Case No: 2201584/2021

EMPLOYMENT TRIBUNALS

Claimant: Claire Parker-Paphitis

Respondent: Knight Classical Ltd.

Heard at: **London Central** **On:** **26 August 2021**

Before: **Employment Judge Joyce**

Representation
Claimant: Mrs. C Parker-Paphitis (in-person)
Respondent: Miss A Knight (in-person)

RESERVED JUDGMENT

The Tribunal has determined that:

1. The complaint of unfair dismissal is not well-founded;
2. The claim for breach of contract is not well-founded;
3. Accordingly, the proceedings are dismissed.

REASONS

Claims and Issues

1. The Claimant has brought a claim of unfair dismissal and breach of contract (wrongful dismissal). The issues were agreed at the start of the hearing as follows: (i) What was the reason, or principal reason, for the dismissal (ii) if the reason was related to the Claimant's conduct was the reason fair or unfair. In particular (a) was a fair procedure followed?; (b) was the decision fair in substance; (iii) in terms of the alleged breach of contract, was the Claimant guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract?; (iv) If the claim was successful, what remedy was due to the Claimant?

Hearing: Procedure, documents and evidence heard

2. The Tribunal heard evidence from the following witnesses on behalf of the Respondent: Miss. Alexandra Knight (Director and CEO); Ms. Amelia Griggs (Company Secretary and Accountant) and Mr. Martin Kendrick (Head of Digital). A witness statement was also provided by Stephen Wright, the previous owner of the Respondent. A request by the Respondent to postpone the hearing so that Mr. Wright could attend to give evidence was denied in advance of the hearing. The request to postpone was opposed by the Claimant, who wished to have the hearing go ahead without delay. I also considered it was not in the interests of justice to postpone. I admitted Mr. Wright's statement but gave it limited weight in light of the fact that he was not subject to any cross examination. In the end I did not need to place reliance on the statement, with there being ample other evidence on the record. The Claimant gave oral evidence. No other witnesses were called as part of the Claimant's case.

3. There was a bundle of approximately 188 pages. Both parties made closing submissions at the conclusion of the hearing.

Facts

4. The Respondent is a company that represents classical music artists, and employs approximately 6 people. The Claimant was employed as a senior artist manager and worked for the Respondent from August 2007 until she was summarily dismissed on 11 December 2020.

5. Her employment contract contained two clauses which are worth reciting here. The first clause related to preventing competition with the Respondent ("Competition Clause") and provided as follows:

> **During your employment you are not entitled to undertake any other additional employment or other work (whether paid or unpaid) outside the Company without the express consent of the Company, which consent not to be unreasonably withheld. However, consent will be withheld if in the reasonable opinion of the Company such additional work is in conflict with your duties and/or the interests of the Company and/or is in competition with the business from time to time conducted by the Company.**

6. The second clause related to confidentiality ("Confidentiality Clause") and provided:

> **(…) Accordingly it is a fundamental term of your employment that you agree to keep confidential and not to disclose to any third party (other than when expressly agreed by the Company and/or its client) either during the course of your employment or at any time thereafter, any confidential information relating to the Company or its operations which is not already in the public domain, including (without prejudice to the generality of the foregoing) trade secrets, press contacts data base, client contact data base, information relating to costs, markets, marketing, research, plans, budgets, strategies, fellow employees, clients, customers, and suppliers and any information in respect of which the Company owes an obligation of confidence to any third party including in particular, clients' confidential or personal sensitive information. Any unauthorised disclosure of such information will be treated extremely seriously and may result in the termination of your employment.**

7. On 21 May 2018, the Claimant emailed Mr. Wright asking his permission to undertake some consultancy work for an artist by the name of Danny Driver

("DD"). By email of 22 May 2018, Mr. Wright agreed with the proposal. No detail was provided as to the scope of the proposal.

8. The terms of reference of the consultancy provided, among others, that the Claimant would "identify key targets concerto/orchestral and recital/festival" and "create spreadsheet of contacts (names and email addresses) of targets (…) in order to facilitate and future tracking and monitoring of promoter feedback and response and to use spreadsheet for October mail out". The total value of the consultancy was £1,750.

9. By email of 5 June 2018, the Claimant informed Mr. Kendrick that she was working with DD and asked him to provide a quote for the cost of a promotional video for DD. It was common ground that Mr. Kendrick subsequently made such video for DD and that it generated approximately £1116.00 of revenue for the Respondent.

10. By email of 6 June 2018, the Claimant thanked DD for a spreadsheet that he had sent her separately, and promised to incorporate it within the larger spreadsheet that she was creating.

11. By email of 20 August 2018, the Claimant asked Miss Knight whether she still had a copy of a document entitled "SW top contacts list". By further email of the same date, in response to a request for clarification from Miss Knight, she clarified that the document was "a spreadsheet with all [Stephen Wright's] top contacts and [that she thought] it was once referred to as the 'top 500' (…)".

12. By further email of 20 August 2018, an employee by the name of Ms. Julie Scannadinari sent two spreadsheets to Miss Knight and the Claimant, one containing 190 names and the other containing 493 names, with the latter being from approximately 2009.

13. By further email of the same date the Claimant thanked Ms. Scannadinari for the spreadsheets and stated that the information was primarily for a 'mail out' that she was doing for another artist by the name of Hugh Wolff.

14. On 4 September 2018, the Claimant sent DD a spreadsheet containing "festival and promoter contacts".

15. On 12 September 2018, the Claimant exported the company address book. On 16 September 2018, the Claimant sent DD two spreadsheets: one was a list of orchestra contacts and the other was a list of orchestras.

16. On 30 September 2018, the Claimant sent DD a spreadsheet of "festival and recital contacts" which contained 179 contacts. On the same date the Claimant sent DD a "final orchestra list" which contained 246 contacts.

17. There were various databases referenced during the hearing, but it is understood that there was one main company database of contact details for booking contacts of the Respondent which was maintained on a business application called "Overture", and a separate database containing top contacts of Mr. Wright, which was known as the "Top 500" but did not in fact include 500 contact names and details, and in fact contained approximately 190 names.

18. The Overture database contained 815 booking contacts for orchestras of which 246 were sent to DD in the "final orchestra list". The Overture database also contained 483 booking contacts of which 179 were contained on the "festival recital contacts" list sent to DD.

19. By email of 8 July 2019, Ekaterina ('Katya') Apekisheva ("KA") contacted the Claimant and asked whether they could meet in order to discuss "possible collaboration". By email of 9 July 2019, the Claimant agreed to meet with KA. It was common ground that the Claimant subsequently agreed to undertake work for KA. She did not ask permission of the Respondent in order to do so.

20. The agreed plan of work included, among others, to "review all current materials (past and future diaries, video/audio clips/interview clips/ biography/ reviews website etc.) and assess what should be used for future mail out/promotional material and what changes could be made for improvement. The plan of work also included a task to "identify key targets concerto/orchestral and recital/festival" and to "create spreadsheet of contacts (names and email addresses) of the above 'targets'. The estimated cost of the work was £1, 850, billable as £462.50 per month. As with DD, all emails were sent from the Claimant's work email address. It was common ground that efforts were made by the Claimant to have Mr. Kendrick prepare a similar video for KA as had been prepared for DD. These efforts did not result in any video being made.

21. On 8 November 2019, the Claimant emailed KA to inform her of the work she was carrying out. As part of the work to be completed, she intended to put together "a spreadsheet of targets (around 500 or so promoter names and email addresses)". It was common ground that this part of the work was not completed due to the Covid-19 pandemic. By further emails from December 2019 through to April 2020, the Claimant and KA were in contact, collaborating on the work to be carried out per the plan of work that was agreed in the email of 9 July 2019.

22. In January 2020, Miss Knight took over the Respondent having purchased it from Mr. Wright. Miss Knight chose to continue the employment of each member of staff, including the Claimant, via TUPE transfer.

23. The Claimant was placed on furlough on 31 March 2020. Miss Knight took over her responsibilities. In doing so, she accessed the Claimant's email inbox. She discovered the above referenced emails between the Claimant and KA demonstrating that they were working together. She further discovered the emails to DD showing that the Claimant had sent him spreadsheets with contact names and email addresses.

24. By phone call of 16 November 2020, Miss Knight informed the Claimant that she was going to be investigated and that she was placed under suspension with immediate effect. This phone call was followed up by an email on the same date from the Claimant to Miss Knight. In that email she referred to the agreement with Mr. Wright relating to the work with DD and stated that as the work with AK was for similar kind of work she did not check with Mr. Wright as she assumed it would be alright, but that in hindsight she probably should have checked with him.

The investigation

25. By email of 18 November 2020, Miss Knight emailed the Claimant to inform her that she would be conducting an investigation into two matters: "(i) Working in direct competition with the company" and (ii) " breaching the company's confidentiality provision by sharing company databases with a third party."

26. Miss Knight informed the Claimant that she would "simply take a careful look at [her inbox/sent items in order to get the facts of the matter". She further stated that she would aim to have the investigation completed by the coming weekend at which point, if she considered there was a case to answer, she would invite the Claimant to attend a disciplinary hearing.

27. At the Tribunal hearing, it emerged that Miss Knight had spoken with Mr. Wright after having examined the Claimant's email account. She did not take a formal statement from him at that point or keep a record of their conversation as he had recently been ill and could not recall much of the events being investigated.

The disciplinary hearing

28. By email of 23 November 2020, Miss Knight emailed the Claimant informing her that she had been investigating two distinct matters (i) "Breach of the Company's confidentiality provision, specifically with regard to contact databases (as outlined in your employment contract) – as evidenced in emails concerning [her] external consultancy work for [DD and KA] conducted over company email and [her] export of our Company database and (ii) "Working in direct competition with the Company – as evidenced by [her] external paid work for [KA] undertaken without prior consultation with the Company, and conducted over Company email."

29. In the same email, Miss Knight invited the Claimant to attend a disciplinary hearing on 7 December 2020. Miss Knight informed the Claimant that Ms. Katie Hyman would act as an "independent third party and the ultimate decision-maker as to the outcome of this hearing". The Claimant was informed that consideration was being given to dismissing her or taking disciplinary action short of dismissal. Miss Knight also informed the Claimant that she could be accompanied by another member of staff from the Respondent and that she should let her know by 4 December 2020 if she wished to bring someone with her. 18 attachments were sent along with the email, which included the emails and spreadsheets exchanged with DD and also the emails exchanged with KA.

30. It turned out that Ms. Katie Hyman was not available to chair the disciplinary meeting and so Ms. Griggs took her place. The Claimant followed up this email seeking further clarification stating "[Miss Knight] explained originally that [Ms. Hyman] the lawyer from Washington would be the third party and ultimate decision maker on the hearing. I just wanted to understand if [Ms. Griggs] is now the decision maker as she is going to be taking on the role of the third party?"

31. By email of 6 December 2020, Miss Knight responded to the Claimant as follows "Basically yes – the third party [i.e. Ms. Griggs] is effectively there to chair the meeting and provide objectivity having not been part of the investigation process."

32. The disciplinary hearing took place on 7 December 2020. It was attended by Ms. Griggs, the Claimant and Miss Knight. The meeting was chaired by Ms. Griggs. Most of the questioning was conducted by Miss Knight. The Claimant was offered the opportunity to explain her actions. She confirmed that she understood the allegations and the evidence that had been provided to her. During the hearing the Claimant stated as follows as regards the sharing of contacts with DD:

(…)I was working for a pianist, [SK] for about 10 years for the company so pianist connections, pianist promoters, festivals, the right kind of places to target is something I feel I did have quite a good knowledge about so there was already various lists that I would work from and the contacts and so on, there was also Danny's contacts that he sent that were put into the mix (…). And I would've looked at the company contacts, I would've gone through them and thought "Hmm have I missed something here? Is there a festival I haven't thought of and put it together for the list?"

33. She further stated:

34. **(…) I don't know where the lines are blurred between sort of what's become part of the contacts that you build up and sort of know and what belongs to the company in all honesty so again I wasn't thinking properly that this is stealing something from the company.**

35. In relation to the sharing of contacts she also stated:

But I think the number of contacts that would be on that must've been the tens of thousands and I think I probably shared about 500 or 600, so it's not…I know it's…again, the quantities of which I was sharing are still within the realms of contacts that I would have having worked with pianists on that level for 10 plus years, integrate it with an excel sheet of contacts that [DD] himself shared and from that we put together a list that was sensible for him.

36. As regards the work for KA she stated:

Then the [KA] stuff happened. And again this was still…when this first came about, this was still when [Mr. Wright] owned the company so I was still working directly under [Mr. Wright] at that point and in all honesty I don't have a defence for this because I should've checked with Stephen and I didn't. And I've been thinking and thinking to myself "why the hell did you not check with Stephen?" And all I can say to you is that I thought…I just thought "it's the same sort of thing again".

37. During the disciplinary hearing, the Claimant stated that "a lot of" the contacts that she used were already in the public domain. She maintained this position at the Tribunal hearing, but accepted that she could not say that something that she had learned during her work for the company did not influence the creation of the spreadsheet for DD. Mr. Kendrick stated that about 30% of the contacts on the Respondent's database were in the public domain, with the rest being generated from working relationships. At the Tribunal Hearing Miss Knight gave evidence that approximately 170 of the orchestra related contacts shared with DD were not in the public domain and approximately 85 of the festival related contacts were not in the public

domain. While the Claimant contested the accuracy of those figures, it was not her case in cross examination that all of the contacts were in the public domain.

38. I found that while it was not possible, based on the evidence, to provide any true approximation of how many of the contact details were information belonging to the Respondent and not in the public domain, Ms. Griggs reasonably concluded that some of the contact details that were sent to DD were contact details in the sole possession of the Respondent and not in the public domain.

39. It was further suggested at the Tribunal hearing by Miss Knight that the spreadsheets provided to the Claimant on 20 August 2018 had subsequently been shared more or less in their entirety with DD. I was unable, on the evidence before me, to reach this conclusion.

40. On 11 December, Miss Knight wrote to the Claimant, copying in Ms. Griggs, to inform the Claimant of the outcome of the disciplinary hearing. She was informed that the decision had been reached that she should be dismissed:

> **On 23 November 2020 you were informed that following an investigation on behalf of the Company, Knight Classical was considering taking disciplinary action against you and we informed you of the range of possible outcomes which might include dismissal. We then had a hearing on Monday 7 December 2020, chaired by Amelia Griggs to discuss the results of the investigation into the alleged misconduct (Breach of confidentiality/working in competition with the Company) and to give you a fair hearing with regard the matters in question. Since then there has been very careful consideration as to the best course of action to take going forwards. I'm afraid that the decision has been reached that you should be dismissed from the Company. The reasons for this are that it is felt that there has been such a significant breach of trust as a result of [the Claimant's] actions as to have gone directly to the heart of the employer-employee relationship.**

41. Miss Knight further reminded the Claimant of her right to appeal against the decision of which she had been informed by Ms. Griggs at the disciplinary meeting on 7 December 2020.

42. In her witness statement at paragraphs 6 and 7 Ms. Griggs stated that:

> **(…) my conclusion was that [the Claimant] was guilty of 1) acting in competition with the company (work for [KA]) and 2) that she shared the company's private database.**
>
> **It was my view that the director felt that despite [the Claimant's] regret there had been an irrevocable breach of trust between [the Claimant] and the company meaning that dismissal on grounds of gross misconduct was the appropriate decision so long as the director agreed with that view.**

43. In cross examination, the Claimant put to Ms. Griggs that she had been unduly influenced by the views of Miss Knight as to the outcome of the case. Ms. Griggs denied this was the case. She further stated that it was a question of whether the Claimant could work again with Miss Knight or not, and not whether she [meaning Ms. Griggs] could work with her.

The appeal

44. By email of 11 December 2020, the Claimant indicated her intention to appeal against the decision following the disciplinary hearing. On 14

December 2020, the Claimant emailed Miss Knight requesting information as to the Respondent's policy on disciplinary matters and the appeal process. Miss Knight replied that the ACAS code was being followed, and provided the Claimant with a link to the code.

45. By email of 18 December 2021, the Claimant set out her grounds of appeal against the decision. She maintained that the outcome was disproportionate. She disagreed that she was working in competition with the company and referred to the monies earned by the Respondent due to Mr. Kendrick's video on behalf of DD. She contended that KA was not a client that the Respondent would have taken on due to the low level of her career and, as such, doing consultancy work for her could not be regarded as being in competition with the Respondent. As to the sharing of contacts from the Respondent's database the Claimant denied taking contacts from the Respondent's database and maintained it was information in the public domain.

46. By email of 21 December 2020, Miss Knight informed the Claimant that the appeal meeting would take place on 5 January 2021.

47. On 5 January 2021, the appeal hearing took place. It was attended by Miss Knight and the Claimant, with Miss Knight acting as the decision maker. Miss Knight explained that she was conducting the hearing because the Respondent was a small company and they had "run out of people". She stated she had checked the ACAS code and that it was permitted for her to conduct the appeal hearing.

48. At the Tribunal hearing Miss Knight explained that she had given consideration to someone else chairing the appeal hearing. She thought of Mr. Wright, who was by then no longer a Director, but ruled him out because he was a witness in the case. She considered Ms. Claire Dacam but she was excluded by virtue of giving legal advice to Miss Knight. Miss Knight stated that she was advised by Ms. Dacam that it would be acceptable for her to proceed to chair the hearing and she did so. In cross examination she was asked why she had not chosen an individual by the name of Mr. Mike Reynolds, and stated that she had considered him but excluded him on the basis of his wife being very unwell. I found that Miss Knight had given careful consideration to alternative possibilities to conduct the appeal hearing but had concluded that there were no viable alternatives. This is conjunction with the advice from Ms. Dacam led her to take the decision to conduct the appeal hearing.

49. On 8 January 2021, the Claimant emailed Miss Knight with evidence of what she had been paid by KA for her services. She was paid approximately £1,387.50.

50. By email of 15 January 2021, Miss Knight wrote to the Claimant to inform her of the outcome of the appeal hearing. She informed her that:

> **Following the discussions we had during that appeal meeting, examination of the material you sent me and careful consideration, I am writing now to inform you that my conclusion is that the original decision taken by [Ms. Griggs] (namely the decision to dismiss you), still stands and since you have now exercised your right of appeal – I must also inform you that this decision is now final.**

Miscellaneous facts

51. The Respondents operate a disciplinary procedure which proscribes a range of penalties for disciplinary offences including dismissal without notice. The document contains a non-exhaustive list of examples of gross misconduct offences including:

    (viii) breach of duty regarding security or confidentiality including any unauthorised disclosure of the Company's or client's confidential information.

52. The appeals section of the disciplinary procedure provides, in relevant part:

    On receipt of the appeal, a Director who has not previously been involved in the decision will invite you to attend a meeting at which your appeal will be considered.

53. There was dispute as to whether or not the Claimant had previously seen the disciplinary procedure. The Claimant stated she had not seen the document until the discovery of documents as part of the Tribunal case. Miss Knight's and Mr. Kendrick's evidence was that the document was provided to all staff members when joining the Respondent and that it was saved on the central network drive, accessible to all employees. I was unable to conclude on the basis of the evidence before me whether the appellant had in fact seen the disciplinary procedure or not previously. I did not consider it to be of central importance as the Respondent had in fact applied the ACAS code in conducting the disciplinary proceedings.

54. At the time of her dismissal, the Claimant was not the subject of any other disciplinary action. She had an unblemished record of 13 years of service for the Respondent.

Legal framework

55. The claim is governed by the 1996 Act, s. 98. It is convenient to set out the following subsections:

    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 – …

    (b) relates to the employee's conduct …

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

    (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
    (b) shall be determined in accordance with equity and the substantial merits of

the case.

56. Although I am bound to apply the clear language of the legislation, I am mindful of the assistance available, both legislative and judicial. By the Trade Union and Labour Relations (Consolidation) Act 1992, s207(2), any ACAS Code of Practice which appears to be relevant to any question in the proceedings is admissible in evidence and "shall be taken into account in determining that question". I take account of the applicable to misconduct cases contained in *British Home Stores Ltd v Burchell* [1978] IRLR 379 EAT (although that authority must be read subject to the caveat that it reflects the law as it stood when the burden was on the employer to prove not only the reason for dismissal but also its reasonableness). The criterion of 'equity' (in s98(4)(b)) dictates that, the more serious the allegation and/or the potential consequences of the disciplinary action, the greater the need for the employer to conduct a careful and thorough investigation (*A v B* [2003] IRLR 405 EAT and *Salford Royal NHS Foundation Trust v Roldan* [2010] IRLR 721 CA). From *Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439 EAT and *Post Office v Foley; HSBC Bank v Madden* [2000] IRLR 827 CA, I derive the important principle that, when considering reasonableness under s98(4), the Tribunal's task is not to substitute its view for that of the employer but rather to determine whether the employer's decision to dismiss fell within a band of reasonable responses open to him in the circumstances. That rule applies as much to the procedural management of the disciplinary exercise as to the substance of the decision to dismiss (*Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23 CA).

57. An employee in fundamental breach (or, if is not the same thing, in breach of a fundamental term) of their contract of employment at the time of dismissal forfeits the right to rely on the essential terms of the contract including those entitling them to notice. In such circumstances, summary dismissal is lawful at common law.

58. The ACAS code provides in relevant part:

> **27. The appeal should be dealt with impartially and, wherever possible, by a manager who has not previously been involved in the case.**

Secondary Findings and Conclusions

Unfair Dismissal

59. What was the reason or principal reason for the dismissal? It was I find, related to the conduct of the Claimant in that the Claimant had committed the misconduct alleged in the two disciplinary charges. While Ms. Griggs referred to her concerns as to the ability of Miss Knight to work in future with the Claimant, it is clear from her witness statement that this was based on her finding that the Claimant was guilty of the two charges of misconduct. Miss Knight then took the decision, based on that misconduct, to dismiss the Claimant.

60. Was the decision to dismiss the Claimant unfair? I start with procedure. The investigation itself was relatively straightforward. Much, if not all of the evidence in relation to both charges was contained in the emails exchanged

between the Claimant and DD and KA. While Ms. Knight had not retained notes of an interview with Mr. Wright in the course of the investigation I did not consider this to be unreasonable given that Mr. Wright had recently been seriously ill and at the time had little recollection of events surrounding the Claimant's work with DD.

61. The principal difference between the ACAS code and the disciplinary procedure related to the decision maker for the appeals process. In the ACAS code, discretion was allowed as to who could ultimately chair the appeals hearing, whereas in the disciplinary procedure only a director not previously involved in the process could hear the appeal. I have in mind that this was a small company with limited resources. Miss Knight explained her thought process that led her to conduct the appeal hearing. It is clear that she gave considerable thought to other viable options before deciding to hear the appeal herself. I find that it was within the band of reasonable responses, in light of the limited resources of the company for her to conduct the hearing.

62. The rest of the procedure was also within the band of reasonable responses. The Claimant was advised of the charges against her and was provided the evidence in support of those charges in good time in advance of the hearing. She was advised of the right to be accompanied at the disciplinary hearing. She attended the hearing and was given ample opportunity to explain her version of events. The disciplinary hearing was followed by an outcome letter and a right of appeal. She availed herself of that right of appeal at a hearing and that hearing was followed up with a further outcome letter.

63. Was the decision fair in substance? I find that it was open to Ms. Griggs to find the Claimant guilty of the alleged misconduct. Indeed, in light of the Claimant's frank admissions at the disciplinary hearing, it is difficult to see how she could have reached a different view.

64. At the hearing a picture emerged of a highly competitive business market where information such as contact details was carefully guarded for clients of the Respondent. On any view, the Claimant had shared some of those details with DD, who was not a client of the Respondent in breach of the Confidentiality Clause in her contract.

65. Further, while the Claimant maintained at the Tribunal hearing that KA was not an artist that the Respondent would have entertained having on its books, this was not a decision for her to take. She had previously had to ask permission to represent DD, but did not do so in relation to KA. This was in breach of the Competition Clause in her contract. The fact that the work for DD had led to some revenue being generated for the company was irrelevant in my view as the work for KA, and not DD, was the basis for the charge relating to acting in competition with the Respondent. The Respondent's conclusion that she had acted in competition with it was therefore also permissible.

66. Given these findings, it was clear that dismissal was a permissible sanction. There was no evidence on appeal which could have led to Ms. Griggs' decision being overturned and the appeal decision was in my view a permissible one.

Wrongful dismissal

67. Turning now to the question of breach of contract, I find that there was a serious breach of the contract. While the Claimant contended that it was not gross misconduct, it is clear from the Confidentiality Clause in her contract of employment that sharing confidential information was viewed so seriously that it could attract termination. Although at the Tribunal hearing, the Claimant denied committing misconduct, in my view, as set out by her frank admissions at the disciplinary hearing, she did commit the misconduct with which she was charged.

68. As she was in breach of a fundamental term of her contract, the Claimant forfeits her right to rely on the essential terms of the contract including those entitling her to notice. The complaint of wrongful dismissal must therefore fail.

Outcome

69. For all these reasons, the claims fail and the proceedings are dismissed.

Employment Judge **M Joyce**

_01.10.2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

04/10/2021.

FOR EMPLOYMENT TRIBUNALS