fines are the employee's responsibility. Cars are acquired through a leasing company which pays the fines then charges it to the respondent who recoup it from the employee. The respondent also has a written provision for deduction of wages with respect to parking fines.

16. The claimant was required to submit business expenses when she incurred them. Provisions in the respondent's Business Code of Conduct requires financial records, which includes expenses, to be *"clear, accurate, timely and in line with the law"*. There is a further reference to disciplinary action and the possibility of dismissal for failures in this respect.

17. The respondent had in place an enhanced sick pay scheme. The employment agreement stated that it is non-contractual. It also stated that it did not confer a contractual right to payment and is subject to the employee fulfilling obligations under local attendance procedure, disciplinary and performance management.

18. The local attendance management policy states, "*Should any absences prevent other CCEP Processes from being completed, entitlement to discretionary company sick pay will be reviewed and may not be authorised."*

19. The respondent has a detailed Disciplinary Policy and toolkits for managers to assist them in following it through. It also uses a number of standard templates forms and letters for these purposes.

20. Ms Sladen became the claimant's line manager in September 2018. On 31 December 2018 she was alerted by Car Fleet that there were 20 parking fines on the claimant's company car which had not been paid. Ms Sladen met with the Car Fleet person who showed her the fines on the claimant's car which were dated between 25 July and 27 November 2018. Ms Sladen took advice from the senior HR Manager who was then involved throughout this process. They agreed that Ms Sladen should raise the issue with the claimant at an already scheduled meeting on 17 January 2019. This then became the investigation meeting for which no warning was needed within the respondent's policy. I have seen the notes of that meeting as indeed all meetings under this process.

21. The claimant asked first why she had not been warned of the meeting; said she had no knowledge of the fines and that she would have to look into it.

All the fines were at Hatfield Station car park, some distance from the claimant's home and the respondent's office. The claimant mentioned that her husband, sister and father also drove the car. This caused Ms Sladen some initial concern as the policy said that there should only be a maximum of two additional authorised drivers. A disciplinary allegation about that was proposed but it was later found out that the third person had been authorised so that aspect was not pursued.

22. The claimant provided the names of the authorised drivers and said she would come back with information on the fines. She was told that the matter would be referred to a disciplinary hearing. She did not come back with any information before the date of that hearing.

23. Ms Sladen asked Mr Marks, who is a senior manager in Sales, to undertake the disciplinary hearing. He is an experienced manager with no previous knowledge of the claimant. He suggested getting further information about the use of the claimant's company car inclduing getting a report on the Fuel Card use and expenses reports.

24. In the meantime, documents were sent to Mr Marks and the claimant for the disciplinary hearing. These included notes of the first investigation meeting, a summary sheet of the parking fines, example of a fine, photo of the last fine and details of authorised drivers.

25. The claimant was informed that she could be accompanied to that meeting and was sent a copy of the disciplinary policy and told that there was a risk of dismissal. The claimant asked for the meeting to be rearranged because of child care issues but this was refused as it was in work time.

26. The expense report and Fuel Card had shown some further issues so Ms Sladen decided there should be another investigation meeting. These issues included the fact that the claimant appeared to be submitting expenses for taxis when it was believed she should have been using the company car and that she was using her own bank card to pay for fuel rather than the Fuel Card.

27. Ms Sladen believed that one entry was particularly suspicious, being for business mileage of 700 miles each way in October 2018. The claimant was then informed that the disciplinary hearing was going to be converted to an investigation meeting on 24 January 2019. The claimant replied that she was not attending because she was on sick leave. This caused the claimant to be referred to Occupational Health who informed Ms Sladen that the claimant was fit to attend but the claimant did not agree to the release of the Occupational Health report.

28. She was therefore invited to attend a second investigatory meeting on 6 February 2019 and was informed at the same time that Ms Sladen had decided not to authorise company sick pay because the claimant was not co-operating with the disciplinary process. That sick pay was reinstated when the claimant did co-operate on 7 February 2019.

29. The second investigation meeting therefore took place on 6 February 2019. Again, I have seen detailed notes of that hearing and some amendments made by the claimant. The claimant told Ms Sladen that her husband had been driving the car, left it at Hatfield station and used the Fuel Card there. She said she had left the Fuel Card in the car.

30. When asked about the business mileage, the claimant said she must have mislaid her Fuel Card. She gave some explanations for business expenses, but they did not fully explain the issues. For instance, such as one for a trip at midnight and on a Sunday. The claimant said she would look into it. The claimant complained about the process and said she wanted to make a grievance. The claimant did send a grievance which included the issue about the third authorised driver which was then resolved as I have said. The claimant offered to pay the parking fines.

31. When Ms Sladen replied, she said matters would be dealt with under the disciplinary process. She also told the claimant that the unpaid fines now numbered 37 and that the authorised drivers had been removed temporarily.

32. The claimant was invited to the disciplinary hearing by detailed letter. These included the allegations and I am just going to read those out from the letter. They read as follows:

> *"1. It is alleged that between 24 April 2018 and 4 January 2019 you have received 37 fines for your company vehicle which has demonstrated a complete disregard for local parking regulations.*
>
> *2. It is alleged that you have failed to pay all 37 of the fines issued to your vehicle over this period of time which has resulted in CCEP paying the fines and incurring additional late payment costs.*
>
> *3. It is alleged that in October 2018 you underreported your private mileage by fraudulently falsifying your mileage submissions and exaggerating business mileage resulting in a personal financial gain amounting to theft from the company.*
>
> *4. It is alleged that you have allowed a third party to use your company Fuel Card to fill up your company vehicle which is in breach of the company car policy.*
>
> *5. It is alleged that you misappropriated company funds by submitting expenses for personal travel and fuel."*

33. After the allegations it reads:

> *"These allegations could amount to a potential act of gross misconduct committed by you. CCEP takes these allegations very*

seriously as the relationship of trust and confidence between employee and employer is crucial to the employment relationship."

34. The claimant was also sent a considerable amount of documentation and was told that she should send any documents that she wanted Mr Marks to consider to him. The evidence included copies of all 37 fines, some photographic evidence, investigation notes, details of fuel uses and the expenses.

35. The disciplinary meeting was held on 26 February 2019. Mr Marks prepared by reading the relatively extensive documentation, the disciplinary policy and tool kit. The claimant attended with a Trade Union representative and there was the same HR manager to take notes. I have seen the notes and the claimant amendments which were not accepted by Mr Marks but there are no particular significant differences.

36. Mr Marks began by asking the claimant whether she had any documents and then her Trade Union representative began to read aloud from a 14-page document, which had not been sent in beforehand as requested. This contained a number of matters including referencing the non-payment of sick pay. Mr Marks discussed the claimant's grievance about the alleged unfairness of the process including the allegation of predetermination. He assured the claimant that the matter was not predetermined.

37. In summary, the claimant, through her representative, said that her husband had incurred the fines, that he had not told her and that he had been having an affair. There was a signed letter from him which said that he had incurred the fines and used the Fuel Card without the claimant's knowledge. The claimant said that she had made some mistakes on her expenses and left her Fuel Card and pin number n the glove compartment of the company car. She also said that she had had some problems with the Fuel Card and showed Mr Marks some emails in March and April of 2018 about that matter. The claimant said that her line manager should have checked her expenses claims.

38. Mr Marks' evidence, which I accept from reading the notes of the hearing, was that the claimant could not fully explain some of the inconsistencies and said she would need to check. Mr Marks decided to adjourn the hearing.

39. He then carried out some further investigation and the claimant sent him some information just before the adjourned meeting. She accepted that a £40 receipt was in error as it was for private fuel. She also sent some amendments to the notes of the hearing which Mr Marks did not accept and caused him some concern as she had changed what he had said from what he had read from pre-prepared notes.

40. The adjourned hearing was on 12 March 2019. The letter of invitation included all the allegations previously outlined. Again, the claimant attended with the same Trade Union representative and, again, considerable notes were taken, and some amendments were made by the claimant.

41. The hearing started at 12 noon and was adjourned a little after 1pm. It was then reconvened at 3.40 when Mr Marks gave his conclusions orally. He dealt first with the grievance. I do not need to go into that except to say that none of the matters the claimant complained about were upheld and Mr Marks gave reasons for each of those decisions.

42. As far as the disciplinary matters were concerned, he gave reasons under each heading.

43. Allegations 1 and 2 can be taken together, those relate to the parking fines and incurring costs for late payment of those fines. Mr Marks said in his witness statement and in the letter of outcome, the reasons for finding that allegation was proved. I will summarise it now.

44. Mr Marks' view was that the claimant had not taken due care or accountability for the car. This had led to parking fines, misuse of the Fuel Card and the car was not available for business use for her. He said that the claimant was ultimately responsible. He did not accept that the car was always available for business use as the claimant had said. In particular, he was concerned about a matter on 23 August 2018 showing 75 business miles and back to St Albans. The same day there had been a parking fine in Hatfield which meant she could not have used it for business use. His view is that this is likely to have happened more often given that there were 37 parking fines and 10 uses of the Fuel Card by the claimant's husband in Hatfield and Slough.

45. Mr Marks was cross examined at the hearing about the wording of those allegations. He said that, with hindsight, they could have been worded differently once it became clear that the claimant was saying that it was her husband who had used the car. In my view, it is entirely clear what those allegations relate to and the claimant had no difficulty understanding the matters put to her.

46. As far as allegation 3 is concerned, this was in relation to over-inflating business mileage and incurring a lower deduction for private use. The example here was 700 miles each way which the claimant had said was a mistake for 70 miles. Again, the claimant was cross examined on this and she accepts that the system requires inputting the miles twice and that in submitting mileage she would have to confirm that the amount claimed is correct. It is difficult to see how such a mistake could have been made. There were also a number of other errors and Mr Marks' finding on this was that the inaccuracies were not acceptable.

47. Allegation 4 related to allowing the Fuel Card to be used and Mr Marks found that to be proven, particularly as the claimant herself accepted that the Fuel Card was in the glove compartment with the pin number.

48. Allegation 5 related to submitting expenses for personal travel and fuel. Again, Mr Marks found that that was made out. He partially upheld it because he could not be absolutely sure whether it was a matter of being

deliberate or caused by errors. They were indeed significant errors including incorrect dates and he gave examples of when the Fuel Card was used when sums had been claimed.

49. Mr Marks looked at the allegations in the round and decided that, in totality, they amounted to gross misconduct because it was a misuse of company assets, incorrect financial information provided which was necessary for trust and confidence between the respondent and the claimant. He decided to dismiss the claimant.

50. He was asked at the tribunal if he considered alternative sanctions to dismissal and he said he had as going through the respondent's tool kit involves looking at those alternative sanctions. Given that he had also said that he had considered matters together, he was asked whether he would have dismissed if one or more of the allegations had not been found against the claimant. For instance, if allegations 1 and 2 had not been found because that was arising out of her husband's use. He replied that that was a difficult question, but he thought he would still have dismissed.

51. A detailed follow up letter was sent to the claimant. It reflected what Mr Marks had said orally to the claimant. It is a long letter and appears at pages 327 to 332. In conclusion Mr Marks said:-

"Therefore from the evidence provide to me before this meeting and the accounts you have given me today. CCEP takes these allegations very seriously, as the relationship of trust and confidence between employee and employer is crucial and therefore I class these actions as gross negligence and a breakdown of trust and confidence which amounts to gross misconduct

Action to be taken
In deciding the most appropriate action to take, I have considered:
- *all of the evidence*
- *your length of service with CCEP*
- *all the alternative options open to me, including taking no action.*

I have decided that your actions are so serious that they amount to gross misconduct and I must dismiss you without notice".

52. With that letter he sent a Grounds of Appeal proforma in case the claimant decided to appeal. The claimant did appeal and that was to be heard by Ms Nixon who is Head of People Services. The disciplinary policy makes it clear that the appeal is not a re-hearing but a review of the earlier decision. Again, a letter was sent to the claimant with all the relevant information asking her to attend a hearing on 29 April 2019. The claimant's grounds of appeal were summarised by Ms Nixon as follows:

"1. Parking fines that you were unaware of and believe this was a CCEP procedural failing

2. The hearing managers interpretation of company car policy was misapplied

3. There was no intent to over-claim expenses.

4. The hearing manager failed to apply a reasonable understanding of your vulnerability to the improper actions of your husband."

53. Ms Nixon looked at the four grounds of appeal put forward by the claimant. She considered each ground of appeal. The claimant attended with the same Trade Union representative as before. There are notes of that meeting. Again, the representative wished to read a 10-page statement, but Ms Nixon made it clear that she wanted to discuss matters with the claimant, especially the inconsistencies around 23 August (above at paragraph 44).

54. The claimant seemed not to accept that there was a photo showing the car with a fine at Hatfield station that day but Ms Nixon's evidence was that she later checked and could see that that was the case. Ms Nixon's view was that the claimant's other explanations did not seem consistent either with earlier statements or with the evidence.

55. The meeting ended and Ms Nixon considered the documents, checked some details and spoke to Mr Marks about the rationale for his decision. By letter of 9 May 2019, Ms Nixon sent a detailed response to the four grounds of appeal. For reasons she provided in that letter she rejected all grounds of appeal and concluded in this way:-

"<u>In summary</u>

The reason the disciplining manager took the decision to dismiss you was based on a pattern of behaviours which amounted, in their totality, to gross misconduct which is potentially a sufficient reason for dismissal. I find that the disciplining manager has properly considered all the mitigating circumstances which you put forward and the other options available to him but has concluded that this pattern of behaviour has led to an irreparable breakdown of trust and confidence between employee and employer and that dismissal was the appropriate sanction in the circumstances. I believe it was reasonable for him to reach the decision he did, working with all the evidence and facts available to him and I therefore do not uphold your appeal."

56. In her witness statement, the claimant said that she started work elsewhere on 18 March 2019. When she was asked about this she could not remember when she was interviewed but said that it was after the dismissal. 18 March is a different date from that on her Schedule of Loss which shows 13 March and the claimant was reminded of a document in the bundle, which shows that she signed a document with these new employers on 25 February. When asked further about this she said that she had been investigating this work from December. It is clear to me that the claimant must have been offered this job before she was dismissed.

57. In any event, as I have said, that was the end of the process. The claimant referred matters to ACAS and brought her claim as previously set out.

The law and submissions

58. The claim for unlawful deduction of wages falls to be determined under Part 11 Employment Rights Act 1996 (ERA). Section 23 ERA provides that a tribunal cannot hear such a claim unless it is presented within three months of when the payment was due. This now means that a reference to ACAS must be within that three month period. Where the tribunal is satisfied that it was not reasonably practicable to present within that three month period, the tribunal must consider what further period would be reasonable. The claimant bears the burden of showing that it was not reasonably practicable to bring the claim in time.

59. The law which I am bound to apply for the unfair dismissal is set out in the Section 98 ERA. Section 98 (1) and (2) contain the potentially fair reasons for dismissal including *"conduct*". The burden of showing a potentially fair reason rests on the respondent.

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

"Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-

a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

b) shall be determined in accordance with equity and the substantial merits of the case"

61. I am also guided in my deliberations, because this is a conduct dismissal, by the leading case of *British Home Stores v Burchell [1978] ICR 303* which sets out the issues which I should consider including whether the respondent had a genuine belief in the conduct complained of which was founded on a reasonable investigation and whether a fair process was followed.

62. The investigation should be one which is fair and reasonable and the band of reasonable responses test applies to that part of the process as well as to the overall consideration of the fairness of the sanction (*Sainsburys Supermarkets Limited v Hitt [2003] IRLR 23*)

63. When considering whether dismissal fell within the range of reasonable responses, I must not substitute my view for that of the respondent, a point

emphasised in *Iceland Frozen Foods v Jones [1982] IRLR 439* (and re-affirmed in *Foley v Post Office and HSBC Bank Ltd v Madden [2000] ICR 1283*). Rather, I must consider whether the dismissal fell within a range of reasonable responses.

64. Both representatives sent very useful written submissions. There is little dispute on the legal tests which are reflected in the agreed issues as set out above.

65. In summary, the claimant contends that the conduct found was not serious enough to amount to gross misconduct unless it undermines trust and confidence (*Neary v Dean of Westminster* [1999] IRLR 288). I was reminded that the employer should consider mitigating circumstances even where there is a finding of gross misconduct *(Brito-Bapapulle v Ealing Hospital NHS Trust* [2014] EWCA Civ 1626). Those matters referred to in the list of issues about the process were repeated, with submissions that the investigation was flawed and the outcome disproportionate.

66. The respondent also referred me to some of the cases already mentioned and on the issue of substitution (*London Ambulance Service NHS Trust v Small* [2009] IRLR 563. The respondent submits that it has shown a potentially fair reason for dismissal and that the dismissal process and the decision did not lead to any unfairness.

Conclusions

Unlawful deduction of wages (issues 1) to 6)

67. The unlawful deduction of wages claim is clearly out of time (issues 5 and 6). On any calculation, the claimant had until 6 or 7 May to go to ACAS, as she receive sick pay from 6 or 7 February 2019. The time limit in section 23 Employment Rights Act 1996 is relatively strict. Only if the claimant can show it was not reasonably practicable to present the claim in time, could there be a possibility of time being extended. There is no evidence from the claimant that it was not reasonably practicable for her to bring the claim in time. What evidence there is shows the opposite. She may not have had legal representation but she was represented by the trade union and it was raised as an issue in the disciplinary hearing well within time. The tribunal has no jurisdiction to hear that out of time claim.

68. For completeness, as I have the evidence before me, my view is that the claimant could not have succeeded on that claim in any event (issues 1) to 4). The contractual position is clear in that it is a discretionary policy with provision for it not to be authorised. The claimant was not entitled to enhanced sick pay in the circumstances.

Unfair dismissal (issues 7) to 11)

69. I turn then to the unfair dismissal claim. The first question for me (issue 7) is whether the respondent has shown a potentially fair reason for dismissal. The respondent said that the dismissal was because of the claimant's

conduct and the claimant has not suggested anything to the contrary. The burden of proof rests on the respondent and I am quite satisfied that all the evidence in this case points to the dismissal being a matter of misconduct which arose from the matters which were put to the claimant, discussed with her at length and included in all the documentation including the letters of outcome. The reason for dismissal related to the claimant's conduct.

70. I therefore have to turn to whether the dismissal was fair or not in all the circumstance of the case in accordance with section 98(4) ERA and the guidance in cases of conduct dismissals.

71. First, in relation to the question of whether the respondent had a genuine belief in the conduct (issue 8). It is quite clear to me that there was such a genuine belief on the part of the respondent. It began with concern about a number of unpaid parking fines and things were then discovered which showed other concerns about the claimant's claiming of expenses, the use of the Fuel Card by another person and a number of issues under the Company Car Policy. The respondent clearly had a genuine belief in the misconduct and there is really nothing to show anything to the contrary.

72. The claimant has raised a question about the decision being predetermined (issue 8) a). I can see no evidence of that. The mere fact that Ms Sladen took the view that the matter should be referred to a disciplinary hearing does not indicate pre-determination. It does indicate that it was considered to be a potentially serious matter but, clearly, it was open to the claimant to provide sufficient information if she could for matters not to proceed as they did. This was a relatively in-depth process. My view is that the officers at the respondent took considerable care with their decisions including being careful not to pre-judge any outcome.

73. The claimant says that the respondent failed to identify what was gross negligence and what gave rise to a loss of trust and confidence (issue 8 b). I do not accept that is necessary in such a case. A finding of gross negligence can lead to a loss in trust and confidence. There is no need for them to be separately identified. I do not accept (issue 8 c) that the respondent did not genuinely believe that the claimant had committed acts of gross misconduct. The totality of the evidence is to the contrary.

74. I consider whether the belief was based on a fair investigation (issue 9). I find that the respondent gave the claimant all the information she needed, it was quite clear what was being alleged and the claimant had plenty of time to deal with the questions raised by the respondent. A number of things indicate a fair investigation in this matter. Of course, as I am reminded, the investigation only needs to be within the band of reasonable responses. It does not need to be a perfect investigation. The respondent easily meets the test in this case. This was a detailed investigation. A number of documents had to be sought from other departments. They were looked at carefully by the officers dealing with the matter and shared with the claimant who could comment on them. The claimant was involved in the investigation. There were two investigation meetings with her, and I cannot find anything other than that is a reasonable investigation. The claimant's

complaints (issue 9 a. to d) about the investigation are not valid. There were no other witnesses needed to be spoken to and the respondent's policy did not require it to allow accompaniment at investigation meetings.

75. I therefore have to look at whether the dismissal fell within the range of reasonable responses (issue 10). Of course, I must be careful here not to substitute my view. It is not a question of whether I would have dismissed in these circumstances but whether what the respondent did fell outside what a reasonable employer in the circumstances of this case could decide. This is a case where it would be very difficult for me to say that the respondent's decision fell outside the range of reasonable responses.

76. For all the reasons given in the dismissal letter, this matter fell squarely within disciplinary policy, the Car Policy and the Business Code of Conduct. All relevant matters were looked at and taken into account including the claimant's record and what she said about the use of the vehicle by her husband. There is no evidence of inconsistent treatment and my view is that it cannot be said that the decision to dismiss this claimant in the circumstances, fell outside the range of reasonable responses.

77. Finally, I look at whether the process was fair. Again, it is clear from what I have said already that the evidence before me and my view is that the respondent followed the disciplinary policy at each stage with some care. It clearly encompasses everything that is expected in the Acas Code of Practice. There is really no criticism of the process that can be maintained in this case. The claimant raised some concerns about the appeal under Issue 11) i-iv. Those concerns do not reflect the evidence at the hearing or in the documents. Ms Nixon did speak to the dismissing manager, she found no lack of clarity and did not fail to address the claimant's grounds of appeal. Her decision was a review of the decision taken by Mr Marks.

78. For all these reasons, this dismissal was not unfair. The claimant's claims fail and are dismissed.

_____
Employment Judge Manley
10/6/21
Date: ……..
24/06/2021
Sent to the parties on: .....
THY
.....
For the Tribunal Office