EMPLOYMENT TRIBUNALS

Claimant: **Ms M Aguiar**

Respondent: **The Good Care Group Limited**

Heard at: **East London Hearing Centre (by Cloud Video Platform)**

On: **12 to 15 July 2021 and on 4 August 2021**

Before: **Employment Judge Hallen (sitting alone)**

Representation

Claimant: Ms C. Prescott- Lay Representative

Respondent: Mr. K. Sonaike- Counsel

JUDGMENT having been sent to the parties on 5 August 2021 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

Background and Issues

1. The Claimant was a live-in carer employed by the Respondent between 8 October 2016 and 13 August 2020, at which time she was dismissed by reason of gross misconduct.

2. In her Claim Form received by the Tribunal on 18 December 2020, she claimed that she was unfairly dismissed by the Respondent. The Respondent in its Response Form disputed that the Claimant was unfairly dismissed and cited that the dismissal was by reason of gross misconduct and that it was a fair dismissal.

3. The issues for the Tribunal were firstly to determine what the reason for dismissal was and whether it was by reason of conduct as asserted by the Respondent. Thereafter, the Tribunal had to ascertain whether the Respondent acted reasonably in all the circumstances in dismissing the Claimant and in particular: -

(i) Did the Respondent believe that the Claimant had committed the acts of conduct relied on?

(ii) Had the Respondent reasonable grounds for that belief?

(iii) Had the Respondent conducted such investigation as was reasonable in all the circumstances of the case?

(iv) Was dismissal within the range of reasonable responses open to a reasonable employer?

4. The Tribunal had an agreed bundle of documents in front of it. The Respondent also called the investigation officer, Ms. Laura Williams (Operational Investigations Manager) and the dismissing officer, Ms Clair Curtis (Regional Manager) to give evidence. The Claimant did not appeal against her dismissal, so the Tribunal did not need to hear from an appeal officer. The Claimant attended to give evidence and called the live-in client's daughter HM to give evidence. She also presented a witness statement from her co live in carer, Ms. SD but she was not called to give evidence in person. The Tribunal read the statement but did not place much weight to it as this witness did not attend and was not subject to cross examination or questions from the Tribunal. All of the witnesses that attended the hearing in person were subject to cross examination and questions from the Tribunal. The Claimant was also assisted by a Portuguese interpreter who was in attendance throughout the hearing to translate for her as and when she needed. The Claimant spoke and understood English to a reasonable standard but needed assistance occasionally when she gave evidence.

Facts

5. Where the Tribunal had to determine questions of fact because of a dispute over the evidence, the Tribunal accepted the evidence of the Respondent's witnesses in preference to the evidence of the Claimant. The Respondent's witnesses were clear and consistent in their evidence. Their answers were consistent with the documentation. By contrast, the Claimant was evasive and inconsistent with her evidence. At various points, she failed to answer straightforward questions, and often gave evidence that was contradicted by the documentation. For example: She asserted that she had told Laura Williams that she did not wish to attend the investigatory meeting because she had to attend her son's operation. However, the email correspondence between her and Laura Williams showed that she had not raised or mentioned any such problem with attending. Instead, her email stated that if her preference of 22 July 2020 was not possible, then she could attend the date requested of 23 July 2020. Her evidence then modified, claiming that she had verbally told her Care Manager about her son, but did not tell Laura Williams. Secondly, the Claimant initially stated clearly in evidence that she believed that MM was at the end-of-life stage, particularly because of her limited eating and apparently failing kidneys. However, when she begun to appreciate the potential impact on her case, and after the intervention of her representative, she suddenly claimed that she had no idea whether or not MM was at end-of-life stage. Thirdly, the Claimant asserted that she did not treat an apparent refusal to eat by MM as an actual refusal to eat. However, this contrasted with the position she took throughout the disciplinary process, where she clearly considered that because of MM's dementia, she did not know what she was doing when she said 'no' or shook her head to food (p90; p103]. Fourthly, the Claimant claimed that she had not been told that the investigatory meeting was in respect of her misconduct. However, it is clear from the invite to investigation (p 95) and the notes to the start of the meeting (p101) that she was clearly informed about the purpose of the meeting and agreed to proceed with the meeting. In those circumstances, the Tribunal preferred the evidence of the Respondent over that of the Claimant.

6. The Claimant was a Live-in Carer employed from 8 October 2016 to 13 August 2020 at which date she was dismissed for gross misconduct without notice or pay in lieu of notice. 31 August was the effective date of dismissal. There were no previous complaints of misconduct.

7. The Respondent provides domiciliary carers for elderly people with long-term health needs who prefer to live in their own homes and has been in business since 2009. The live-in carers move in and live with their clients for the duration of a rota and typically alternate this rota with another carer. The Respondent is registered with the Care Quality Commission (CQC) and has an "Outstanding" quality mark with the CQC.

8. The Respondent's organisation is arranged by regions and there are 6 regions. Each region is headed up by a Regional Manager who supervises Care Managers. Each Care Manager has a client portfolio for each region consisting of 14-18 service users. Clinical leadership across the Group is provided by Dr Pritchard who is a Clinical Nurse and gives advice and support to management and staff on patient care and treatment recommendations. Other members of The Respondent's organisation multi-disciplinary team include the organisation's Occupational Therapist, and the service users' own doctors (GPs).

9. It was a Care Manager, Hayley Boorman, to whom a report was made about the Claimant which triggered the investigation in the Claimant and her co-carers conduct. On or around 17 July 2020, Dr Jane Pritchard was visiting MM because of a decline in MM's health. Upon going to the home of MM she met Carer AB who reported that the Claimant and her colleague SD, her fellow live in carer were not treating MM in line with company policy. Ms Pritchard reported it to Ms Boorman who raised a serious incident call to discuss with the care management and operational team and it was decided that an investigation should be conducted.

10. The carers are arranged in teams. Some of them, like the Claimant, are based internationally for example in Portugal or Spain. They come to the United Kingdom (UK) to work for a rotation of 2 - 4 weeks for example and then return to their home country on their days off. The Claimant was on a 6 weeks rotation at the time of her dismissal, meaning she worked for 6 weeks with the Respondent taking care of MM and living in her home, and then had 2 weeks off whereupon she returned to her home in Portugal. Whereas some carers work on their own, there are other carers who work simultaneous with another colleague on the same shift because of the dependency level of the service user. The Claimant worked together with Ms SD on the same placement as co-carer. MM was a patient suffering from dementia and had a high degree of dependency.

11. On 14 July 2020 when the Claimant's 6 weeks rotation came to an end another Carer AB took over from the Claimant and worked alongside SD. AB had only been in the role for a few days when she noticed that the Claimant and SD were force feeding MM. It was alleged by AB that she observed the Claimant scooping food into MM's mouth despite her signalling a refusal and her reluctance to swallow and eat. Also, the Claimant and her colleague used a distraction method to get MM to open her mouth by pretending to ask her a question that required an answer and when she opened her mouth to answer they hurriedly scooped food into her mouth. The main concerns highlighted by AB were the strict regimented routine used by the Claimant and SD to feed MM, the actual food and diet given to MM, the use of non-standard incontinent pads and the use of a razor to shave off the Claimant's hair without permission

12. The diet to be given to MM was of particular relevance because MM was an end-of-life patient, she was in kidney failure, and she was tired and weak. As a result of this she had reduced food intake and often did not feel like eating or drinking. She was on an eating regime of 1200mls fluids per day and puree food. The Respondent provided end-of-life training annually and it was reiterated that reduction in food intake was expected normally with such patients in their care plans.

13. As part of the investigation conducted by Laura Williams the Claimant admitted to in her investigatory meeting on 23 July 2020 to altering meals by adding oats, mango and fish to soup which, was not part of the care plan. The Claimant stated in the investigatory meeting that she used her feeding technique with MM because sometimes MM did not realise if she wanted to eat or not and believed that her brain had to signal to her that it was time to eat, so she waited and kept trying to feed MM. However, the care plan dated 2 June 2020 clearly stated that a gentle approach was to be used so MM does not feel pressured into eating or drinking. It also stated that 1200mls was a good fluid intake to aim for if possible, but carers should not feel they have failed if they had not reached that target and furthermore that MM may eat slowly which would require the carers to be patient and spoon feed MM slowly. The care plan also stated that all food was to be pureed because MM found it hard to swallow (it did not state that food was to be liquefied).

14. The Claimant had received internal training from the Respondent in the care of elderly patients and had an NVQ qualification in elderly care. According to the Claimant's Care Profile the Claimant received training in the following areas: Dementia care; Parkinson's care; First Aid; Medication management; Care Certificate.

15. The Respondent carried out an investigation into the allegations. Laura Williams, the Investigating Officer, interviewed the Claimant, SD the fellow live in carer and HM who had also previously cared for the client RS as well as the Care Manager, Ms. Hayley Boorman. She also obtained information from Dr. Prichard and HM the client's daughter as part of the investigation and the allegations were put to the Claimant. Following Ms Williams' investigation, she recommended that the matter should proceed to a disciplinary hearing as the allegations raised potential safeguarding issues. The allegations were: Physical abuse - force feeding client; Institutional abuse – not respecting client's choice and instilling a regimented routine in the placement instead of an individualised approach, in keeping with the Respondent's philosophy of care policy.

16. Ms Williams concluded on 4 August 2020 that the Claimant and SD were force feeding MM. She also concluded that they were not sticking to the care plan by giving the Claimant 1500mls of fluid a day instead of 1200mls and adjusting her meals. She also felt that the Claimant did very little to engage MM during the day especially at night as they were putting her to bed at 7 pm and not 9 pm as recommended in the care plan. There was also little evidence that the Claimant and SD were engaging with her between 7 pm and 9 pm. Ms. Williams considered that the Claimant could have used a more individualised approach to caring for MM.

17. In line with the company's disciplinary procedure the Respondent sent the Claimant a letter inviting her to the disciplinary hearing on 5 August together with all the relevant evidence that the chairperson would refer to at the disciplinary hearing. This included information gathered from Dr. Pritchard, information gathered from the Care Manager, Hayley Boorman, a photo of breakfast, Weekly Care Reports, Daily Care Reports,

Investigation meeting notes with SD, the care plan from June 2020, notes of investigation minutes with the Claimant and notes of investigation meeting with AB.

18. At the disciplinary hearing on 10 August 2020, Ms. Claire Curtis, the Respondent's Regional Manager and dismissing officer, put the allegations to the Claimant. The Claimant was given the right to be accompanied but she attended the hearing unaccompanied. Ms. Curtis opened the meeting by re-confirming to the Claimant that the allegations against her were abuse, physical abuse by force feeding and institutional abuse by instilling a regimented routine not in line with our philosophy of care. The invitation letter to the disciplinary meeting stated that a potential sanction of the disciplinary hearing could be dismissal. The Claimant admitted that she did not realise MM was an end-of-life patient but denied that she was knowingly doing anything wrong by the methods she used to feed MM. She denied that what she did qualified as force feeding. The Claimant's explanation was not accepted by Ms. Curtis.

19. Throughout the disciplinary hearing the Claimant did not show any appreciation of the severity of what she had done. She was very fixated on MM getting a liquefied diet bumped up with oats and fruit, together with 1500 mls fluids a day, despite what the care plan said. The Claimant did not appreciate that her approach was institutionalised, and she did not understand that what she was doing fell under the category of force feeding. She did not appreciate that her approach was doing MM more harm than good. In another patient a heavy, liquefied diet might have been the right approach for that patient but it was not right for MM. She was at the end of her life and could not tolerate it.

20. The Claimant had no regard for MM's emotional and mental wellbeing and the need to keep her comfortable and allow her to rest. With MM in kidney failure, she would have been exhausted even at rest or with very little activity and would have wanted to rest.

21. Furthermore, in Ms. Curtis's view there was a complete lack of communication between the Claimant and her Care Manager. No decision should have been made which affected the emotional and physical wellbeing of MM without consulting with the Care Manager, Hayley Boorman, and/or professionals involved in MM's care. It was most worrying to Ms. Curtis how the Claimant did not see her failure to communicate with her Care Manager on issues regarding MM's care, as a crucial omission.

22. In the disciplinary meeting Ms. Curtis asked the Claimant about the nutritional regime that she had established. The Claimant's comment struck Ms Curtis as quite telling as to her attitude, "Another carer was there beforehand, and she had the same problem and we had to wait, and she eventually started to eat. It was my duty to do it. I could stop, my mistake was not to notice that the client was at the end of life. I did not notice, my focus was urine and body temperature" (page 159 bundle). To Ms. Curtis, the Claimant clearly admitted the fact that she could have stopped the regime and the way she was continually feeding MM, she felt it was a duty. Ms. Curtis viewed that the Claimant's role was to communicate and seek the necessary support and advice from her Care Manager, not to take decisions into her own hands.

23. Ms Curtis concluded that the Claimant believed that because MM had a cognitive impairment, she did not know what she was doing when she shook her head 'no'. However, the care plan clearly stated that when the Claimant shook her head 'no' it should be taken as a refusal. It was Ms. Curtis's view that every client had the right to say 'no' and the carers had to respect the patient's dignity and his/her right to say 'no'.

24. After the hearing concluded Ms. Curtis did not make her decision immediately. Following the disciplinary meeting she consulted with her colleagues Kerrie-Anne and Hannah Morgan before she made her final decision. She wanted to reflect, and she made her decision entirely independently having discussed her thoughts with these colleagues.

25. Ms. Curtis concluded that the care plan was there for the Claimant and her colleague SD to follow but they did not refer to the care plans, or if they did, they ignored what the care plans stated. They got themselves into a routine with the way they cared for MM and stuck to that routine because it was easy even when the indications were that they should change that routine. The care plans stated that MM should be given a puree diet, but the Claimant ignored that and gave MM a liquefied diet which was not the same as a puree diet and which had not been authorised by anybody. They added items to MM's diet that were not authorised like oats to her soup or crushed bananas or boiled eggs to bulk up her meals. This would be unappetising for a person who was healthy far less for a person who was in declining health and could tolerate food. They forced food on her even when she was being sick, they spent hours feeding MM and did not leave sufficient time between breakfast and lunch when the force feeding would start again. Despite the Claimant's protestations to the contrary, there was no evidence that she ever consulted the Care Manager to discuss her concerns over MM's care and diet. Most importantly Ms. Curtis concluded that they forced food on MM even after she shook her head 'no', which showed a disregard for MM's dignity and was abusive.

26. Ms. Curtis did consider a lesser sanction than dismissal for gross misconduct for the Claimant but she felt it was not appropriate because the Claimant showed a total lack of understanding of the needs of the client MM. Despite her long service and experience she demonstrated an unwillingness to work within the boundaries of our clinical guidance and with the instructions in the care plans that were tailor-made for each patient. She was fixated on following a regimented routine even though it was not appropriate and even though it was harming MM. She did not respect MM's dignity, she did not respect MM's right to say no despite her cognitive impairment and she did not adhere to company values. Ms. Curtis could not be confident or trust that the Claimant would not follow the same course of again in the future.

27. Ms. Curtis's concluded that the role of a Professional Carer was to work in isolation with extremely vulnerable clients. Following her actions within this placement Ms Curtis did not feel the Claimant would work to the Respondent's values, provide a high standard of care and follow its process and procedures to ensure the wellbeing of a client in the future.

28. The Claimant had stated that there was flexibility in the manner the client was being cared for but Ms Curtis concluded that this was simply a false statement. It was not for the Claimant to decide the degree of flexibility with MM's diet off her own back. These were clinical and management decisions discussed with the family and set out in the care plan which Ms Curtis concluded the Claimant had ignored.

29. Ms Curtis accepted that English was not the Claimant's first language, but the Claimant confirmed that she understood what she was being told and had clearly managed to work in a professional capacity with her level of English for the last 4 years working for the Respondent. At the Tribunal hearing, the Claimant had the assistance of an interpreter, but the Tribunal was satisfied as was the Respondent that she could speak and understand English well and was cognisant of what her contractual duties were as a live-in carer.

30. Following the disciplinary hearing the Respondent wrote to the Claimant advising that she was being dismissed for gross misconduct on 13 August 2020. The Respondent considered there was sufficient evidence of force feeding and did not consider the Claimant's explanation provided sufficient mitigation to impose a lesser penalty. The Respondent could not be sure that the Claimant would not in similar conduct again in the future and believed that trust had been destroyed. Furthermore, the Respondent considered that the institutional abuse was proven because the evidence indicated that the Claimant did not respect MM's choice and dignity.

31. The Claimant alleged that she sought the assistance of the dietician and the district nurses. However, there was no evidence produced to the Tribunal that the Claimant sought the support of the dietician. The Respondent's process for raising concerns was through incident reporting which would then enable it to investigate the incident and put together action plans to aid and support the Carer. However, this was not done by the Claimant in this case. The Claimant altered MM's diet without a dietician or doctor's input.

32. The Claimant was given the right of appeal against the decision to dismiss her, but she chose not to appeal against such decision.

Law

33. Section 98(1) Employment Rights Act 1996 (ERA) provides that it is for the employer to show the reason or principal reason for dismissal of the employee and 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. If the Respondent fails to do so the dismissal will be unfair.

34. If the Tribunal decides that the reason for dismissal of the employee is a reason falling within Section 98(1) or (2) ERA it will consider whether the dismissal was fair or unfair within the meaning of Section 98(4) ERA. The burden of proof in considering Section 98(4) is neutral.

35. Section 98(4) ERA provides: -

> "the determination of the question whether the dismissal is fair or unfair (having regards to the reason shown by the employer) –
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case."

36. In the case of **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439 EAT**, guidance was given that the function of the Employment Tribunal was to decide whether in the particular circumstances the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair. If the dismissal falls outside the band it is unfair.

37. In the case of **Sainsburys Supermarket Ltd v Hitt [2003] IRLR 23CA**, guidance was given that the band of reasonable responses applies to both the procedures adopted by the employer and the sanction, or penalty of the dismissal.

38. The Tribunal should not substitute its own factual findings about events giving rise to the dismissal for those of the dismissing officer (**London Ambulance NHS Trust v Small [2009] IRLR 563**).

39. In the case of **British Home Stores v Burchell [1978] IRLR 379 EAT**, guidance was given that, in a case where an employee is dismissed because the employer suspects or believed that he has committed an act of misconduct, in determining whether the dismissal was unfair, an Employment Tribunal has to decide whether the employer who discharged the employee on the grounds of misconduct in question and obtained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at the time. This involved three elements. First, there must be established by the employer the fact of that belief, that the employer did believe it. Second, it must be shown that the employer had in its mind reasonable grounds upon which to sustain that belief. Third, the employer at the stage on which he formed that belief on those ground, must have carried out as much investigation into the matter as was reasonable in all of the circumstances of the case.

40. With regard to contributory fault pursuant to s122(2) ERA 1996, a tribunal may reduce a basic award where it considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such as it would be just and equitable to reduce or reduce further the amount of the award to any extent.

41. With regard to the compensatory award (s123(6) ERA 1996), where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, the tribunal shall reduce the amount of the compensatory award by such proportion as it considers just and equitable.

42. To fall into this category, the Claimant's conduct must be 'culpable or blameworthy'. In respect of the compensatory award, such conduct must cause or contribute to the Claimant's dismissal, rather than its fairness or unfairness. Such conduct need not amount to gross misconduct (**Jagex Ltd v McCambridge UKEAT/0041/19**).

43. A tribunal should first assess the amount of loss under s 123 (1) ERA 1996 and then consider the question of contributory fault. Where an initial reduction has been made under s 123(1), this might alter the extent of the reduction under s 123(6). Accordingly, it may turn out that the reduction from the compensatory award under s 123(6) would be less than the reduction which it was just and equitable to make to the basic award under s 122(2) ERA 1996.

44. The EAT in **Steen v ASP Packaging Ltd UKEAT/0023/13, [2014] ICR 56** (Langstaff P Presiding) observed that a finding of 100% contributory conduct is an unusual finding, albeit a permissible finding. A Tribunal should not simply assume that because there is no other reason for the dismissal therefore 100% contributory fault is appropriate. It may be the case, but the percentage might still require to be moderated in the light of what is just and equitable: see **Lemonious v Church Commissioners UKEAT/0253/12** (27 March 2013, unreported) (Langstaff P presiding).

45. In assessing contribution, the tribunal should in turn, 1) Identify the relevant conduct; 2) assess whether it is objectively culpable or blameworthy; 3) consider whether it caused or contributed to the Claimant's dismissal; and 4) If so, determine to what extent it is just and equitable to reduce any award. (**See Steen v ASP Packaging Ltd UKEAT/0023/13/1707**).

Conclusion and Findings

46. In the first instance the Tribunal had to find the reason for dismissal. The Tribunal had no doubt in finding that the genuine reason was the Claimant's misconduct. The Respondent's policies were clear and should have been adhered to by the Claimant. The Claimant's contract provided that the "*principal duty is to complete the tasks set out in, and such additional tasks as were necessary in order to ensure the satisfactory fulfilment of any Care Plan to which you are assigned…You are expected to devote your full attention to the needs of the client"* The Respondent's disciplinary procedure (p 49) confirmed that examples of gross misconduct included: any form of client neglect, any form of client abuse, any action or failure to act which is seriously detrimental to the health/well-being of any person in the Good Care Group care. The Respondent concluded that the Claimant had committed gross misconduct, specifically by maintaining a regimented regime that failed to respect the Claimant's choice and dignity and 'force-feeding' the client and failing to seek advice or confirmation of her actions.

47. On the question of 'force feeding' it was clear to the Tribunal why and how the Respondent defined this. By persisting with feeding MM even after she shut her mouth and turned away, and by 'tricking' her into opening her mouth by asking questions and then putting food in when she answered, the Claimant was essentially force-feeding MM because she and her colleague were making her eat against her will. Claire Curtis confirmed the basis of her conclusions in her witness statement at paragraph 17, namely that the Claimant and her colleague had failed to follow MM's care plan, and they got themselves into a fixed routine, from which they did not deviate particularly in respect of MM's bedtime. The Claimant and her colleague gave liquified rather than a pureed diet without getting authority. They both added items to MM's diet that were not authorised like oats to her soup and boiled eggs to bulk up her meals. The Claimant and her colleague forced food on MM despite her refusal and her being sick. They spent hours feeding MM and did not leave sufficient time in between meals. They did not properly consult with or inform the care manager over these changes.

48. The Claimant and her colleague displayed a failure to adhere to the Respondent's policies and to respect the dignity of MM which in the Tribunal's view amounted to client neglect or alternatively client abuse or alternatively actions that were detrimental to the health and well-being of MM. In particular, it was clear that the Care Plan set out for MM in June 2020 (pg 87) provided as follows: For her bedtime to be between 8pm to 9pm. Her food to be pureed. 1,200ml of fluid per day. She should not be pressured or forced to eat or drink. Carers should not feel they fail if they do not achieve 1,200ml.

49. Despite this the Claimant and her colleague put MM to bed at 7pm most days rather than 8pm to 9pm. They liquified (rather than merely pureed) her food without agreement or authority. They sought to feed MM 500/600ml for every meal i.e. 1,500 – 1,800ml per day (p 90). They treated apparent refusals by MM as akin to a baby's refusal, which refusal did not need to be adhered and thus pressured her to continue eating.

50. There was no doubt in the Tribunals view that these items individually and cumulatively amounted to gross misconduct.

51. The Tribunal then had to consider whether the Respondent conducted a reasonable investigation in all of the circumstances. The Tribunal found that the investigation was full and thorough. Laura Williams interviewed or obtained information from each of the relevant witnesses, namely: AB (pg. 91) The Claimant's colleague and live in carer (pg. 96); the Claimant (pg. 101); HB – Care Manager (pg. 109 – 110); Former Carer to MM (pg. 123); HM, MM's daughter (conversations with HM 24/7/20). Additionally, she reviewed the care plans, Daily Care Notes, Weekly Reports. Her Investigation report fully summarised that evidence (pg. 124) and indicated that she carefully considered all the relevant evidence in great detail before reaching her view that there were two allegations that warranted disciplinary action. The Tribunal accepted that an investigation need not be perfect or faultless, nevertheless, Laura Williams' investigation in the Tribunals view amounted to a comprehensive investigation that supported the allegations and the reasonable grounds that ultimately led to dismissal.

52. As to whether the Respondent had a genuine belief in misconduct, there was no suggestion from the Claimant that the Respondent did not have a genuine belief that she had committed gross misconduct. Claire Curtis set out the reasons for dismissal and those reasons were not challenged by the Claimant and therefore the Tribunal accepted that the Respondent did have a genuine belief that the Claimant had committed the misconduct for which she was dismissed.

53. The question for the Tribunal was not whether the Claimant committed the gross misconduct alleged, but whether the Respondent had reasonable grounds for that belief. Given the carefulness of the investigation, the Tribunal has concluded that the reasonableness of the belief was established. At the heart of the case appeared to be a fundamentally different approach to care shown by the Claimant, compared to the values of the Respondent. The Respondent considered that the client's dignity was paramount, and her wishes should be respected; whereas the Claimant saw MM as akin to a child, who essentially had to be treated as such. The Respondent's view was that MM's wishes were paramount and should be respected. The Tribunal noted that whilst carers could be creative in encouraging MM to eat, her refusal or declining to eat should have been respected and adhered to by the Claimant and SD. However, in this case the Claimant apparently considered that because of her dementia, a refusal to eat could essentially be ignored.

54. Much of the basis of the allegations were either admitted by the Claimant, or evidently true on the face of the documents, because: the Claimant herself stated that she continued to feed MM 500/600ml for every meal (1,500 – 1,800ml per day) despite the fact that MM's target had been reduced to 1,200ml with an instruction that she should not be pressured to achieve even that; The Claimant accepted that her entries in the Daily Care Notes did not indicate much activity and interaction between herself and MM between 7pm and 9pm; The Claimant confirmed in the investigation meeting that she did not obtain the doctors approval to liquify MM's food (pg. 103); The Claimant then asserted that she had obtained approval from MM's GP but then also confirmed that she had not noted this on MM's Daily Care Note, and there was no evidence that she discussed or informed her Care Manager either. Indeed, at the GP visit in March (pg. 351) there is no mention by the Claimant of any discussions about the Claimant's diet; The Claimant confirmed that she would often take 2 hours to feed MM, which inevitably meant that her next meal would follow on very soon after. This was especially serious because it meant the Claimant was using up 2 hours to give 500ml –

600ml as opposed to only aiming for 400ml or less if MM was not able to take that amount; The Claimant admitted that she added foods like oats to soup to bulk up MM even though her care plan did not call for those sorts of attempts to bulk her up (pg. 101).

55. AB confirmed that: MM was put to bed at 7pm with no further interaction – pg. 91; pg. 93; MM put her mouth together and turned her head away, which was a refusal but the approach of SD (and by logical extension the Claimant) was to continue to feed even if the food ran down her face (pg. 101); Because of the lengthy feeding, the following meal would be given to MM very soon after; Oats and mango were added to the soup; Although they wrote food in the daily care plan, the food had all been liquidised (pg. 101).

56. Dr J Prichard also confirmed that AB had made similar allegations to her, namely that they would 'trick' MM into opening her mouth (pg. 89). HB confirmed that MM should have been on 1,200ml per day and that she did not agree to a strictly liquid diet (which AB suggested was being done and which could be seen from the picture of the food (pg. 195), and that it was not documented that MM was refusing her food (pg.110). Former carer, RS, confirmed his approach to feeding, which was to leave the food if she declined and then try at a later time (pg. 123).

57. The Tribunal found that any complaints by the Claimant about out-of-date care plans were irrelevant to these proceedings, since the relevant elements of the care plan (fluid intake target, bed time, not forcing MM) were not in dispute and were agreed by all parties including the Claimant and her fellow live in carer. Equally, the Tribunal found no material difference as to whether the conduct alleged was defined as abuse or neglect since the central issue was what the conduct actually was and whether it amounted to gross misconduct. Such conduct on the Claimants part in the Tribunals view could be defined equally accurately as abuse or neglect.

58. The Tribunal found that the hair cutting issue was also a point of low importance in respect of the Claimant's dismissal. The dismissal letter did not refer to it as a reason for dismissal; Ms Curtis confirmed that it had minimal impact on her decision, and it did not appear in her summary of the relevant points she concluded warranted dismissal of the Claimant.

59. Furthermore, the Respondent was reasonable in accepting the evidence of the witnesses interviewed because there was no basis to believe or assume that they were anything other than honest in their account of the facts of the Claimant's misconduct based on the evidence presented to the Tribunal: AB had no reason to dislike or lie about the Claimant; The Claimant's colleague worked with the Claimant and it was clear that they took the same basic approach to caring for MM; Dr JP had no reason to give anything other than accurate responses; HB as care manager was in a position of authority that the Respondent was entitled to rely on. In those circumstances, the Tribunal accepted that the Respondent had reasonable grounds to believe that the Claimant had committed the misconduct alleged.

60. With regard to the range of reasonable responses/fairness of sanction, the Tribunal noted that the Claimant herself accepted that if the matters found by the Respondent to be true occurred then a possible sanction was dismissal. Vulnerable adults with live in carers are entirely dependent on their live-in carers. As such the Respondent must have total confidence that the carers will care for the client in line with its principles and according to its care plan. HM, MM's daughter also confirmed that she expected the care plan to be adhered to without diversion. Given that the Claimant failed to do this in many respects, it

was clear to the Tribunal that she committed gross misconduct and that dismissal was entirely appropriate and within the range of reasonable responses. It was particularly relevant that the Claimant did not accept at any stage that she had done anything wrong, which supported the Respondent's decision that the Claimant was unlikely to change or modify her behaviour.

61. In relation to fairness of procedure, the Claimant made little if any criticism of the disciplinary procedure that was followed by the Respondent. The Respondent's disciplinary procedure was set out (pg. 45) and was followed properly and fully by the Respondent. The Claimant was invited to an investigation meeting and given the opportunity to attend at a time that was convenient to her. Each allegation was put to her giving her a full opportunity to respond and provide any defence or mitigation. She was notified of the outcome of the investigation and the decision to progress to a disciplinary hearing. She was provided with all the evidence obtained through the investigation (pg. 156). She was invited to and attended a disciplinary hearing with the disciplinary officer and was given an opportunity to respond to the allegations against her. The Respondent wrote to her with the dismissal decision and conclusions and gave the Claimant the opportunity to appeal. The Claimant initially appealed (pg. 184) but did not pursue her appeal. In all the circumstances, the Tribunal accepted that that the fairness of the Respondent's procedure was established.

62. For the sake of completeness, even if the Tribunal had concluded that the dismissal was unfair, the Tribunal would have found that the conduct of the Claimant amounted to conduct before dismissal that should lead to a just and equitable reduction in any basic award or compensatory award. Given the seriousness of the Claimant's misconduct, the Tribunal in all likelihood would have concluded that the reduction should be 100%.

63. Given the above conclusions of the Tribunal, the Claimant's claim for unfair dismissal is dismissed.

Employment Judge Hallen
Date: 16 September 2021