



EMPLOYMENT TRIBUNALS

Claimant: Mrs K J Amison

Respondent: Hinckley & Bosworth Borough Council

Heard at: Leicester **On:** 2, 3 and 4 August 2021

Before: Employment Judge M Butler (sitting alone)

AT A FULL HEARING BY CVP (HYBRID)

Representation

Claimant: Mr T Payne, Partner and Lay Representative

Respondent: Ms D McGuire, Solicitor

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

RESERVED JUDGMENT

1. The Judgment of the Employment Judge is that the claims of unfair dismissal and wrongful dismissal are not well founded and are dismissed. The claim of unauthorised deduction from wages is dismissed on withdrawal by the Claimant.

RESERVED REASONS

The Claim

1. By a claim form submitted on 10 July 2019 after a period of early conciliation from 29 May 2019 and until 11 June 2019, the Claimant brought claims of unfair and wrongful dismissal, unauthorised deductions from wages and holiday pay. The

holiday claim was withdrawn at a closed preliminary hearing before my colleague, Employment Judge Heap, and was dismissed on withdrawal. At the hearing before me, the Claimant confirmed she had received the wages she claimed she was owed and so withdrew that claim. The Claimant was employed by the Respondent from 15 September 2000 until 6 April 2019 when she was dismissed for gross misconduct. For the last 16 years of her employment, she was employed as a Council Tax Officer.

2. The Respondent dismissed the Claimant principally for claiming a single person discount on her council tax for a period in 2018 when the Respondent concluded she was not entitled to that discount because she was living with Mr Payne and his two sons at a property which was their main residence. The Respondent also alleged that the Claimant had requested the Valuation Office Agency to delete a property belonging to Mr Payne from its records without following the correct procedure and that she had shared confidential investigation notes with Mr Payne which named one of her colleagues in breach of the Respondent's Data Protection Policy and Officer Code of Conduct. The Respondent stated that the third allegation in respect of a breach of the data protection policy did not form part of the reason for her dismissal. The Claimant claims the dismissal was unfair and wrongful because she had provided evidence to the Respondent that Mr Payne had his own separate main residence at another property and so she was not dishonest in claiming the single person discount. In relation to the breach of the data protection policy she claims that the documents shared with Mr Payne showed that his council tax account had a credit of £300 which the Respondent was wrongly withholding from him and he was entitled to know about it in the same way as any other council tax payer.

The Issues

3. At the commencement of the hearing, I discussed the issues with the parties. These are: -
 - i. What was the principal reason for the dismissal?
 - ii. Was it a potentially fair reason?
 - iii. Did the Respondent have a genuine belief on reasonable grounds in the misconduct alleged? Was that belief sustained after a reasonable investigation? Did the decision to dismiss fall within the range of the responses of reasonable employer?
 - iv. Did the Respondents decision to dismiss constitute a repudiatory breach of contract entitling the Claimant to bring a claim for wrongful dismissal?

The Law

4. Section 98 of the Employment Rights Act 1996 (ERA) provides: -

1) *"In determining for the purposes of this part whether the dismissal of an employee*

is fair or unfair, it is the employer to show: -

- a) The reason (or, of more than one, the principle reason) for the dismissal, and*
- b) That it is either a reason falling within subsection (2).....*

(2) A reason falls within this subsection if it – (a).....,

b) relates to the conduct of the employee,

c).....,

d).....

(3)

(4) Where the employer has fulfilled the requirements of sub section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

a) Depends on whether in the circumstances (including the size and administrative resources of the employers 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”.

5. In ***British Homes Stores Ltd v Burchell [1980] ICR303***, the EAT held that in establishing a reason for dismissal in conduct cases the employer must show that it believed the employee guilty of misconduct, it had in mind reasonable grounds upon which to sustain that belief and, at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.
6. An employee will be wrongfully dismissed if dismissed in circumstances where the dismissal amounted to a repudiatory breach of the terms of the employee’s contract or where the employee was dismissed without notice in circumstances where notice should have been given.

The Evidence

7. There was an agreed bundle of documents extending to 480 pages and references to page numbers in this Judgment are to page numbers in the bundle. The bundle was badly presented. The records of preliminary hearings were not within the bundle, some documents were duplicated and most of the documents were not in chronological order. This made navigation through the bundle extremely difficult.
8. I heard oral evidence from the Claimant and, for the Respondent, from Miss S Booth, Senior HR Advisor, Miss S O’Hanlon, Head of Leicestershire Revenues and Benefits Partnership, Mr A Wilson, Head of Finance and Section 151 Officer, Ms S Stacey, Director of Community Services, and Councillor R Fleming. All

witnesses produced witness statements and were cross-examined.

The Factual Background

9. It is unfortunate that a significant part of this case revolves around the property dealings of Mr Payne who is described as a Property Investor/Developer and Builder. His involvement is such that on several occasions I had to remind him that cross-examination of the Respondent's witnesses was not an opportunity for him to give evidence. It is also unfortunate that Mr Payne chose not to give evidence himself. The factual issue is whether the property at 35 Station Road was his main residence even though the Claimant, who is his partner, and his sons lived for the relevant period at 39 Stoneygate Drive. Following on from that, the Claimant's acceptance of the single person discount for council tax purposes on that property, bearing in mind her position as a Council Tax Officer of the Respondent for 16 years, is also of significance if I find that the property at 35 Station Road was not the main residence of Mr Payne at the relevant time which is the period between 27 April to 19 June 2018.
10. The Claimant began her relationship with Mr Payne in January 2016. At this time Mr Payne was going through a divorce and living in rented accommodation at 8 Bradgate Gardens with his two sons. The Claimant owned another property where she lived with her youngest son and when he moved out she sold that property and moved in to 8 Bradgate Gardens with Mr Payne.
11. Mr Payne then bought the property at 35 Station Road which had been used as a Probation Office by the Ministry of Justice. He obtained planning consent to convert it back to a residential property. He arranged home insurance, arranged for BT to connect a telephone and broadband service at 35 Station Road, registered on the Electoral Register on 13 April 2018 and for council tax on 25 April 2018. He notified HMRC that he was treating 35 Station Road as his main residence and this was acknowledged by a letter dated 1 June 2018 (page 247).
12. On 15 February 2018, Mr Payne gave a month's notice to his landlord that he was to vacate the property at 8 Bradgate Gardens. Unfortunately, there was a flood at 35 Station Road on 7 March 2018 which caused considerable damage to the property. The lease at 8 Bradgate Gardens was extended for 6 weeks and his home insurers indemnified him for the cost of repairs to 35 Station Road and the cost of temporary accommodation at 39 Stoneygate Drive. The Claimant then moved in to 39 Stoneygate Drive with Mr Payne's children. The Claimant's evidence was that she accepted that she was to move into 35 Station Road to live with Mr Payne and his two sons once the renovation work had been completed. The date of the purchase of 35 Station Road has not been disclosed but it must have been on or before 17 February 2018, which is the date, she took out home insurance.
13. I found the Claimant's evidence in relation to where Mr Payne lived when she moved into 39 Stoneygate Drive to be unreliable. She said in her oral evidence that during the relevant period when she was in receipt of the single person discount, he lived at 35 Station Road where he had won the contract to carry out

the repairs on behalf of the insurance company. She said he worked flat out carrying out these repairs to a property which was his main residence. She said that for some 33 days during the relevant period, Mr Payne stayed with her and his sons at 39 Stoneygate Drive. She did not visit 35 Station Road at all and for the remainder of the time when he was not staying with her, he slept at 35 Station Road.

14. There are two principal reasons why I do not accept the Claimant's evidence in this regard. Firstly, at paragraph 6 of her witness statement she said, "... Tim slept at Stoneygate Drive for about half of the time. The rest of the time he was either at 35 Station Road attempting to sort the damage out, in Portugal, the Isle of Man or on a cycling holiday with friends". With respect to the Claimant, if Mr Payne did indeed spend time in Portugal, the Isle of Man and take a cycling holiday with friends, it would have left very little time for him to be involved in any repairs to 35 Station Road let alone to sleep there.
15. Secondly, on 10 July 2018 a change of occupancy form was completed on behalf of Mr Payne (page 87) stating that on 10 July 2018 he had moved from 39 Stoneygate Drive to 35 Station Road. Also on 10 July 2018, Mr Payne telephoned the Respondent to advise he had moved into 35 Station Road, the renovation work had been completed and "there was now a bed in there" (page 161). This does not accord with the Claimant's evidence that Mr Payne did not live with her other than staying over for approximately 33 days at 39 Stoneygate Drive.
16. Mr Payne sought to argue, although he did not give evidence on the point, that the change of occupancy form should be ignored because he had not submitted it. The Respondent's evidence, however, which I accept, is that the form is completed by an officer of the Respondent from details given over the telephone by the owner or occupier of a particular property. There was no evidence before me that Mr Payne did not make that telephone call.
17. I further note that Mr Payne paid the council tax on 39 Stoneygate Drive and this was relied upon by the Claimant to support her evidence that she showed no interest in the notifications in relation to council tax because she was not paying it. This despite her evidence at paragraph 6 of her witness statement that she was responsible for council tax at that property.
18. The Claimant has two further arguments in relation to the single person discount applied to the property at 39 Stoneygate Drive. She says that she made no application for the discount. The Respondent's argument is that, upon receipt of the "the property you are moving from" form (page 354), one of her colleagues who knew of her relationship with Mr Payne, automatically applied the single person discount and issued the council tax demand notice (page 353) including the 25% single person discount. This was sent to the Claimant on 30 April 2018 at 39 Stoneygate Drive. She does not deny receiving this and took no action to dispute it. Further, since Mr Payne had agreed to pay the council tax from his own bank account, he received a copy of the council tax demand on 9 May 2018. Of further interest is the fact that this was sent to him, not at 35 Station Road but at a property known as The Courtyard House. There is no evidence that Mr Payne

disputed that he was not living there. Indeed, and further, on 13 September 2018 the Claimant wrote to Ms Waterfield of the Respondent confirming that she and Mr Payne had moved into The Courtyard House on 8 September 2018. This does not support Mr Payne's assertion that 35 Station Road was ever intended to be his or their main residence.

19. I also raised concerns with the Claimant's evidence in relation to the insurance claim made by Mr Payne in relation to 35 Station Road. I queried on what basis Mr Payne's insurers would pay for temporary accommodation under his insurance policy when he would not be living there. There was, in effect, no answer to this enquiry and no documents were produced in relation to this particular matter.
20. Mr Payne asserted that under the Respondent's own policy, 35 Station Road was his main residence. He referred to page 474 which states under the heading "What criteria would not allow me claim for this discount" that "if someone stays at your property and does not have a main residence elsewhere". This does not, of course, indicate that 35 Station Road was Mr Payne's main residence, only that he says it was. I bear in mind that Mr Payne is a Property Developer and would know that a property used as a main residence would not attract Capital Gains Tax on any amount by which the sale price exceeds the purchase price. I have regard to the www.gov.uk website in relation to private residence relief which states "you do not pay capital gains tax when you sell (or "dispose of") your home if (inter alia) You have one home and you have lived in it for as your main home for all the time you have owned it". Due to the contradictions in the Claimant's evidence and its general unreliability, I do not accept that the property at 35 Station Road was ever Mr Payne's main residence.
21. In dismissing the Claimant, the Respondent also took into account the fact that, within 6 minutes of receiving a request from Mr Payne in her capacity as a Council Tax Officer to delete one of his properties from the council tax register, she had actioned this in circumstances where an ordinary member of the public would have had to wait a considerable period of time as it was not an urgent request. His email to the Claimant is at page 372 and the Claimant made a note (page 371) that her team leader had confirmed a new property was to be included in the council tax register for council tax purposes. In my view, this misses the point. Mr Payne clearly received preferential treatment because of his relationship with the Claimant.
22. Many documents were produced to illustrate Mr Payne's difficult dealings with the Respondent. The Claimant's assertion was that the Respondent's allegations against her had more to do with the identity of her partner than any misconduct on her behalf. I consider these matters to be nothing more than a smoke screen.
23. For the above reasons, I found the Claimant's evidence in relation to the issues to be unreliable. As a Council Tax Officer of 16 years standing, she was well versed in the operation of council tax matters and would have been well aware of the proper basis for giving a single person discount.
24. In contrast, I found the Respondent's witnesses to be entirely credible. Ms

O'Hanlon explained the fact that Mr Payne had said there was now a bed in the property at 35 Station Road, a change of occupancy form had been completed and the Claimant had said they were living together (page 124). All raise suspicions that the Claimant had received a single person discount to which she was not entitled. Mr Wilson conducted the investigation into the allegations against the Claimant and stood steadfastly by the contents of his report (pages 166 -172). He interviewed the Claimant and 6 of her colleagues and took into account the Claimant's detailed knowledge of council tax matters. He also considered the relevant policies of the Respondent. His investigation was detailed and comprehensive.

25. Ms Stacey was the Dismissing Officer. She confirmed she read Mr Wilson's investigation report and all the supporting documents submitted by the Respondent and the Claimant. She freely admitted she was not aware of the flood at 35 Station Road. She did not consider that documents from BT, Mr Payne's insurance company or HMRC proved that 35 Station Road was Mr Payne's main residence. On the evidence before her she said she concluded that Mr Payne's main residence during the relevant period was 39 Stoneygate Drive. Ms Stacey confirmed that she was disappointed the Claimant chose not to attend the disciplinary hearing. She confirmed that if she had asked for a postponement due to her ill health it would readily have been granted. She confirmed that she took full account of the fact that the Claimant had 18 years' service with an unblemished disciplinary record. Despite this, she considered that the Claimant had made a fraudulent claim for single person discount and attached weight to the Claimant's position as a Council Tax Officer of 16 years standing.

26. Although the appeal was dealt with by a panel comprising Councillor Flemming and two other Councillors on 27 June 2019, the Claimant indicated before she received the outcome that she was withdrawing her appeal. She did this in an email to Ms Booth (page 188).

27. For the reasons set out above, I concluded that where there was a dispute as to the evidence before me, I preferred the evidence of the Respondent's witnesses.

Findings of Fact

28. In relation to the issues in this case, I find the following facts: -

- i. The Claimant was employed by the Respondent, a Borough Council, from 15 September 2000 until 6 April 2019. For the last 16 years of her employment she held the position of Council Tax Officer.
- ii. She began a relationship with her partner, Mr Payne, in January 2016. They began living together in March 2017 at 8 Bradgate Gardens. Mr Payne subsequently bought a property at 35 Station Road which he was converting back from commercial to residential use. It is questionable as to whether their intention was to occupy that property as their family home with Mr Payne's two sons.

- iii. Having giving notice to the landlord of 8 Bradgate Gardens, there was a flood at 35 Station Road. Mr Payne made a claim on his home insurance and began repair and renovation work. The lease of 8 Bradgate Gardens was extended for approximately 6 weeks and, thereafter, his insurers, not only paid for the repairs to 35 Station Road, but also paid for accommodation for Mr Payne, the Claimant and his sons. This accommodation was at 39 Stoneygate Drive where they all resided. At no time during Mr Payne's ownership of 35 Station Road did he live there as his main residence.
- iv. Upon notifying the Respondent that she had left 8 Bradgate Gardens, the Respondent sent a council tax notice to the Claimant which confirmed a single person discount against her council tax of 25%. On 10 July 2018, Mr Payne notified the Respondent for the first time that he was occupying 35 Station Road and there was a bed in it. There is no evidence that either Mr Payne or the Claimant ever lived at 35 Station Road and they notified the Respondent that they had moved into The Court House as a family home in September 2018.
- v. Upon the Respondent becoming aware of the Claimant's circumstances in relation to the single person discount, she was interviewed by three team leaders when she admitted that Mr Payne was living with her at 39 Stoneygate Drive.
- vi. The Claimant raised a grievance against various colleagues alleging bullying and harassment, but I find this has no bearing on the issues before me. The Claimant followed the Respondent's informal grievance procedure and at no time asked for her grievance to be considered on a formal basis.
- vii. The Respondent instructed Mr Wilson to investigate allegations that the Claimant had dishonestly claimed a single person discount and had acted inappropriately in acceding to Mr Payne's formal request to properly address one of his properties.
- viii. Mr Wilson's investigation involved interviewing the Claimant and six of her colleagues who had knowledge of her circumstances and matters which had arisen involving the Claimant and Mr Payne. Mr Wilson concluded that there was a case to answer and the Claimant was invited to a disciplinary hearing before Ms Stacey. The Claimant had by this time been signed off work on sickness absence with work related stress and, in fact, never returned to work. She elected not to attend the disciplinary hearing but instead made written submissions and produced documents which purported to show that 35 Station Road was Mr Payne's residence and that she was entitled to the single person discount in respect of 39 Stoneygate Drive.
- ix. Having considered all of the evidence before her, and taking into account the Claimant's unblemished disciplinary record with the Respondent, Ms Stacey nonetheless found that the Claimant had acted dishonestly in

receiving the single person discount in relation to 39 Stoneygate Drive. She did not consider that any of the documents before her proved that 35 Station Road was Mr Payne's main residence and reasonably believed that he had been living with the Claimant at 39 Stoneygate Drive. Accordingly, she found this was an act of gross misconduct for which the appropriate sanction was summary dismissal.

- x. The second allegation against the Claimant related to her work on Mr Payne's council tax account in respect of properties at 7a/7b Stockwell Head was upheld. It was concluded she knew she should not work on accounts where she had a connection with the tax payer as this was inconsistent with the Respondent's Officer Code of Conduct.
- xi. Although the Claimant initially appealed and the appeal was heard, the Claimant subsequently said she wished to withdraw that appeal.

Submissions

29. Both parties made oral submissions and although I briefly summarise these below, I confirm I took full account of those submissions.

30. For the Claimant, Mr Payne submitted that, at all times, the Claimant acted reasonably in treating the property at 39 Stoneygate Drive as her main residence and Mr Payne's property at 35 Station Road as his main residence. He said that the Respondent had misunderstood its own rules making specific reference to the guidance in relation to main residences. He submitted (wrongly) that the Claimant had paid her own council tax in respect of 39 Stoneygate Drive. He further submitted that the Respondent took advantage of the Claimant's illness and she should have been told she could ask for a postponement of the disciplinary hearing. There had also been undue delay in relation to the disciplinary process.

31. For the Respondent, Ms McGuire, submitted that the Claimant had been fairly dismissed for gross misconduct and the '**Burchell**' test had been satisfied. On the facts, it was reasonable for the Respondent to conclude that 35 Station Road was not Mr Payne's main residence and that the Claimant, given her extensive experience as a Council Tax Officer, would have known full well she was not entitled to the single persons discount. In relation to the wrongful dismissal claim, the Claimant's conduct was a repudiatory breach entitling the Respondent to dismiss summarily.

Conclusions

32. This was a case where many smoke screens were erected containing information which had no bearing on the issues before me. They related in the main to Mr Payne's property dealings and his rather strained relationship with the Respondent. On the evidence before me, and bearing in mind that Mr Payne chose not to give any evidence at all, it was not possible for me to find that 35 Station Road was his main residence. The Claimant's evidence in relation to the location at which he slept while that property was being repaired and renovated

was inconsistent and unreliable. Merely paying council tax on that property, having a phone line and broadband connected and notifying HMRC that it was his main residence does not prove it was his main residence. A smaller smoke screen, which was of less significance in relation to the issues before me, was the Claimant's relationship with her colleagues. Her interview by three team leaders without prior notice may well have been somewhat heavy handed but they all had authority to raise the issue of the single person discount in relation to 39 Stoneygate Drive and I accept the evidence given to Mr Wilson that the Claimant admitted she was living with Mr Payne at 39 Stoneygate Drive. One incident such as this does not taint the disciplinary process followed by the Respondent. Instructing Mr Wilson to carry out an investigation and report on the allegations against the Claimant was entirely appropriate and proportionate. The Claimant had been a Council Tax Officer for 16 years and was subject to the Respondent's Officer Code of Conduct. She clearly had significant knowledge and information about the single person discount for council tax purposes. She should also have been aware that she should not be involved in council tax matters in relation to a person with whom she was connected. For the purposes of her duties, she was not an ordinary member of the public and her own personal council tax arrangements should have been above reproach. I have found no evidence that Ms Stacey's decision to dismiss and her findings against the allegations made against the Claimant were premeditated or based in any way on her relationship with Mr Payne.

33. The Claimant also states that she should have been notified of her ability to postpone the disciplinary process because of her illness. She said she was unaware she could do this. I do not accept her evidence in this regard. For some time both before and after her claim was submitted to the Tribunal, she was represented by solicitors and my view of her failure to attend the disciplinary and appeal hearings is that she simply chose not to.
34. Upon learning of the application of the single person discount to the property of 39 Stoneygate Drive, the Respondent clearly had a genuine belief the Claimant had been receiving the discount dishonestly. The evidence is that she was notified of this and was notified when it was withdrawn but, in both cases, she did nothing. The Respondent then investigated the allegations. The investigation should have been reasonable, and I find that it was. Mr Wilson conducted interviews with relevant personnel and considered relevant documents. The investigation was detailed and thorough. As result of his recommendation that there was a case to answer, the Respondent clearly maintained his genuine belief that the Claimant may have acted dishonestly.
35. It is, however, necessary to then consider whether the decision to summarily dismiss the Claimant fell within the range of responses of a reasonable employer. Ms Stacey held the disciplinary hearing. She would have preferred the Claimant to have attended in person, but the Claimant chose not to. Nevertheless, Ms Stacey considered in detail the evidence before her. She also took into account the Claimant's long unblemished disciplinary record during her employment with the Respondent. Despite this, she considered on the evidence that the Claimant had acted dishonestly in receiving a single person discount when she knew and

had admitted to colleagues that Mr Payne was living with her at the address in question. It is clear also that Ms Stacey was right to question whether the Claimant had acted in breach of the Respondent's Officer Code of Conduct. The Claimant should have known not to become involved in any way in Mr Payne's council tax matters.

36. In all the circumstances, I find a reasonable employer would have been perfectly entitled to reach the conclusions given by Ms Stacey and that the sanction of summary dismissal was both reasonable and proportionate for a reasonable employer to impose. I remind myself of two matters at this point. Firstly, I have been careful to ensure that I have not substituted my own view in relation to the allegations made against the Claimant. As I explained to the parties at the commencement of the hearing, my view of the Claimant's guilt or otherwise is irrelevant. The standard to apply is that of the reasonable employer. Secondly, the sanction of summary dismissal may not have been the only sanction available. However, the fact that an employer chooses to apply one sanction when lesser sanctions may have been imposed does not make the dismissal unfair.

37. I bear in mind, as did the Respondent, that the Claimant was a long serving employee of the Respondent and for 16 years she had worked in the council tax office. In my view, a reasonable employer could well have formed the view that she knew what was happening, she knew her personal circumstances and it was reasonable for the Respondent to expect a high standard of conduct from her.

38. Accordingly, I find that the test in '**Burchell**' is met and the dismissal was fair.

In relation to wrongful dismissal, I must also determine whether the Claimant's conduct amounted to a repudiatory breach of a term or terms, express or implied, of her contract of employment. Given my findings of fact above and the evidence before me, I find that the Claimant's conduct did amount to a repudiatory breach. The evidence before me showed she acknowledged she was living with Mr Payne at 39 Stoneygate Drive, received a council tax notification showing she was receiving a single person

39. discount when she continued her relationship with him at that address and that view is justified by the fact that she failed to complain when that discount was effectively taken away and she was notified of that fact. In relation to the allegation of her involvement in Mr Payne's council tax affairs, the Claimant admitted what she had done. Her justification was that she had received approval from her team leader to take the action requested by Mr Payne. However, although a lesser act of misconduct than dishonestly receiving a single person discount, the Claimant should have known better than to be involved in anyway with the council tax affairs of her partner. In these circumstances, her actions amounted to a repudiatory breach of the terms of her contract of employment and her claim for wrongful dismissal is dismissed.

Employment Judge M Butler

Date: 11 August 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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