



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4101866/20**

**Held on 26 and 27 May 2021**

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**Employment Judge N M Hosie**

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**Mrs V Shields**

**Claimant  
Represented by:  
Mr S Martins - The  
Employment Law  
Service**

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**Wilson James Ltd**

**Respondent  
Represented by:  
Mr P Chadwick -  
KLC Employment Law  
Consultants**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that the claim is dismissed.

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**REASONS**

## Introduction

1. This case called before me by way of a Final Hearing to consider the  
5 claimant's complaints of unfair dismissal and wrongful dismissal. The  
respondent admitted the dismissal but claimed the reason was conduct and  
that it was fair. The respondent also denied that the claimant was "wrongfully  
dismissed". They maintained that she was not entitled to notice as she was  
guilty of gross misconduct.

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## The Evidence

2. On behalf of the respondent, I heard evidence from: -
- 15 • Paul Cook, Account Manager who carried out the investigation.
  - David Chambers, Security Manager, and the claimant's Line  
Manager.
  - Scott Barclay, Business Manager, who conducted the Disciplinary  
Hearing and took the decision to dismiss the claimant.
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3. Each of the respondent's witnesses spoke to a written statement.
4. I then heard evidence from the claimant who also spoke to a written  
statement.
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5. A joint bundle of documentary productions was lodged on behalf of the  
parties ("P").

## The Facts

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6. Having heard the evidence and considered the documentary productions, I  
was able to make the following findings in fact. The claimant commenced her  
employment with the respondent as a Security Officer on 26 November 2006.  
Her employment ended on 21 November 2019 when she was summarily

dismissed. In the last 2 years of her employment, she was employed as a Lead Security Officer.

- 5 7. The respondent provides security services at the BP Headquarters in Dyce, Aberdeen (“the site”) and the claimant worked there. She reported to David Chambers, the respondent’s Security Manager, who, in turn, reported to Paul Cook, Account Manager.

### **BP Policies and Procedures**

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8. As part of their role, Security Officers are responsible for viewing the CCTV system installed at the site. BP has a “Local Response Plan” which sets out procedures relating to CCTV operations (P51-58). CCTV “incidents” require to be logged on a form which details the time, date and camera, description of the incident, action taken and who recorded the incident to a disc (P60).  
15 There is also a “Daily Occurrence Book” to record incidents.
9. BP also has a UK Code of Practice regarding the use of CCTV (P61/62). This provides that Security Officers will complete an “Incident Log” “to  
20 describe events which have been recorded on CCTV” and action taken; a log to record maintenance and faults; a record of the removal of images from CCTV; and a check form to record the “once weekly check”.

### **First Written Warning**

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10. On 22 August 2019, the claimant was issued with a first written warning (P156). This related to an incident which had taken place between 22 and 24 June 2019. A mobile phone had been left on a desk and, in accordance with BP’s “clear desk policy”, details of the phone had been entered on the  
30 “clear desk tracker sheet”. The phone was then correctly placed in the area where all clear desk items are placed for retrieval or collection. What then occurred was that the claimant, contrary to policy, had decided to place the item in the safe and had amended the documentation to show that the item was now in “lost and found”.

11. The claimant admitted in her email to Mr Chambers on 26 July 2019 that she had changed “the Clear Desk Tracker to Lost and Found Tracker” and accepted that it was an “error” on her part (P105).

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12. The notes of the Disciplinary Hearing, which was conducted by Mr Cook on 20 August, were produced (P150-154).

13. On 22 August Mr Cook wrote to the claimant to confirm she had been issued with a first written warning (P156).

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14. The claimant did not exercise her right of appeal.

#### **Lead Officers’ meeting on 6 August 2019**

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15. As part of his responsibilities, David Chambers, Security Manager, held regular meetings with his Lead Officers. One of these meetings was held on 6 August 2019. The meeting was attended by the claimant and several other Lead Officers. Notes of the meeting were produced (P110-116).

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16. At the meeting, Mr Chambers discussed two matters of particular relevance to the claimant. First, he discussed the “Clear Desk Policy”. The discussion was in general terms. However, Mr Chambers emphasised the importance of ensuring proper recording and “*accuracy of information*” (P111).

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17. Second, Mr Chambers discussed the CCTV system and procedures (P114/115). He emphasised the importance of, “*detailed recording of all occasions requests were received to either view recorded CCTV footage or copy footage/images to CD, both for internal and external bodies*”. He highlighted the lack of recording by security staff on both the “*CCTV Incident Log and to a lesser extent the CCTV Record of Removal of images from CCTV*”. He discussed “*the general principles of management of confidential CCTV recordings which included the statutory requirement for all requests to*

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*view/copy CCTV footage to be accurately recorded for internal and external recording purposes”.*

18. He instructed all the Lead Officers to arrange for their staff to participate in training (P115). His aim was to ensure that all security staff were trained and were competent in the use of the CCTV system on a daily basis.

### **Disciplinary Procedure and subsequent dismissal**

#### **10 Claimant’s first contact with Colin Walker, BP Security Manager**

19. On 10 August 2019, at 15:27, the claimant sent an email to Colin Walker, the BP Security Manager. She advised him that she had been required to attend a disciplinary meeting. She alleged in that email that, *“there was no wrongdoing on my part”* (P128/1).

20. On 11 August, Mr Walker forwarded the claimant’s email to Paul Cook, the respondent’s Account Manager, and David Chambers, the claimant’s Line Manager (P128).

#### **Claimant’s second contact with Colin Walker**

21. On 17 August, the claimant sent another email to Mr Walker alleging that she had been “intimidated and bullied “ by her Line Manager, David Chambers, on 7 March 2019 (P137-139). She had raised this with “Human Resources” on 13 March (P63/64). However, she did not want her complaint progressed at that time (P65).

22. Mr Walker replied to the claimant’s email on 19 August 2019 as follows (P143): -

*“Thank you for the email. Given the nature of these allegations it is my intention to forward this email for the attention of Sandy Sheehan, Director,*

*Wilson James who oversees this contract. These matters require to be investigated in line with Wilson James processes and procedures.*

5 *Whilst the expectation that all contractors and workforce associated with BP will follow our values and behaviours, the actual processes for such matters are held with the relevant contractor. Accordingly, all communication with regard to this matter should be communicated via the appropriate internal WJ channel. Given this is an allegation surrounding site management, I suggest that Sandy Sheehan or Wilson James Employee Relations are your initial point of contact to raise this matter if you haven't already done so.*

10 *Please confirm you are content with me advising Mr Sheehan of this email and forwarding it accordingly."*

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23. The claimant replied immediately in the following terms (P144):-

*"Thank you for replying so soon.*

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*I fully understand what you have said and I have no problem for you to send it to him. I am deeply saddened as I have no confidence in Wilson James at the moment with what has been happening.*

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*I have worked at BP Dyce coming up 13 years in November and enjoyed every minute; but things have dematically changed for the worse. There us no trust amongst staff now. So much uneasiness and very low moral" (sic).*

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24. On 19 August, Mr Walker forwarded the claimant's email to the respondent's Director, Mr Sheehan (P145). He said this in his email: *"Whilst it's not normal for staff to contact the client direct, given the nature of the allegations, it requires further scrutiny by Wilson James."*

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25. Mr Sheehan replied shortly thereafter, in the following terms (P146): -

*"Many thanks for forwarding this on to me, apologies that you have been contacted directly by one of our team, this is not normal or acceptable behaviour and not something you should have been troubled with.*

40

*There are ongoing investigations regarding Vicki Shields allegations, this will be forwarded on to our employee relations department to ensure it is investigated in the appropriate manner.*

*Apologies once again."*

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**Grievance**

26. On 18 August, the claimant also sent an email to “Employee Relations” with her allegation that she had been “bullied” by David Chambers on 7 March 2019 (P140-142). This was the same email she had sent to Mr Walker the previous day.

27. Employee Relations acknowledged receipt of this “grievance” by email on 19 August 2019 and went on to say this (P147): -

*“We are also aware that you sent the below email to the Client. We would like to remind you that this is not the correct procedure to follow with regard to escalating an issue and as such we advise you that you must stop approaching the client with internal matters and follow the correct escalation process”.*

28. The claimant replied by email later the same day in which she said this (P148):-

*“I understand; but because of the viciousness and how serious it was; I deeply felt the client should be aware of it. It is; my human right”.*

**CCTV**

29. On 23 August, Mr Cook received an email from Mr Chambers which attached an email he had received from the claimant earlier that morning. It was entitled “footage” and related to the control room door being wedged open on various dates which the claimant had observed, apparently, on CCTV (P160). Mr Chamber’s email was in the following terms (P161):-

*“Forwarding you this email as clearly another case of Vicki Shields looking to introduce disharmony amongst the current staffing complement whilst also attempting to lesser some her own inappropriate performances.*

*You will recall that I had occasion to formally record the fact that Vicki would have been the Lead Office on duty the evening the Security*

*Control Room door was left wedged open when the item of found property (finger ring) went missing.*

5 *This resulted in Performance management meeting being held and Managerial Advice being give (sic).*

10 *I also circulated a global staff email to instruct staff to refrain from wedging the doors open as had potential for unauthorised access as well as public viewing of 'live' CCTV footage.*

15 *Vicki's inappropriate actions on this occasion indicate that she has breached the viewing rights for CCTV as does she have justifiable reason to be viewing the system? Or is it more that this is for personal reasons?*

20 *I have checked the relevant CCTV folder for staff to complete when CCTV footage is viewed/copied and there are no recent entries made by Vicki to formally record reasons why she has viewed CCTV on dates she has listed below.*

*Can we discuss this matter further at your convenience”.*

25 30. The claimant was signed off work due to ill health from 27 August 2019 until 22 September 2019. As requested by the claimant (P169), Mr Cook conducted the “return to work” interview on 22 September. Notes of that meeting were produced (P178/179). Mr Cook advised the claimant that while her grievance was being investigated it still needed to be “*business as usual*” and she needed to continue to work alongside Mr Chambers.

30 31. Mr Cook also advised the claimant that investigations were being carried out into her alleged misuse of CCTV and approaching the respondent’s client, BP, direct, in contravention of the respondent’s procedure.

35 32. Mr Cook was charged with the responsibility of carrying out the investigation. To start, he completed the respondent’s “Authorisation to Compile Request” form on 23 September (P180). In that form he gave the following “brief explanation” of the allegations: -

40 **“Case No 1:** *That over the dates stated above Vicki contacted the BP client directly twice via email to step in concerning an alleged incident*



*as well as WJ process regarding her own investigation and disciplinary, rather than go through the correct WJ HR/ER channels.*

5 ***Case 2:** That Vicki went against CCTV processes in place at the client's site and illegally accessed CCTV footage to inform management of bad practice from other colleagues. Vicki also went against BP CCTV policy by not recording her activities while using CCTV".*

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### **Investigation Meeting**

15 33. On 24 September, Employee Relations invited the claimant to attend an investigation meeting with Paul Cook on 26 September and gave her details of the allegations against her (P198/199).

20 34. Unfortunately, the claimant advised that she was unable to attend the meeting as she had been signed off sick. Accordingly, Mr Cook proposed that a "modified procedure" be used and, rather having a face-to-face meeting, he would send a list of written questions to the claimant for her to answer. The claimant agreed. Accordingly, Mr Cook wrote to the claimant on 2 October 2019 with his questions (P204/205). The claimant responded the same day (P206-208).

25 35. As part of his investigation, Mr Cook also received an email from Davie Downie, one of the respondent's Security Officers, regarding what he had seen the claimant doing on the night shift of 22 August 2019. His email was in the following terms (P209): -

30 *"On the evening of Thursday 22<sup>nd</sup> August (our last night shift), I asked Vicki Shields when she was going to go through the CCTV Training "Quick Guide" with me, so as to give me a better understanding as to how the system works for my own development.*

35 *Vicki went on to say that she needed to do the training herself first, and she needed to learn herself & then she would do the training with me at a later date.*

40 *Subsequently for the best part of that night shift, every time I went into the Control Room, Vicki was on the CCTV Monitoring Station &*

*the same footage of the Reception Security Door was on the screen. I asked Vicki as to how she was getting on with her training in the early hours of Friday 23<sup>rd</sup> August & she said that she was starting to get her head round it.*

5

*The agreed plan between myself & Vicki, for me to carry out the CCTV training with her at the next available opportunity, has still to be determined as she has been on sick leave”.*

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36. Mr Cook forwarded Mr Downie’s email to Employee Relations on 8 October (215).

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37. After carrying out his investigations, Mr Cook prepared an “Investigation Summary” (P200-203). He recommended that disciplinary action be taken in respect of the following allegations (P203):-

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*“i. Approaching a client direct with no good reason apart from attempting to taint her line manager’s and also WJ’s reputation*

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*ii. Not following the correct guidelines and policy regarding CCTV procedure, by not reporting possible security breaches correctly in line with client policy or statutory CCTV guidelines when accessing CCTV”.*

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38. Mr Cook was not involved in the disciplinary process but he did correspond with the claimant about her ongoing absence through ill health. In her email of 18 November 2009, she informed him that she wished to step down from her role of Lead Officer (P280).

### **Disciplinary**

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39. By email and letter on 8 October 2019, Employee Relations invited the claimant to attend a Disciplinary Hearing to be conducted by Scott Barclay, Business Manager, on 11 October 2019 (210-212). However, the claimant advised by email the same day that she would be unable to attend due to ill health (P213). Mr Barclay was prepared to re-arrange the meeting. However, he was advised by Employee Relations that a “*modified process*”, in writing, was likely to be appropriate again due to the claimant being signed off work.

The claimant agreed and Mr Barclay sent his questions to the claimant by email and letter on 31 October 2019 (P237-239). The claimant replied on 2 November 2019 as follows (P248):-

5                    “Allegation 1

10                    *Firstly, at this stage a disciplinary investigation process was initiated by David Chambers so in this instance why would I approach him or Paul Cook who informed me that a Disciplinary would be taking place. I sent an email to Colin Walker on clarification on the procedure as he was previously employed by Wilson James as Account Manager who was based on BP Site prior to Paul Cook, and that I had no confidence with Wilson James. It was the responsibility of the previous shift who had retrieved the mobile phone and had left it lying next to the retrieved laptops and should not have been left for another shift to deal with.*

15                    *Secondly, my email/statement of Intimidation and Bullying is factual and not an allegation. I initially informed Gemma Fuller by email on the 13<sup>th</sup> March 2019 in relation to the incident on 7<sup>th</sup> March, within the control room. I believe that Gemma has then passed this to Hannah as I received an email from Hannah Bury who responded to my email. Hannah has asked for clarification that I do not wish to proceed further at this time, to which I have replied “I do not want to continue with this for the moment, I just want it put on record”. I also notified Colin Walker as I believe this to be my human right that he be made me aware of the incident and I have no confidence in Wilson James.*

20                    Allegation 2

25                    *It was never stipulated by senior management as to what images could be viewed for ‘training purposes’ at any particular date or time. As a security officer, the use to search or monitor CCTV is one of said duties within my role. As a static camera, it would show the same image all the time, just different times and dates.*

30                    *As previously notified by David Chambers himself, who wanted to be advised of any security issues, I felt obliged in my capacity as Lead Officer to fully highlight the matter to David Chambers. As I have already advised, there is no documentation relevant to the logging of accessing the use of CCTV for training purposes, this has been confirmed by a fellow Lead Officer Alan Winton. There has never been a request form to view/train on CCTV images. No one within the security team has ever been given professional training on the CCTV system”.*

40. The claimant's reference to "Intimidation and bullying" related to her complaint about David Chambers which she first raised in March. She only wanted her complaint noted at that time. However she raised the matter again by email on 7 August 2019 (P118) and this was treated by Employee Relations as a formal grievance. This was also dealt with by way of written questions and answers. The joint bundle included further correspondence between the parties in this regard (P240-244). A Grievance Hearing was conducted by Alexander Sheehan on 25 November 2019 (P303-313). The claimant's grievance was not upheld. No issue was taken with this procedure by her representative.

41. Mr Barclay also sent an email to the claimant on 4 November (P251) in response to the claimant asking in her email of 2 November why she had been sent a photocopy of the "CCTV Incident Log" (sheet number 00002) (P245). Although the document sent to the claimant was "several years old" it recorded the most current incidents (P252-253).

42. As he had received all the information he required, Mr Barclay then proceeded to consider the matter. He documented his deliberations in a "Disciplinary Hearing Summary" (P282-284). The Summary recorded his "Conclusion" as follows: -

***"Conclusion***

***VS should have raised any concerns with Line Management. My summation is that she deliberately went out of her way to damage Wilson James on 2 occasions.***

***CCTV was in fact inappropriately accessed for her own purposes and the usage was not recorded on the CCTV log.***

***VS and others were advised at the Lead Officer meeting on 6.8.19 that: -***

***"DC emphasised the importance of detailed recording of all occasions requests were received to either view recorded CCTV footage or copy footage/images to CD both for internal and external bodies. The general principles of management of confidential CCTV recordings was discussed which***

*included the statutory requirement for all requests to view/copy CCTV footage to be accurately recorded for internal and external auditing purposes.”*

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43. Mr Barclay decided that the claimant's conduct amounted to gross misconduct and that she should be dismissed summarily.

## 10 **Dismissal Letter**

44. On 21 November 2019 Mr Barclay wrote to the claimant to advise her of his decision (P291-292). The following are excerpts from his letter: -

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*“I considered the emails you sent to the BP Client (Colin Walker) as relevant. This was against process and any concerns you had should have been raised with Line Management. Additionally, you contacted the Client on more than one occasion. By doing so you could have damaged the relationship with the Client. I do not deem your justification for contacting the Client as reasonable.*

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*I gave consideration to your statement that the images you picked up using the CCTV system were unintentional, however there was sufficient evidence to demonstrate that you inappropriately accessed the CCTV for your own purposes. Additionally you did not record your usage on the log.*

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*Given the evidence available I concluded that there is good reason to believe that you used the CCTV for your own purpose. You have previously been briefed on the process when using CCTV and the importance of detailed recordings. You were therefore aware of the correct process to follow and as a Lead Officer it is reasonable to expect that you would know the correct process to follow.*

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*Other factors I gave consideration to was your length of service and previous conduct record. You have almost 13 years service and I considered a Final Written Warning, however I discounted this due to the severity of your actions. You were issued with a First Written Warning in August 2019 for failure to comply with Company policy and so it was reasonable to expect that there would not be a repetition of failure to follow a process.*

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*In the modified disciplinary letter dated 31<sup>st</sup> October 2019, I advised you that a potential outcome could be dismissal.*

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*I have established to my reasonable satisfaction that you have committed 2 (two) accounts of Gross Misconduct. I can therefore confirm that it is my decision that you are summarily dismissed due to Gross Misconduct and this letter therefore gives formal notification of the summary termination of your employment.*

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*Whilst I have given full consideration to your responses to my questions, I was unable to find any mitigating factors for a lesser sanction”.*

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## Appeal

45. Mr Barclay had advised the claimant of her right of appeal in the dismissal letter. On 28 November, the claimant wrote to the respondent to advise that she wished to appeal against her dismissal (P354-357). However, as it appeared that the claimant was mainly raising issues regarding a protected disclosure, Employee Relations advised her by emails on 2 and 4 December that she needed to stipulate the grounds of her appeal (P398 and P400). The claimant replied by emails on 6, 10 and 12 December (P401-405). On 12 December, Employee Relations sent an email to the claimant to explain what was required by way of an appeal and the “*need to clearly specify the grounds on which you are making the appeal*” (P406). Further email correspondence then ensued (P407-409) resting with an email from Employee Relations on 18 December to the effect that the claimant had still failed to provide grounds for her appeal (P409).

## Respondent’s Submissions

46. The respondent’s representative submitted that conduct was the reason for the claimant’s dismissal and that it was fair. He submitted, with reference to ***British Home Stores Ltd v Burchell*** [1978] IRLR 379, that the respondent had a genuine belief in the claimant’s guilt.

47. He further submitted that credibility was the principal issue in the case and that the claimant’s evidence about her use of CCTV was not credible. She said initially that she had not used CCTV before 22 and 23 August. However, it was clear from her response during the disciplinary proceedings (P248) and from the documentary productions (P427-430) that she had used CCTV previously. Also, as Lead Officer it was part of her job.

48. The respondent's representative submitted that this was significant as much of the case related to the claimant's motivation and the respondent's assessment of why she contacted Colin Walker at BP and accessed CCTV.
- 5 49. He also submitted that it was not just what the claimant did, but the timing of when she did it, which was significant so far as her motivation was concerned.
- 10 50. In March 2019, she had complained of "intimidation/bullying" by her Line Manager, David Chambers, on 7 March. However, she advised the respondent that she did not wish to take the matter further at that time (P63-67). Her first contact with Colin Walker was by email on 10 August 2019 after she had been advised that she was required to attend a disciplinary meeting (P127); she contacted Mr Walker again on 17 August and sent him details of the complaint which she had made about Mr Chambers back in March (P137-139).
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- 20 51. The respondent's representative submitted that it was necessary to look very carefully at her motivation behind sending these emails to Mr Walker. He submitted that this was an attempt to get Mr Walker involved in the disciplinary process. However, what she said to Mr Walker was different from what she said to the respondent when she admitted that she had been at fault. He submitted that the reason she sent the "old grievance" to Mr Walker was, not only to damage the respondent, but also Mr Chambers with whom she had an issue. Then, almost immediately thereafter, she accessed the CCTV on 22 and 23 August.
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- 30 52. She claimed she was undergoing training at the time when she accessed the CCTV and it was only by chance that she came across the image of the door being wedged open on the CCTV. The respondent's representative submitted that it was not credible that the only instances of her accessing the CCTV recorded a matter which Mr Chambers had been involved in previously.

53. The claimant accepted in evidence, that she should have logged these “incidents” or at least recorded them in the “Daily Occurrence Book” but she had not done so. He submitted that the reason she had accessed the CCTV was to, *“dig some dirt on David Chambers”*.
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54. Mr Chambers felt this was the claimant trying to introduce, *“disharmony amongst the current staffing complement whilst also attempting to lesser some of her own inappropriate performances”*.
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55. So far as the disciplinary process was concerned, the respondent’s representative submitted there was no particular complaint. The claimant accepted that the “modified process” was agreed.
56. Mr Barclay recorded in the disciplinary summary that he considered various options but concluded the claimant’s conduct constituted “gross misconduct”.
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57. So far as the appeal was concerned, the claimant accepted in her evidence accepted that she did not provide the respondent with her grounds of appeal.
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58. The respondent’s representative submitted these acts of gross misconduct by the claimant, a Lead Officer, were actions which went to the root of the relationship with her employer. The claimant was deceitful and tried to manipulate the respondent’s client, BP and then accessed CCTV for personal reasons.
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59. Finally, the respondent’s representative submitted, in the alternative, that even if I were to find that there were procedural failures, dismissal would have resulted in any event. Accordingly, in that event, on the basis of ***Polkey v A E Dayton Services Ltd*** [1987] IRLR 503, I should reduce any award of compensation by 100%.
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60. He also submitted, in the alternative, that the claimant was guilty of contributory conduct. For example, she accepted she had failed to document



the CCTV “incidents” on 23 August. There was also no dispute that she contacted the client twice and viewed the CCTV over the course of one evening. He submitted that she wholly contributed to her dismissal and that this also justified a 100% reduction in any award of compensation.

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61. Finally, the respondent’s representative submitted that there was insufficient evidence to establish that the claimant had taken reasonable steps to mitigate her loss and that any award of compensation should cease, “*around the time Covid-19 took effect in March 2020*”.

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### **Claimant’s Submissions**

62. The claimant’s representative spoke to written submissions which are referred to for their terms. He also made oral submissions.

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63. In support of his submissions he referred to the following cases:-

***British Home Stores***

***Sainsbury’s Supermarkets Ltd v Hitt*** [2003] IRLR 23

***Trusthouse Forte (Catering) Ltd v Adonis*** [1984] IRLR 382

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64. He first set out the relevant law, with reference to the Employment Rights Act 1996 (“the 1996 Act”) and in particular s.98(4) and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

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65. So far as the present case was concerned, he submitted that Mr Cook did not carry out a proper investigation: he failed to explore the facts before referring matters to Mr Barclay for disciplinary proceedings.

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66. He submitted that, “*the reason why CCTV was important was because the claimant lacked training*”. Mr Chambers “*openly confessed*” she had not been trained and he was her Line Manager. Also, there is nothing in the BP “Local Response Plan” about what training was required (P51-58).

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67. So far as the claimant contacting Colin Walker was concerned, he had been employed by the respondent at one time as an Account Manager and the claimant knew him professionally. She had no faith in her employers and that was why she contacted him. There was, *“nothing in writing about the claimant not contacting the client”*. The first time she was advised by the respondent that she should not approach the client with *“internal matters”* was when she received the email of 19 August 2019 from Employee Relations (P147) and she ceased contact with Mr Walker after that.

68. Further, when Mr Cook issued the claimant with the first written warning (P156) he was aware that the claimant had been in contact with Mr Walker.

69. The respondent’s representative submitted that, *“the warning was shaky, motivated by contact with the client”*.

**“Conduct of David Chambers”.**

70. Mr Chambers, a former Inspector of Police, joined the respondent in January 2019. When questioned at the Tribunal Hearing he said that the claimant had been trained in the use of CCTV but that the BP Guidelines were *“vague”*. However, the respondent’s training record on the usage of the CCTV system did not include the claimant (P426). The claimant’s representative submitted that, *“Mr Chambers couldn’t give a clear answer as to where the record came from. He appeared disorganised”*.

71. As a consequence of a fatality in August 2019, BP instructed a review of the CCTV procedures. However, the fatality was not recorded in the documentary productions.

72. Mr Chambers arranged a meeting with his colleagues on 6 August 2019 (P114-115). He said that he thought the claimant would have been trained as she had been a Lead Officer for 12 years. However, she had only been a Lead Officer for 2 years.

73. Mr Chambers was also asked at the Tribunal Hearing about the incident on 7 March and the complaint by the claimant about his conduct. He denied that he had “harassed and bullied” the claimant.

5 74. So far as Scott Barclay was concerned, like his colleague Paul Cook, he also said he’d been trained how to manage employees. Mr Barclay had to address the allegations against the claimant (P237/238). However, it was submitted that Mr Barclay had a “*closed mind*”. When asked about appraisals and whether he had checked “*shortfalls in training and CCTV records*” he  
10 said that he had not.

75. At para 19 of his statement, he said that the claimant had, “*illegally accessed CCTV footage*”. However, the claimant was a Lead Officer and part of her duties was to access CCTV. The claimant’s representative submitted that,  
15 “*to use the word ‘illegally’ is very sinister*”.

76. The claimant was able to observe from the CCTV occasions when the door had been wedged open. He said that she “*disputed this was to have a swipe at David Chambers. I say this was part of her duties. She was doing training. It was her job. She made a report. It wasn’t done for her own purpose but for health and safety*”.

77. In Mr Barclay’s opinion, the claimant was trying to bring the business into disrepute by contacting Colin Walker, “*but there was nothing hidden*” (P128  
25 and P137).

### **Dismissal**

30 78. The claimant’s representative submitted that the claimant’s dismissal was “*too harsh*”. He accepted that the procedures up to the appeal were reasonable. However, the claimant sought guidance concerning the appeal process but wasn’t given the opportunity to appeal her dismissal.

## Discussion and Decision

79. In every unfair dismissal case where dismissal is admitted s.98(1) of the Employment Rights Act 1996 (“the 1996 Act”) requires the employer to show the reason for the dismissal and that it is an admissible reason in terms of s.98(2) or some other substantial reason of a kind such as to justify dismissal of an employee holding the position which the employee held. An admissible reason is a reason for which an employee may be fairly dismissed and among them is conduct. That was the reason which the respondent claimed was the reason for the claimant’s dismissal. I was satisfied that she was dismissed for that reason. However, that is not to say, that it followed that the claimant was guilty of the conduct complained of, or that it amounted to gross misconduct, only that the respondent believed that she was and that was the reason for the dismissal.

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80. The remaining question which I had to determine under s.98(4) of the 1996 Act, therefore, was whether the respondent had acted reasonably in treating that reason for dismissing the claimant as a sufficient reason and that question had to be determined in accordance with equity and the substantial merits of the case.

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81. To determine whether a dismissal for conduct is fair, valuable guidance was provided in the well-known case of **British Home Stores**, to which I was referred by the parties’ representatives. Mr Justice Arnold gave the following guidance in that case at page 380: -

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*“What the Tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of that employee of that misconduct at that time. That is really stating shortly and compendiously what in fact is more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief and thirdly, we think that the*

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*employer, at the stage at which he formed that belief, on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case”.*

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82. This means that the employer need not have conclusive direct proof of the employee’s misconduct – only a genuine and reasonable belief, reasonably tested.

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83. I also remained mindful of the guidance of the Court of Appeal in **Sainsburys Supermarkets Ltd v Hitt**, to which I was referred by the claimant’s representative, that the objective standard of the reasonable employer must be applied to all aspects of the question of whether an employee was fairly and reasonably dismissed. The “*range of reasonable responses test*” applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances, as it does to other procedural and substantive aspects of the decision to dismiss a person from his employment for a conduct reason.

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### **Procedures**

84. The claimant agreed to a “modified procedure” being used. I am satisfied that the procedures which the respondent adopted in the present case were those which a reasonable employer could have adopted in all the circumstances. The claimant was made aware of the allegations against her and was afforded an unrestricted opportunity of responding at every stage. There was a full investigation by Mr Cook, a disciplinary “hearing” conducted by Mr Barclay by way of written questions and answers, with the claimant’s agreement, and the claimant was offered the right of appeal.

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85. As far as the appeal was concerned, the respondent’s request that the claimant provide her grounds of appeal was a reasonable one and it was only because she failed to do so that the Appeal did not proceed. When cross examined at the Tribunal Hearing the claimant accepted that she had never specified her grounds of appeal and that was why her appeal wasn’t heard.

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**Misconduct**

- 5 86. What then of the allegations of misconduct on the claimant's part? The first allegation related to the claimant contacting BP, the respondent's client, direct and in particular, Colin Walker their Security Manager.
- 10 87. I found favour with the submission by the respondent's representative that it was reasonable, in all the circumstances, for the respondent to take a view as to the claimant's motives in so doing from the timing of what she did.
- 15 88. On 10 August 2019, only a day or so after the claimant had been advised that she was required to attend a Disciplinary Hearing on 13 August, she sent an email to Mr Walker (P127). In that email, she complained, in effect, about the way she was being treated by the respondent. The clear inference from her email was that she was being treated unfairly. She also asserted that, "*there was no wrongdoing on my part*", despite the fact that in her email to David Chambers on 26 July she admitted "*there was an error on my part*" (P105) and she did not appeal the first written warning she received..
- 20 89. On 17 August 2019, some 3 days before her rescheduled Disciplinary Hearing, the claimant sent another email to Mr Walker with a copy of a complaint she had made about her Line Manager, David Chambers, some 5 months before in March 2019 (P137-139).
- 25 90. On 19 August 2019, the claimant sent a further email to Mr Walker (P144). In that email she told him that she had "*no confidence*" in the respondent that there was "*no trust amongst staff now*" and there was, "*uneasiness and very low moral*" (sic).
- 30 91. It was clear from the email correspondence that Mr Walker took the view that this direct contact from the claimant was abnormal and inappropriate, that he had no desire to become involved and that the claimant's allegations required to be addressed by the respondent and not by him. He said this in his email of 19 August to Sandy Sheehan, one of the respondent's Directors (P145): -

*“Whilst it’s not normal for staff to contact the client direct, given the nature of the allegations, it requires further scrutiny by Wilson James”*

92. At the same time, the claimant also raised again with the respondent’s  
5 Employee Relations, Department her allegation of “intimidation/bullying” by David Chambers (P140-142).

93. Following his investigation, Paul Cook recommended that the disciplinary  
10 process be engaged to address the allegation of the claimant, *“approaching a client direct with no good reason apart from attempting to taint her line manager and also WJ’s reputation”* (P203). In my view, the submission by the claimant’s representative that Mr Cook had not carried out a full investigation was not well-founded. His investigation was comprehensive.

15 94. Following the Disciplinary Hearing, Scott Barclay decided that the emails she had sent direct to Mr Walker were:-

20 *“Against process and any concerns you had should have been raised with Line Management. Additionally, you contacted the Client on more than one occasion. By doing so you could have damaged the relationship with the Client. I do not deem your justification for contacting the Client as reasonable”.*

25 95. In all the circumstances, Mr Cook’s view and Mr Barclay’s decision were ones which a reasonable employer could have reached and were *“within the band of reasonable responses”*.

30 96. As I recorded above, the timing of what the claimant did was significant. It was against the immediate background of her facing disciplinary proceedings. Further, having made the very serious allegation that she had been *“intimidated and bullied”* by Mr Chambers, some 5 months previously, she had advised the respondent at that time that she did not want the complaint progressed (P65). There was no other reason for the claimant raising the  
35 issue again direct with Mr Walker when she did other than to, *“taint her Line*

*Manager's reputation*" and "*damage the respondent's relationship with the client*". It was reasonable for the respondent to take that view.

- 5 97. BP is a valued client of the respondent. I was satisfied therefore, that Mr Barclay's conclusion that this constituted gross misconduct fell within the band of reasonable responses which a reasonable employer might have adopted.
- 10 98. Paul Cook also recommended that the disciplinary process be engaged to address the allegation of the claimant, "*not following the correct guidelines and policy regarding CCTV procedure, by not reporting possible security breaches correctly in line with client policy or statutory CCTV guidelines when accessing CCTV*" (P203).
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99. Following the Disciplinary Hearing, Scott Barclay decided that while the images the claimant, "*picked up using the CCTV system were unintentional, there was sufficient evidence to demonstrate that you inappropriately accessed the CCTV for your own purposes. Additionally, you did not record your usage on the log*".
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100. The claimant maintained that she had accessed the CCTV, "*for training purposes*". I found favour with the submission by the respondent's representative that this was simply not credible. While no evidence was
- 25 adduced of the claimant undergoing training, she had been employed by the respondent for over 12 years and was in a supervisory position as a Lead Officer at the time. Once again, the timing of what she did was significant. She accessed the CCTV when she had been through disciplinary proceedings, had just received a first written warning and was clearly
- 30 unhappy and aggrieved with the way she had been treated. On 23 August 2019, she sent an email to David Chambers in which she made reference to the CCTV footage which showed that the security control room door was left wedged open on a number of occasions (P160). There were no entries in the CCTV logs recording the claimant viewing the CCTV on specific dates and



times, as there should have been; there were no entries in the BP Incident log highlighting a security breach as there should have been in terms of BP's Code; there were no entries in the Daily Occurrence Book. As part of his investigation, Paul Cook received an email on 7 October 2019 from David Downie, Security Officer, who observed the claimant using the CCTV and,  
5 *"for the best part of that night shift every time I went into the control room Vicki was on the CCTV Monitoring Station & the same footage of the Reception Security Door was on the screen"* (P209).

10 101. Mr Barclay concluded that this also constituted gross misconduct on the part of the claimant. I am satisfied that that decision, in all the circumstances, fell within the band of reasonable responses which a reasonable employer could have adopted. In arriving at that view, I also had regard to the fact that the claimant was an experienced employee with almost 13 years' service and  
15 was well aware of the respondent's policies and procedures and those of the client, BP; she had received a first written warning on 22 August for not following Company policy; and she had been briefed recently by Mr Chambers at a Lead Officers' meeting on 6 August 2019 about the use of the CCTV system (P110-116).

20 102. As far as the written warning was concerned, the claimant's representative submitted that it was "shaky". However, there was no evidence whatsoever to suggest that it had been issued in bad faith or that it was *"manifestly inappropriate"* ( ***Davies v Sandwell Metropolitan Borough Council*** [2013] IRLR 374). There was no such assertion by the claimant's representative and  
25 the claimant did not appeal.

### Dismissal

30 103. I then went on to consider whether, in all the circumstances, the claimant's dismissal was a reasonable sanction. The claimant's representative had submitted that dismissal was *"too harsh"*.

104. I was mindful of the guidance, given in such well-known cases as ***Iceland Frozen Foods Ltd v Jones*** [1982] IRLR 439, that there is a band of reasonableness within which one employer might reasonably dismiss the employee, whereas another would quite reasonably keep him on. It depends  
5 entirely on the circumstances of the case whether dismissal is one of the penalties which a reasonable employer would impose. If no reasonable employer would have dismissed, then dismissal is unfair, but if a reasonable employer might reasonably have dismissed, then dismissal is fair.

10 105. Having arrived at the view that it was reasonable for the respondent to conclude that the claimant was guilty of gross misconduct, I had no difficulty deciding that the dismissal, in the particular circumstances of this case, was within the band of reasonable responses which a reasonable employer might have adopted. In arriving at this view, I was mindful that the claimant had  
15 some 13 years' service. However, she was guilty of gross misconduct, on two counts, and BP is a valued client of the respondent. Any conduct which seeks to portray the respondent in an unfavourable way to the client and create "*disharmony*" is a matter of considerable concern to the respondent, as the claimant undoubtedly would have known.

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106. The respondent satisfied the ***British Home Stores*** test: they had a genuine and reasonable belief in the claimant's guilt, reasonably tested; they followed a fair procedure; they imposed a sanction, dismissal, which fell within the range of reasonable responses. Accordingly, the dismissal was fair, and the  
25 claim falls to be dismissed.

**Judge N M Hosie**

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**Employment Judge**

**12<sup>th</sup> of July 2021**

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**Dated**

**12<sup>th</sup> of July 2021**

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**Date sent to parties**

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