



# EMPLOYMENT TRIBUNALS

**Claimant:** Parus Bhardwaj

**Respondent:** Insultec Ltd

**Heard at:** Watford **On:** 26-28 April 2021

**Before:** Employment Judge Ord

**Representation:**

Claimant: Mr R Jones (Counsel)  
Respondent: Mr C Murray (Counsel)

## JUDGMENT

1. The claimant's complaint of unfair dismissal is not well founded and is dismissed.
2. The claimant's complaint of wrongful dismissal is not well founded and is dismissed.
3. The claimant's claim for unlawful deductions from wages is not well founded and is dismissed.
4. Upon the claimant's withdrawal of his claim for holiday pay, it is dismissed.

## Reasons

### Claim

1. By a claim dated 19 June 2019, the claimant brought a complaint of unfair dismissal, wrongful dismissal and unauthorised deduction from wages.

### Issues

2. The issues were agreed at the hearing as being:

(A) *Unfair Dismissal*

- What was the reason for the claimant's dismissal?
- If the reason was conduct, did the respondent act reasonably in all the circumstances in treating that conduct as a sufficient reason to dismiss the claimant? In particular:
  - Did the respondent genuinely believe that the claimant had committed the misconduct?
  - If so, was this based on reasonable grounds?
  - At the time the belief was formed, had the respondent carried out a reasonable investigation?
  - Was the procedure within the band of reasonable responses?
  - Did the respondent act reasonably in treating the misconduct as sufficient to dismiss the claimant?
  - Was dismissal within the band of reasonable responses?
- If the reason was Some Other Substantial Reason capable of justifying dismissal, in this case a breakdown in trust and confidence, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

(B) *Wrongful Dismissal*

- Did the claimant fundamentally breach the contract of employment so as to justify the respondent treating the contract as at an end?

(C) *Unauthorised Deduction from Wages*

- Did the respondent make an unauthorised deduction from the claimant's wages?

**Evidence**

3. The tribunal had before it a joint bundle of documents of 940 pages, an additional bundle of documents from the claimant of 566 pages, the claimant's chronology of events and the claimant's Further and Better Particulars.
4. It also had a witness statement from the claimant with three exhibits attached, and witness statements from the respondent's witnesses, namely Dorian Punj (Director), Suki Johal (book-keeper) and Juliana Olaru (Business Development Manager). All of these witnesses gave oral evidence.
5. Closing submissions were heard from both the respondent's and the claimant's representatives.
6. The numbers in brackets in the Findings of Fact below are references to pages within the joint bundle of documents.

### Findings of Fact

7. The claimant started work with the respondent on a temporary basis in June 2004 and this was made permanent in 2005. He was recruited by Prem Sharma, who lived opposite the claimant and knew the claimant's mother and father. Mr Sharma was the claimant's line manager, and he developed the claimant's skills over the time the claimant was with the company.
8. The respondent, at the material time, was a small company which increased in size from five to seven employees during the claimant's employment with them.
9. There were issues with the claimant's conduct and he was sent a warning letter in April 2009 about the tone and manner of his verbal communications (86).
10. The claimant also had concerns about the respondent, and felt that he was being picked on. His issues were addressed in a meeting on 14 December 2015 (128) which was attended by Dorian Punj (Director) and Mr Sharma, amongst others. The minutes record that the claimant confirmed that all the issues had been dealt with.
11. Thereafter, the claimant demonstrated instances of poor conduct over a prolonged time period and despite his line manager raising concerns and informally warning him of his actions, the poor behaviour continued. For example, the claimant put staff under surveillance and kept a log of their movements (895). The detail he recorded read as though he was stalking them. This surveillance and monitoring went on for some considerable time.
12. Furthermore, the claimant referred to two employees in the log in a disparaging way, calling one "Ghettzy" (Suki Johal, book-keeper) and another "Chipmunk" (Arvind Saxena, his previous line manager). The tribunal does not accept the claimant's evidence that these were just musician's names, as no credible explanation was given as to why he should refer to them as musicians. There was no good reason to call anyone in this way and it is likely that anyone reading the log would consider the names to be derogatory. Whilst it was not a public log, it was on a work computer and might have been accessed by others.
13. The claimant sent an e-mail to Suki Johal requesting that she provide the claimant with information about the movements in and out of the office of his line manager, Mr Sharma. No credible reason was provided by the claimant for wanting this information. The claimant also admitted photographing the office without permission for his own personal use.
14. Additionally, there was a problem with the claimant's time keeping, which was unsatisfactory. The respondent sent him a warning letter in March 2018 about his constant lateness into the office (228). Meetings also took place with the claimant in January 2017 and March 2018 about his punctuality.

15. The claimant did not deny that he constantly came into the office about 15 minutes late. This caused a problem for the respondent, not least because many of the respondent's customers were located globally in the East, including China, which is ahead of the UK in time, and therefore prompt morning attendance for communication purposes was particularly important. The claimant's argument that other staff came into the office late was no excuse.
16. The issue over the claimant's time-keeping was only resolved once Mr Sharma spoke to the claimant's parents about it. The claimant referred to this in his log of 20 March 2018, which said "*Done this for their sake, don't give a fuck otherwise*". This is evidence of what was becoming an increasing problem of insubordination and disrespect for management.
17. The claimant also admitted to playing chess in the office whilst he was waiting for documents to download despite there being other necessary work to do, such as filing. There were other instances of insubordination. For example, in February 2018 in Mr Sharma's office, the claimant used inappropriate language and showed disrespect by saying "*I don't give a Monkeys*". The claimant did not deny that words to this effect were said.
18. The respondent alleged that on 31 May 2018 the claimant shouted at Mr Sharma down the phone in the office. Whilst the claimant denied shouting, he admitted calling Mr Sharma unprofessional. Given the claimant's history, it is likely that the tone of the claimant's comments was disrespectful.
19. Shortly afterwards the claimant went on sick leave with work-related stress. He did not keep the respondent informed each day as to his sickness position or tell the respondent when he expected to return to work, as was required by the company rules.
20. At the claimant's return to work meeting on 11 June 2018 (251) the claimant was reminded about keeping in touch whilst absent from work and about a number of other conduct issues, such as his failure to file documents, and taking his laptop out of the office against company rules. The respondent sent him a warning letter about his poor filing dated 12 June 2018 and Mr Sharma referred to this in his e-mail of 14 June 2018 (268) as a last informal warning before disciplinary action might be taken.

### *Grievance*

21. The claimant raised issues about the company in a grievance letter dated 12 June 2018, which appear to have been initiated by the warning about his filing (254-261). Mr Sharma responded on 13 June 2018 by giving the claimant the respondent's grievance policy and confirming that his concerns would be dealt with. Mr Sharma attempted to deal with some aspects of the grievance by giving the claimant specific details of his tasks and roles as the claimant had requested (272) and he set up a grievance meeting with an external HR consultant (285).
22. Dorian Punj spoke to the claimant on 31 July 2018 to try and understand

why he was unhappy, and on 1 August 2018 Mr Punj e-mailed Mr Sharma setting out what he believed the issues were that the claimant wanted addressed (316). The e-mail referred to five issues, namely, that the claimant was unhappy because 1) he came to work on time when others did not; 2) he felt he should be paid more; 3) he had to move his desk several years ago, although that was resolved; 4) Prem Sharma had spoken to his parents (he still lived at home with his parents), and 5) he felt he was not respected in the office, he was singled out, and there was no team spirit.

23. A grievance hearing was set up for 7 September 2018, although this was postponed to 5 October 2018, after the claimant became unfit for work according to a fit note he produced. The grievance hearing took place ahead of the disciplinary hearing that was also being scheduled (see below) and was heard by a neutral HR consultant, Phil Garrard. The claimant was allowed to record the meeting and did so.
24. There were additional complaints made by the claimant at the meeting about the respondent. These included the claimant allegedly being bullied by Arvind Saxena, his previous line manager, who he said made him do things he was not responsible for, and an alleged threat by Mr Sharma to dock his wages if he continued being late. There was some overlap in the issues addressed in the grievance hearing and the later disciplinary hearing.
25. The outcome of the grievance was that, although there had been many complaints by the claimant, the vast bulk of them were unfounded. Phil Garrard produced a comprehensive report of his findings dated 23 October 2018, which dealt with all of the grievances which Phil Gerrard thought to be of any significance. It found that the claimant's belief that he had been bullied was his perception and that there was insufficient evidence to support his allegation of being treated in such a way.
26. However, a few defects in management were identified, such as Mr Sharma contacting the claimant's parents, and a suggestion was made that they be reviewed and improved. It also highlighted the claimant's unsatisfactory behaviour and said that the respondent had legitimate issues which warranted disciplinary action (508). It concluded that the relationship between the claimant and the respondent had broken down and was unlikely to be capable of repair. The outcome report was detailed and well balanced.
27. The claimant was given a copy of the grievance decision and report by Suki Johal on 30 October 2018. On 2 November 2018 he appealed and his extensive grounds of appeal were set out in a document dated 20 November 2018 (596-647). They included complaints that Phil Gerrard's investigation was not thorough or meticulous, fair or impartial, and that his notes were misconstrued and incomplete. The appeal was heard by another external consultant, Colin Jones, on 29 November 2018 (656-660) and the claimant made further submissions by e-mail dated 2 December 2018 (661).
28. In his outcome decision letter dated 6 December 2018 (687-692), Colin

Jones did not find evidence of bullying, or sufficient evidence to support any of the other allegations considered. He agreed with the previous consultant, Phil Gerrard, that the relationship between the claimant and the respondent was unlikely to be capable of repair. The letter also drew on some of the claimant's own unacceptable conduct.

29. The grievance appeal was thorough and comprehensive and the conclusions were properly drawn and were fair.

*Disciplinary*

30. Returning to the summer of 2018, there were numerous e-mails and letters exchanged regarding or related to disciplinary matters. The following paragraphs refer to those of particular note.
31. Mr Sharma sent a letter to the claimant on 13 August 2018 requesting him to attend a formal disciplinary hearing (first disciplinary letter 354). There were two allegations to answer, namely, 1) The claimant's challenging and disrespectful behaviour to Prem Sharma in particular, and 2) his work conduct and performance.
32. The claimant replied on 14 August 2018 to the effect that he would engage with the disciplinary process after his grievance was resolved.
33. Mr Sharma sent a second disciplinary letter to the claimant on 15 August 2018 about an incident in the office on 7 August 2018 (368). He informed the claimant that he would be conducting an investigation on 21 August 2018 and asked the claimant to be in the office. A letter was also sent, referring to the claimant's letter of 14 August 2018, and saying that the disciplinary hearing would go ahead as notified (367).
34. That same day (15 August 2018) Suki Johal sent a letter to staff reminding them not to be in the office outside working hours without permission and that personal phone calls during working hours were not appreciated (363).
35. On 15 August 2018 the claimant was in the office after hours without permission.
36. On 16 August 2018 the claimant wrote to Mr Sharma admitting to being in the office after hours, saying that other staff were also there including Mr Sharma. He also complained that many new procedures had been brought into force over the past few weeks, many of which he felt were put in place to make an example of him. He said he was taking his laptop home so he could work after hours. Both of these actions were contrary to company instructions.
37. On 16 August 2018 the claimant obtained a fit note signing him off work for two weeks until 29 August 2018 due to stress at work. He returned to work on 30 August 2018. However, Mr Sharma was concerned that he might still be unfit for work and suggested that he consult his GP.
38. On 3 September 2018 Mr Sharma wrote to the claimant informing him that

the investigation relating to the incident on 7 August 2018 had been rescheduled to 6 September 2018.

39. On 4 September 2018 Mr Sharma sent a third disciplinary letter (401) to the claimant advising him that he was not following management instructions because 1) he used the office outside work hours without permission on 15 August 2018, and 2) he took company property home without permission (company laptop). He was informed that this would be discussed at the outstanding disciplinary hearing, which was rescheduled for 10 September 2018.
40. On 4 September 2018 the respondent received another fit note from the claimant signing him off work from 30 August to 26 September 2018 (405). Therefore, Mr Sharma wrote to the claimant postponing the investigatory meeting relating to the 7 August incident (404).
41. On 27 September 2018 the claimant attended a back to work meeting and it was agreed that the claimant was fit to return.
42. On 15 October 2018 Mr Sharma had a meeting with the claimant in the presence of Arvind Saxena and Suki Johal about concerns he had that the claimant was sending work e-mails and documents to two personal e-mail addresses (minutes 482). The claimant admitted doing this on his own accord without permission and for his future personal use. This was recorded in a letter to the claimant dated 17 October 2018 (502) which set out concerns that the claimant had forwarded company e-mails with details of a purchase order, pricing information and client communication, to two personal accounts. Mr Sharma requested further information on this from the claimant by 22 October 2018.
43. On 22 October 2018 Mr Sharma sent a fourth disciplinary letter (519) informing the claimant of other matters he intended to consider at the forthcoming disciplinary hearing as follows:
  - AA) Management Instructions: 1. Use of office outside working hours without permission; 2. Taking company property home without permission.
  - BB) E-mailing official documents to the claimant's personal account: 1. Purchase order; 2. Communication related to the purchase order along with complete client communications.
44. The claimant was reminded of the company's rule on this action in the Staff Handbook, which was set out with the letter, and which in summary stated that such information shall not be used except for the benefit of the company.
45. The claimant replied to the 17 October letter on 22 October 2018 (522) stating in essence that he had forwarded the documents to win back a client who had left because of the respondent's contracts department.
46. In response, Prem Sharma sent a letter to the claimant on 24 October

2018 (531-2). He reminded the claimant that the laptop was company property, as were the e-mails held on it, and he raised the issue of security of information, amongst other things. The letter contained instructions on the use of the company's computer equipment. These included clear directions that the claimant was not to remove data from the company's premises without permission, and not to send inappropriate e-mails. He was to be mindful of the need for confidentiality of certain company documentation and he was not to take copies of documents for personal use.

47. On 11 December 2018 (after the grievance appeal outcome letter of 6 December), Mr Sharma sent a letter to the claimant (698) suspending him on full pay from 13 December 2018. The reasons related to his approach to management and relationships with other staff members. The claimant was told not to attend the office nor to undertake any work, and he was instructed to leave the company's laptop at the offices.
48. On 12 December 2018 Mr Sharma sent an e-mail to Philip Delafield, an external HR employment advisor (699) telling him that the respondent had gone through the claimant's mail to sort out progression of his work in his absence and noted that the claimant:
  - still had a rule set for all e-mails from Juliana Olaru (business development manager) to be forwarded to his deleted folder upon receipt. Mr Sharma noted that he had asked the claimant to immediately remove this rule some time ago.
  - had a rule set that all mails from Juliana should be forward to his junk folder immediately upon receipt.
49. In cross examination the claimant admitted setting this rule but said it was to help him manage his e-mails. The tribunal does not accept the claimant's evidence in this regard as such actions are highly likely to cause problems with e-mail management.
50. The letter went on to say that the claimant had accessed server directories and looked at documents in old contracts, which could have been copied or forwarded somewhere else. He had also accessed other documents without apparent good reason, including details of a court hearing and a witness list.
51. On 11 January 2019 Prem Sharma sent a fifth disciplinary letter to the claimant (702) inviting him to a disciplinary hearing on 18 January 2019. In it he set out a long list of issues for discussion under the heading of 1) Attitude to management – 14 issues, 2) Attitude to other staff – 2 issues, 3) Other conduct concerns – 8 issues; 4) whether there was a breakdown in trust and confidence that the respondent had in the claimant. It also noted that the claimant had already confirmed the breakdown of trust and confidence in all senior management of the company.
52. Altogether there were 25 allegations to address under the various headings, some of which overlapped with matters raised as a grievance. They included remarks made by the claimant to and about Mr Sharma. Under the heading "*Attitude to management*" it was alleged that the



- claimant made unsubstantiated claims against Mr Sharma of bullying, harassment and discrimination of colleagues resulting in the deterioration of their health and resignations. Also, there was an allegation that the claimant told Mr Sharma he was not doing his job properly.
53. There was no formal investigatory stage as such, but before the hearing, Mr Sharma gathered the evidence together on the claimant's conduct that had been obtained over the relevant time period.
54. A bundle of documents (about 50 pages) including witness evidence was enclosed with the invitation letter in support of the allegations, and the claimant was given the opportunity to prepare a written response. Whilst the claimant contended that a number of the documents were falsified or backdated, there is no persuasive evidence of this and it is not accepted by the tribunal. The letter explained that he could have a work colleague or trade union official accompany him at the hearing and that the outcome of the hearing could be a formal warning or dismissal.
55. On 17 January 2019 the claimant was signed off sick until 31 January 2019 and produced a Fit Note saying "Work related stress" (709). He then produced another Fit Note similarly signing him off sick until 8 February 2018.
56. The disciplinary hearing was postponed on a number of occasions due to the claimant's sickness. After being re-scheduled to 1<sup>st</sup>, 8<sup>th</sup> and 11<sup>th</sup> February 2019, it eventually took place on 22 February 2019.
57. Mr Sharma was the disciplinary officer, with Phil Delafield appointed to advise him on HR/employment matters. Minutes of the meeting were taken by Suki Johal (746-752). The claimant contended that they were inaccurate and added his comments to them thereafter (753-754). Whichever is correct is of little consequence to the overall process.
58. The claimant prepared a 15 paged defence note dated 22 February 2019 (731-745), which addressed each of the allegations and more. This was handed in at the disciplinary hearing. In it the claimant complained that matters raised in his grievance were now included in the disciplinary and this made a mockery of the grievance. He also suggested that the disciplinary came about after he made a protected disclosure. It is not clear from the document what the protected disclosure was, although the claimant had raised a health and safety issue about the quality of drinking water some considerable time in the past, which had been resolved. He also expressed doubt over whether he would get a fair hearing.
59. In the document the claimant admitted many of the actions alleged, but set out what he believed to be justifications for his behaviour in his extensive, convoluted defence. However, the tribunal does not find his reasoning convincing.
60. For example, he complained that the documents in the bundle provided insufficient examples of aspects of his conduct and in some cases, he referred to there being no evidence against him. However, there was in fact significant evidence in support of the allegations.

61. With respect to his behaviour towards Mr Sharma, he claimed that Mr Sharma's unprofessionalism, dishonesty and incompetence were confirmed on several counts in the grievance decision report. However, whilst the grievance report criticised a few aspects of management, including Mr Sharma approaching the claimant's parents in breach of confidentiality, it did not uphold the claimant's grievance.
62. The claimant also complained that many of the issues raised were trivial and could have been dealt with through appraisals. However, the respondent had already attempted to address many of the issues with him through informal warnings and meetings and none of them had worked. He also suggested that he had been undermined because of his young age and, had he been older, things would have been different. However, there was no evidence that this was the case.
63. At the hearing, the defence to the first two allegations were read out by Mr Sharma and the claimant was asked if he wanted to add anything to what he had written in the notes. As the claimant replied that he had nothing to add, it was agreed that the rest of his defence relating to the other 23 allegations need not be read out. No-one asked any other questions about the defence or sought clarification during the hearing.
64. The claimant pointed out that in August 2018 there were only two or three disciplinary points but now there were 25 and he believed this was because he raised a grievance. Mr Sharma confirmed that it was not because of the grievance.
65. The claimant asked Mr Sharma if he had read the grievance report and he confirmed that he had, to which the claimant responded that he should not have seen it, it should have been confidential, and he was not being treated in a fair way. He went on to say that Mr Sharma was unprofessional and dishonest.
66. Mr Sharma told the claimant that he, Suki Johal and Phil Delafield would discuss the allegations and all the defence points amongst themselves and that the claimant could leave the meeting. The three of them then proceeded to read the defence. Mr Sharma deliberated and made the decision to dismiss the claimant with effect from 27 February 2019.
67. Mr Sharma's reasons for dismissal are contained in his dismissal letter of 26 February 2019 (759-766) where he addressed each of the 25 allegations, referencing the main evidence he relied upon and summarising the claimant's points of defence. As certain allegations and points of defence concerned accusations against Mr Sharma, Mr Sharma was in the position of deciding issues where he was the target.
68. Mr Sharma found against the claimant on all allegations, some of which he determined were serious misconduct and others of which he classed as gross misconduct. He concluded that the claimant's acts amounted to gross misconduct overall, such as to justify summary dismissal. In summary his findings on each allegation were:

1 - Attitude to management.

1. Accusing Prem Sharma of mismanagement, in particular of draconian conduct, malpractice, abuse of authority, and having traits of missing from the office and duties - serious misconduct.
2. Serious and continuing insubordination towards senior management – serious misconduct.
3. Deliberate lateness and leaving the office during working hours without permission, thereby receiving payment for not working – gross misconduct.
4. Blunt communication with Mr Sharma, calling him dishonest, unprofessional, shouting at him and calling him incompetent – serious misconduct.
5. Claims against Mr Sharma about bullying, singling out and victimising which were unfounded – serious misconduct.
6. Claims against Mr Sharma of bullying, harassing and discriminating against other colleagues which resulted in deterioration of their health and resignations – serious misconduct.
7. Telling Mr Sharma that he was not doing his job properly – serious misconduct.
8. Asking Suki Johal to provide the claimant with information about Mr Sharma's movements – serious misconduct.
9. Denying to Mr Sharma that filing was part of the claimant's role and making an issue of this, despite doing it – serious misconduct.
10. Not providing access to the claimant's laptop when requested and taking the laptop home without permission and against an instruction – serious misconduct.
11. Trying to access the office after hours in defiance of a management instruction – serious misconduct.
12. Carrying out work outside of the claimant's domain without referral to management (this included accessing the server and copying confidential documents) – gross misconduct.
13. Making unproven allegations against the respondent company, including statements that the company had not paid staff their dues or not paid them at all and that the company had several legal cases against it from suppliers and clients (maligning the company's 32 year old reputation and name in the market with potential consequences for future business and growth) – gross misconduct.
14. Not following instructions and not replying to Mr Sharma's mail – serious misconduct.

2 - Attitude to other staff

15. Compiling surveillance records about their attendance – serious misconduct.
16. Use of derogatory and abusive names for colleagues – serious misconduct.

3- Other concerns

17. Accessing company data without need or permission and forwarding to personal e-mail address or backing up in external personal sources – gross misconduct.
18. Going on leave without proper handing over of work – serious misconduct.

19. Defying instructions, for example meeting suppliers/visitors without anyone else's knowledge and use of meeting room without booking – serious misconduct.
20. Unorganised work and not meeting tender deadlines – serious misconduct.
21. Setting the claimant's computer to move all of Juliana Olaru's mail upon receipt to the deleted folder (causing serious risk of missing out on important inquiries or client communications) – serious misconduct.
22. Asking staff to prepare documents that were false (Juliana and Abraham to say that the claimant was made manager of the Estimation Department, and an e-mail sent to Kelvin requesting him to write a letter in the exact draft written by the claimant trying to falsely implicate senior management) – serious misconduct.
23. Use of the company's computer for personal reasons during work time, including a legal claim and preparing a document about Suki and Arvind – serious misconduct.
24. Taking photographs of the office without permission – serious misconduct.

4 - Whether there has been a breakdown in the required trust and confidence that the company had in the claimant. It concluded that there had been and that this was in breach of contract justifying dismissal.

Alternatively, it concluded that the claimant's acts of gross misconduct justified instant dismissal.

The claimant was advised of his right to appeal.

69. The claimant exercised his right of appeal and submitted a lengthy set of grounds of appeal dated 6 March 2019 (769-791), some of which related to procedure. Amongst other things, he complained that the various points were not discussed at the disciplinary hearing, and therefore it was a predetermined judgment. He submitted that the process had been orchestrated with the intention of dismissing him and this is what Prem Sharma wanted all along. He stated that the disciplinary process was fundamentally flawed from the beginning because Prem Sharma had chaired the disciplinary hearing after he had seen the grievance documentation and confirmed that most of the disciplinary issues arose as a result of the grievance. He said that Prem Sharma was the most unsuitable person to chair the disciplinary given that the claimant had raised a grievance against him and that he was biased.
70. The appeal hearing was set for 15 March 2019 and Julia Punj (Shareholder representative) was appointed as appeal officer. Dorian Punj wrote to the claimant (795) saying that *"As your grievance is about Prem, the next level up are the Shareholders. Julia is the representative of the shareholders of Insultec Limited and will be impartial."*
71. The claimant was unable to make that date and so it was changed to 20 March 2019 and the claimant was asked to confirm his attendance before a cut-off date of 15 March 2019, so that Julia Punj could make

travel arrangements (she was based in the USA). The claimant did not do so and the appeal did not go ahead then. The next available appeal date was 22 May 2019 when Dorian Punj (also based in the USA) was next in the UK. The claimant confirmed his availability for then, and so arrangements were made for that date. The claimant complained about the delay.

72. The appeal proceeded on 22 May 2019 with Mr Punj as appeal officer, and Philip Delafield advising on HR matters. Suki Johal took notes. Mr Punj spoke to witnesses and considered the evidence.
73. In a detailed outcome letter of 30 May 2019, Mr Punj dismissed the appeal (827-835). The letter started with an explanation of certain matters that the claimant had complained about, including the issue of Mr Sharma hearing the disciplinary. Mr Punj explained that, as Mr Sharma was the claimant's line manager, he was most aware of the issues and also, being a small company, the respondent did not have the management structure to have others become involved at that level. He noted that concerns were raised with the claimant before he submitted his grievance and the disciplinary was put on hold in order to deal with the grievance. The disciplinary was not a result of the grievance, although he did accept that certain matters raised in the grievance formed part of the grounds for his dismissal. The claimant had been given plenty of opportunity to put forward his version of events and had done so.
74. Mr Punj then addressed each of the allegations in turn that were set out in the dismissal letter and noted in essence that the accusations which the claimant had made against Mr Sharma and others had been dismissed at the grievance stage and were unfounded. Mr Punj referred to the evidence before him in support of his determination and noted that the claimant had admitted most of the allegations. Mr Punj's letter was thorough and clearly explained why he had reached his conclusion on each allegation.

*Wrongful dismissal*

75. Drawing from the above findings, the main facts are briefly as follows. The claimant admitted most of the allegations, although those admissions came with lengthy reasons in his defence. However, the defence was unconvincing.
76. The claimant's insubordination was serious and had become unmanageable over time. Amongst other things, he had treated other members of staff with grave disrespect and had maligned the respondent's reputation. He had accessed confidential company documentation and data for his own use and forwarded it to his external accounts.

*Pay*

77. The claimant claims that he should have been paid company sick pay for the duration of his sick leave. The respondent paid him some company sick pay and then statutory sick pay. It was explained to the claimant in correspondence on several occasions that company sick pay was discretionary. The respondent, in its discretion, had decided not to pay

him company sick pay for much of the time he was absent through sickness.

78. The claimant said that he was not given written particulars of employment when he commenced work and he only got them about nine years later. He also submits that he was not made aware of company rules and policies.

79. He had been given the latest "Statement of Main Terms and Conditions of Employment" early in 2018 and those terms and conditions were effective from January 2018. Paragraph 4 states that *"...the Company may pay you, at its discretion, additional sick pay of up to 10 days at full pay (inclusive of SSP), and 10 days at half pay (inclusive of SSP) in any 12 month rolling period."*

80. There is no dispute that, according to the 2018 document, the pay that the claimant received was correct. However, the claimant had not signed the document and he argued that it did not apply to him. Nonetheless, despite not signing it, he knew what the terms were and he had continued to work under them.

81. The tribunal is satisfied that the claimant impliedly accepted the 2018 terms and conditions and that they were effective at the material time.

## Law

82. Section 98 of ERA provides, so far as is relevant:

(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 subsection (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 subsection if it-

- a) .....
- b) Relates to the conduct of the employee

98(4) whether the dismissal is fair or unfair

(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.

83. The **ACAS Code of Practice 1** on Disciplinary and Grievance Procedures 2015 is relevant to the procedure followed.
84. The main caselaw that the tribunal took account of is set out below, although other cases were also considered, which were referred to by the parties.
85. It was held in ***Abernethy v Mott, Hay & Anderson*** [1974] ICR 323 that: “A reason for the dismissal of an employee is a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee.”
86. ***British Home Stores Ltd. Burchell [1980] ICR 303*** held that “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, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in in all the circumstances of the case.”
87. When determining reasonableness, the tribunal should not focus on whether it would have dismissed in the circumstances and substitute its view for that of the employer – ***Iceland Frozen Foods Ltd v Jones*** [1983] ICR 17, EAT.
88. The test to be applied in determining reasonableness is whether the employer’s decision to dismiss fell within the range of reasonable responses available to it – **(1) *Post Office v Foley* (2) *HSBC Bank plc v Madden*** [2000] ICR 1283, CA.
89. In ***J Sainsbury plc v. Hitt*** [2003] ICR 111, the Court of Appeal said that, in applying the test of reasonableness, the tribunal must not substitute its own view for that of the employer. It is only where the employer’s decision is so unreasonable as to fall outside the range of reasonable responses that the tribunal can interfere.
90. Whether or not a procedural defect is sufficient to undermine the fairness of the dismissal as a whole, is a question for the tribunal. Not every error will do so. It is crucial to assess the gravity of any procedural defect and consider its impact on the fairness of the decision as a whole – ***Pillar v NHS*** 24 UKEAT/0005/16/JW [2017] All ER (D) 173 (Apr).
91. A failure to follow the ACAS Code of Practice or internal procedures is not determinative of the fairness of a dismissal. The tribunal must address whether the procedure followed overall was reasonable – ***UPS Ltd v Harrison*** (UKEAT/0038/11/RN)(16 January 2012 unreported).
92. The tribunal must have regard to the appeal process when considering the unfair dismissal claim. It should examine the fairness of the disciplinary process as a whole and each case will depend on its own facts – ***Taylor v OCS Group Ltd*** [2006] ICR 1602, [2006] IRLR 613.

93. In *Brito-Babapulle v Ealing Hospital NHS Trust* [2013] IRLR 854 it was held that where dismissal is for gross misconduct, the tribunal has to be satisfied that the employer acted reasonably both in characterising the conduct as gross misconduct, and then in deciding that dismissal was the appropriate punishment.

## Conclusions

### *Unfair Dismissal*

*What was the reason or principal reason for dismissal?*

94. It is the claimant's case that the reason for his dismissal was because he raised a grievance against the respondent and made a protected disclosure. However, the claimant did not make clear what the protected disclosure was and, in any event, provided no evidence of any connection between it and the disciplinary action. The tribunal therefore does not accept that there was any link between the two.
95. With respect to the grievance, the evidence demonstrates that the respondent was having significant problems with the claimant's conduct over a prolonged time period before the grievance was raised. These problems included the claimant's surveillance of other staff, calling staff derogatory names, poor time-keeping, photographing the office without permission, playing chess during working hours, using inappropriate language, not keeping the respondent informed when on sick leave, taking his work laptop home against company rules, failing to file documents, shouting at his line manager and other general insubordination.
96. The claimant's conduct had been raised with him on several occasions before the grievance and he had been given a warning and told that disciplinary action might be taken. Given the timeline, the grievance appeared to be in response to the warning. The disciplinary action followed on from the warning and was not in response to the grievance. The grievance was not the reason for the claimant's dismissal.
97. The respondent in its Grounds of Resistance suggests that the reason for dismissal was Some Other Substantial Reason based on a breakdown of trust and confidence, or alternatively gross misconduct. The tribunal is not convinced that it was for Some Other Substantial Reason. A breakdown of trust and confidence is usually also a feature of conduct dismissals and on the basis of the facts, the procedure undertaken and the contents of the dismissal letter resulting in summary dismissal, the tribunal finds that the reason for dismissal related to the claimant's conduct. This is a potentially fair reason.

*Did the respondent genuinely believe that the claimant had committed misconduct and was this belief based on reasonable grounds?*

98. Prem Sharma was the dismissing officer and it is what was in his mind that must be attributed to the respondent at the time of dismissal. Mr Sharma was the claimant's line manager and he had a good understanding of the claimant's conduct. He had tried to manage the various issues that arose



with the claimant over a significant time period, and he had been informed by other staff of problems with the claimant. He amassed considerable documentary evidence and witness accounts relating to the claimant's poor conduct and he had experience of the issues himself.

99. Out of the 25 allegations of misconduct set out in the dismissal letter, there was incontrovertible evidence supporting many of the actions. This included evidence available in support of the allegations of insubordination towards senior management and use of inappropriate language, keeping records of other employees' movements and using derogatory names for two employees. Also, for accessing confidential company documents and data and sending these to the claimant's personal accounts without permission, and setting the computer to delete Juliana Olaru's e-mails.

100. The claimant admitted to many of the allegations, although he sought to justify his conduct. Nonetheless, the claimant's points of defence were unconvincing. There were also the findings of the grievance hearing, and grievance appeal hearing, both of which were undertaken by independent consultants. The issues they investigated overlapped with the disciplinary matters and provided additional evidence against the claimant. The consultants, in dismissing the grievance, drew on the claimant's own conduct and suggested that the respondent had legitimate reasons to undertake disciplinary action.

101. Consequently, I find that Mr Sharma's belief that the claimant carried out the alleged misconduct was genuine and based on reasonable grounds.

*At the time the belief was formed, had the respondent carried out a reasonable investigation?*

102. Whilst there was no formal investigation stage, reasonableness must be assessed in the context of the respondent being a small company of up to seven employees and having limited resources. Therefore, it cannot be expected to do the things that would be expected of a larger employee. It would be wrong to expect a meticulous investigation.

103. The claimant had a long history of misconduct and he had been spoken to on many occasions about his actions. Mr Sharma had listened to and received responses from the claimant previously on many of the disciplinary matters, as they had been the subject of prior discussions and warnings. There were several disciplinary letters addressing various matters as they arose, and there were also the grievance reports to draw on.

104. The amount of evidence available to the respondent in support of the allegations was extensive and consequently, a formal investigation stage would have made little difference to the decision to hold a disciplinary.

105. The claimant was given plenty of opportunity to respond to the allegations and did so. The respondent took his submissions into consideration and so was fully aware of his defence to his actions.

106. Consequently, the respondent carried out a reasonable investigation at the time the belief was formed that the claimant was guilty of gross misconduct.

*Was the procedure within the band of reasonable responses?*

107. The ACAS Code of Practice (para 5) says that where practicable different people should carry out the investigation and the disciplinary hearing. However, it goes on to state that, in a small company, it is not unreasonable for the same person to do both. This was the situation in this case where Mr Sharma carried out both functions. In and of itself, this was not unreasonable in the circumstances.

108. Nonetheless, the claimant had raised a grievance against Mr Sharma and some of the disciplinary allegations related to the way the claimant had treated him. However, the grievance, which had been dealt with independently, had gone in the respondent's favour, and this somewhat militated against the prospect that Mr Sharma might have held a grudge. Still, Mr Sharma also produced evidence for consideration at the disciplinary and was a witness to some of the allegations. Therefore, it was understandable that the claimant perceived bias and a lack of fairness.

109. In support of Mr Sharma's position, Mr Punj gave credible evidence about the company's set up and the problem of having no-one else within the company at Mr Sharma's level who could undertake the disciplinary. Also, Mr Sharma was a senior manager and able to rise above the accusations against him. His involvement, from the evidence before me, appears to have been measured and professional and it has not been shown that he was unfair.

110. There was an external HR employment law advisor present at the disciplinary (Phil Delafield) to assist Mr Sharma and this introduced external independence to the procedure. The claimant was given ample opportunity to put across his case and he presented extensive written representations, which were all taken into account. Mr Sharma produced a comprehensive, reasoned decision, which clearly explained how he had reached his conclusions.

111. Nonetheless, because Mr Sharma was the target of some of the misconduct, and because his own evidence was relevant to the outcome, he was not the most appropriate person to carry out the disciplinary in these circumstances. This was a defect in the procedure, but not sufficient to undermine the fairness of the dismissal as a whole.

112. The claimant also complained that no questions were asked about his defence at the hearing and no discussion took place. However, he had submitted a detailed written defence, which was considered, and he was given the opportunity to add to it at the hearing if he so wished. Consequently, Mr Sharma had the information he needed to make a decision and this was a reasonable way to proceed.

113. The tribunal must consider the process as a whole, including any appeal stage. The claimant exercised his right of appeal and the appeal officer was Mr Punj. He was a suitable person to carry out the appeal, being at arms-length with little prior involvement. He also drew on independent external advice from Mr Delafield to assist him in reaching a balanced conclusion.
114. Mr Punj spoke to witnesses and considered all the documentary evidence. The claimant again had plenty of opportunity to comment and his detailed representations were taken into account. Mr Punj produced a comprehensive and reasoned decision letter, explaining the appeal outcome. The appeal process was fair and reasonable. Any perception of bias or lack of fairness at the disciplinary stage was cured on appeal.
115. Although the claimant was unhappy about the delay in organising the appeal, the claimant himself was unable to meet the earlier dates offered. Given that Mr Punj was based in the USA, it was difficult to re-arrange sooner. The delay was not unreasonable in the circumstances.
116. The claimant complained that matters raised in the grievance were thereafter raised in the disciplinary.
117. Where there is a grievance procedure and a disciplinary procedure, the ACAS Code of Practice (para 46) says that the disciplinary may be temporarily suspended in order to deal with the grievance, and where the two are related, it may be appropriate to deal with both issues concurrently. This gives discretion to the employer on how best to handle the two processes.
118. In this case there were clearly issues of overlap and there was nothing unreasonable about the respondent adding issues that were dealt with in the grievance hearing, into the disciplinary process.
119. Therefore, considering the process overall, the procedure was within the band of reasonable responses.

*Did the respondent act reasonably in treating the misconduct as sufficient to dismiss the claimant?*

120. The respondent had held several informal meetings with the claimant about various aspects of his conduct, and issued him with warnings, but this had not rectified the problems. There were multiple issues of misconduct, some of a very serious nature and some that impacted significantly on other staff in a small office. Consequently, the respondent was not unreasonable in treating the claimant's conduct as gross misconduct overall, sufficient to dismiss the claimant.

*Band of reasonable responses*

121. Overall, the dismissal was within the band of reasonable responses.

*Overall Conclusion*

122. The tribunal finds that the respondent acted fairly in dismissing the claimant and in accordance with equity and the substantial merits of the case. Accordingly, the claimant's complaint of unfair dismissal is not well-founded and is dismissed.

**Wrongful Dismissal**

123. For the purposes of the wrongful dismissal claim, the tribunal has considered its own view

124. The claimant's multiple acts of misconduct cumulatively resulted in a fundamental breach of trust and confidence. Furthermore, the actions of maligning the respondent's reputation, and accessing confidential company documentation and data for his own use, each amounted on its own to a fundamental breach of the employment contract.

125. Consequently, under these circumstances the claimant's conduct was sufficient to be classed as gross misconduct and a repudiatory breach of his contract of employment. Therefore, the respondent was entitled to summarily dismiss the claimant, and the claimant's complaint of wrongful dismissal is dismissed.

**Unlawful deduction from Wages.**

126. The claimant had received the 2018 terms and conditions and it was not necessary for him to have signed them in order for them to be effective. The respondent had a discretion over whether to pay company sick pay and there was no obligation on it to do so. The claimant had been paid all that he was entitled to. Accordingly, there was no unlawful deduction from wages and the claim is dismissed.

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Employment Judge Liz Ord

Date: 16 July 2021

JUDGMENT SENT TO THE PARTIES ON  
THY

.....  
.....  
FOR THE TRIBUNAL OFFICE

**Case No:3319500/2019**  
**Hearing Code V**

1. The hearing code "V" in the heading to this judgment indicates that the hearing took place on a remote video platform. Neither party objected to the format of the hearing.