



EMPLOYMENT TRIBUNALS

Claimant: Mr. Y Choualeb

Respondent: British Airways Plc

Heard at: Watford (hybrid, partially by CVP)

On: 25 and 26 March 2021 and 5 and 6 September 2021

Before: Employment Judge Price (sitting alone)

Representation

Claimant: In person

Respondent: Ms C Bell, Counsel

RESERVED JUDGMENT

1. The Claimant's claim for unfair dismissal contrary to s.94 Employment Rights Act 1996 ('ERA') is dismissed.

REASONS

Introduction and issues

1. By claim for presented on 7 June 2020 the Claimant brings a complaint of unfair dismissal. The Claimant commenced employment as a cargo agent for the Respondent on 3 May 2016. He was promoted to the position of Acentis Level 20 Team Leader, which was effective from 7 October 2018.
2. There is no dispute that the Claimant was dismissed and that this took effect on 15 January 2019. ACAS were notified under the early conciliation procedure on 12 April 2019 and a certificate was issued on 12 May 2019. The ET1 was presented on 7 June 2019. The ET3 was received by the tribunal on 12 August 2019.
3. The issues had been addressed at length in a case management hearing.
 - 3.1. What was the reason for the dismissal?

- 3.2. The respondent asserts that the reason was misconduct which is a potentially fair reason under section 98(2) of the ERA 1996.
- 3.3. The Claimant says the reason is because of he called the Safe Call hotline and informed them that his manager Mr Archer was putting pressure on him and he needed help. This followed Mr Archer raising the Claimant's use of a social media chat group on Yammer. And that he had been harassed by Mr Archer.
- 3.4. Has the Respondent shown the reason for dismissal?
- 3.5. Was the dismissal fair or unfair applying the band of reasonable responses? Following the 3-stage test in *British Home Stores v Burchell* [1980] ICR 303:
- 3.5.1. Did the respondent genuinely believe the claimant was guilty of misconduct? The respondent must show that this is the case.
- 3.5.2. Did the respondent hold that belief on reasonable grounds?
- 3.5.3. Did the respondent carry out a proper and adequate investigation?
- 3.6. The Claimant raised the following issues in respect of the fairness of the dismissal:
- 3.6.1. The offence never happened. Ms Dhaliwal told the Claimant he could take leave.
- 3.6.2. The claimant did not ask for dependency leave, but under pressure from circumstances and although he did not really understand the person taking the call, did not dispute the suggestion that what he wanted was dependency leave.
- 3.6.3. The investigation was unfair in that Ms Dhaliwal, Ms Scheide, Ms Mundy, Ms Blue and Ms Jackman were all friends so that there was no chance of a fair investigation.
- 3.6.4. The Respondent did not treat the Claimant in a fair and reasonable manner contrary to their policy EG901, para 2.1.
- 3.6.5. The Respondent did not allow the Claimant to be accompanied to the first outcome hearing contrary to their policy EG901, para 2.2.
- 3.6.6. Akram the claimant's work colleague who accompanied him to the second appeal meeting spoke privately with Mr Burton.
- 3.6.7. The delay in the disciplinary process from the alleged offence on the 11 August 2018 to 10 January 2019.
- 3.6.8. Following EG901 the alleged offence is not gross misconduct.
- 3.6.9. On 15 November 2018, Ms Blue pretended to be off sick and did not attend the disciplinary hearing.
- 3.6.10. The Respondent did not follow the time limits set by its policy EG901 para 3.3.1.

- 3.6.11. The Respondent banned the Claimant and his family from using the staff travel discount in September 2018 prior to sanctioning him and before they investigated the allegations.
- 3.6.12. The preliminary investigation meeting took 3 hours.
- 3.6.13. The respondent failed to follow para 4 of EG901 in that they brought up a second alleged offence about the claimant travelling in 2017 when they did not do anything about this at the time.
- 3.6.14. The Respondent did not monitor the absence level of the claimant and address issues as they arose in breach of their own policy (EG300).
- 3.6.15. The Respondent unreasonably delayed delivering the outcome of the first appeal.
- 3.6.16. Ms Jackman did not tell the Claimant that he had a second right of appeal.
- 3.6.17. The Respondent changed the person who was going to hear the second appeal from Mr Alder to Mr Burton.
- 3.6.18. The Claimant was only given a day to prepare his final appeal.
- 3.6.19. The Claimant requested to be accompanied by Ms Lucy Danny from the Richmond Fellowship to his final appeal hearing because he was suffering from anxiety and depression but this was refused.
- 3.6.20. The Respondent did not provide the Claimant with a fair disciplinary hearing as he was not given a warning at any time.
- 3.6.21. The Respondent did not follow appendix A of EG901 as the original offence was on the 11 August 2018 and the Respondent only informed the Claimant about the issue on 5 September 2018.
- 3.6.22. Ms Mundy was unaware that the Respondent's policy was for staff to call First Care to report staff absence.
- 3.6.23. Ms Mundy misread the policy on 5 September 2018 when she notified the Claimant of the alleged offence.
- 3.6.24. Ms Scheide told the Claimant that this was not a EG901 case.
- 3.6.25. That there was an error in the letter stating the disciplinary outcome which stated that the Claimant reported for sickness absence on 17 - 21 December 2018 when the Claimant was at work on those dates.

Procedure, documents, and evidence heard

- 4. This was a hybrid hearing which had not been objected to by the parties. The form of remote hearing was video. A full face-to-face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a partially remote hearing. The Claimant was present at the hearing venue and had a French interpreter with him throughout the hearing. The Respondent's counsel and witnesses all appeared by remote CVP link.
- 5. I was assisted by agreed bundle of documents of 756 pages. Throughout the hearing some further documents were admitted as evidence by both parties which

were duly added to the bundle bringing the pages to a total number of 777. Both parties had the opportunity to consider the additional pages. A 3.50 minute recording made of a conversation between the Claimant and Mr Dan Archer was also provided by MP4 format which I watched.

6. The Claimant provided a witness statement and gave oral evidence. Ms Nicola Blue, Ms Sharon Jackman and Mr Matthew Burton all provided witness statements and gave oral evidence on behalf of the Respondent.
7. I heard oral submissions from both Ms Bell and the Claimant. Ms Bell also submitted written submissions and a bundle of authorities on behalf of the Respondent.

Findings of Fact

8. The Tribunal made the following findings of fact, on the balance of probabilities, after giving careful consideration to the documentary and oral evidence provided to it and the submissions made by the Claimant and the Respondent's representative.
9. It was not disputed that as part of the staff perks of being an employee of the Respondent, the Claimant was entitled to buy flights at a discounted price through a staff travel scheme.
10. The Claimant was on leave between 14 and 18 January 2017. The Claimant informed the Respondent that he had a cough and a cold and in his evidence before the tribunal said he had the flu. On 18 January 2017 the Claimant booked and took a flight from London Heathrow to Basel, France. He was rostered to work until 14.00 on 18 January 2017. This flight departed at 13.48. The Claimant explained that this was because his mother was very ill and his family had told him her condition was deteriorating rapidly. No issue was raised with the Claimant about this at the time.
11. The Claimant was on leave between 7 and 21 December 2017. This was following the death of his mother on 28 November 2017. The Claimant took a flight from London Heathrow to Basel on 17 December and returned on 20 December 2017. He was rostered to work on 17-20 December 2017. The Respondent was aware of the Claimant's bereavement. No issue was raised with the Claimant about this at the time.
12. It was not disputed that the Claimant raised a 'Safecall' to the Respondent's Whistleblowing Hotline provider on 26 June 2018 because he believed Mr Dan Archer was putting pressure on him and he needed help. He said that he had been harassed by Mr Archer and colleagues and that he was insulted. The Claimant's Safecall followed a discussion he had with Mr Dan Archer. It was agreed that the

Claimant was on a social media platform the Respondent used called Yammer. The Claimant had posted something in a group which some members of the Respondent's staff regarded as offensive. Mr Archer told the Claimant about this and asked him not to use Yammer. He said he was not going to do anything about it. The Claimant recorded this conversation without the knowledge of the Respondent. Although the claimant may have felt insulted by the conversation having listened to the recording I do not consider that the way Mr Archer behaved was unreasonable. He raised an issue with the Claimant's conduct and told him he was not going to take any further action, this appears to be ordinary managerial behaviour.

13. The Claimant was on sick leave between 27 June and 19 July 2018. The Claimant reported that this was due to stress at work following his conversation with Mr Archer and due to his father's illness. The Claimant took a flight from London Heathrow to Basel on 6 July and returned on 12 July 2018. He was rostered to work from 6-9 July 2018.
14. Ms Buljinder Dhaliwal (BD) the Claimant's manager investigated the Claimant's Safecall. She sent an outcome letter on 13 August 2018. This recorded that a meeting was held on 9 August 2018 between the Claimant and Dan Archer at the end of which they 'shook hands' and both agreed to work to improve their working relationship.
15. The Claimant was interviewed for promotion to the position of Team Leader by Ms Blue on 24 July 2018. He subsequently got this promotion
16. It is agreed that on 11 August 2018 the Claimant used his staff travel concession to book flights for himself, his wife and his son to Algiers. The original booking was for a flight to depart on 13 August 2018 which was the start of the Claimant's pre-booked annual leave.
17. A few days prior to this on 9 August 2018 the Claimant met with Ms Dhaliwal. It was agreed that during this meeting he asked whether he could take 11 August 2018 off as a day in lieu so that he could depart for his holiday earlier.
18. It was not disputed that the Respondent's formal practice was that any leave, including lieu days, must be requested and then formally approved on the Respondent's electronic staff tracker system. Ms Dhaliwal did not give evidence before the tribunal and I accept the Claimant's evidence was that an informal practise existed in his team which meant that what had been agreed with an employee's manager verbally overrode the content of the staff tracker.
19. It was disputed as to exactly what was said within this meeting. The Respondent's account was that Ms Dhaliwal said she would '*come back*' to the Claimant about

his request. However, the Claimant told the tribunal he left the meeting with the understanding that the time off had been agreed and that Ms Dhaliwal had said she would *'take care of it'* and therefore he then thought he had been given the time off. I do not accept the Claimant's account of this meeting. His evidence of what was said in the meeting was inconsistent. In the investigation meeting he said he thought he had leave because *'BD did not get back to me'*. This is consistent with Ms Dhaliwal's account of the meeting. Whereas at the time in the disciplinary hearing he said that *'BD did not say yes or no, he was under the impression that she would take care of it'*. In the event, it was clear from both his later email to Ms Dhaliwal on 13 August 2018 and also from his call to First Care that the Claimant was aware prior to boarding his flight on 11 August 2018 that he was supposed to be at work.

20. On 10 August 2018 the Claimant amended his travel booking so that his departing flight would leave on 11 August. On 11 August 2018 the Claimant was rostered to work from 22:00. During the day on 11 August 2018 the Claimant remotely accessed his staff tracker which contained the staff roster. The last time the Claimant accessed the tracker was 16:10. The Claimant accepted in his evidence that the tracker at this stage still showed that he was rostered to work. The Claimant agreed that he could access the roster on his telephone through a portal. He agreed that he did this whilst travelling to the airport and *'fiddling with his phone'*.
21. It was documented that 21:39 the Claimant telephoned the Respondent's First Care telephone line. First Call was an independent company who ran the Respondent's absence reporting line. During the call the Claimant informed First Care that he could not go to work because he had a 'private problem'. The Claimant was asked by the call handler whether the reason for absence was due to care of a dependent. The Claimant confirmed that that was correct. The Claimant was asked twice on this call whether his absence should be recorded as absence due to the care of a dependent. On both occasions the Claimant responded 'yes'. He was consequently granted dependency leave. The Claimant's evidence before the tribunal was that he could not hear properly as the person he was speaking to had an accent he didn't understand and so he just said yes. The Claimant explained in his evidence that he had called First Care as that is what he understood he was to do when he was absent from work in an emergency situation. The Claimant also gave evidence that his wife had been very distressed at this point and he had felt he had to fly with her on this earlier date.
22. On 13 August 2018 the Claimant emailed Ms Dhaliwal at 10:01 saying 'I am very sorry, I tried everything but I couldn't come at work on Saturday. Would you be able to use a lieu day?'

23. The Claimant then returned to work after his annual leave came to an end on 29 August 2018.

Disciplinary process

24. Upon the Claimant's return to work an informal meeting was arranged for the Claimant to attend on 5 September 2018 with Ms Edwina Munday. This was due to his call to First Care. Following this meeting Ms Munday considered that a preliminary investigation was necessary in line with the Respondent's disciplinary policy to determine whether the Claimant had a disciplinary case to answer for breaching the staff travel guide and policy EG406.

25. Around this point the Claimant's access to the staff travel discount scheme was removed.

26. Ms Sue Scheide then conducted a preliminary investigation. An interview took place that lasted some three hours in which the Claimant was asked about the use of the staff travel policy. In this interview the Claimant accepted that at the airport he discovered that he was still rostered to work, and that he had gone to the airport and not to work as he thought he had leave because '*BD did not get back to me*'.

27. As part of the investigation, Ms Dhaliwal was also interviewed. She was asked whether or not she had granted leave on 18 August 2018. It is recorded that in interview she said she did not and that she had only said she would '*look into it*'. After this the matter was passed to Mr Param Kang, to determine if there was a case to answer. There was no dispute that Mr Kang was an independent manager who was not involved in the case, who decided that there was.

28. Following the investigation Ms Blue was appointed as Disciplinary Officer. She wrote to the Claimant on the 7 November 2018 informing him that there would be a disciplinary hearing. This letter informed the Claimant that the matter could constitute gross misconduct and he could be dismissed. This letter informed the Claimant that he could be accompanied to the hearing if he wished and attached a summary of who could accompany him should he so wish.

29. The consequent disciplinary hearing was supposed to take place on 15 November 2018, however Ms Blue was unwell and so it was rearranged and took place on 26 November 2018. The Claimant explained during the hearing that he did not know his leave had not been approved until he reached the airport on 11 August 2018.

30. During the hearing the Claimant also explained that his wife suffered from depression and so he could not leave her alone in the airport or to travel. The Claimant said that he had GP evidence to show he was his wife's carer due to her depressive illness.

31. Following the hearing Ms Blue undertook further investigations of the Claimant's absence record and use of the staff travel benefit and discovered that the Claimant may have used his staff travel benefits whilst absent on sick leave on other occasions. On 19 December 2018 Ms Blue wrote to the Claimant to inform him that a further allegation relating to his use of staff travel whilst on sick leave would be considered. The Claimant was provided with the dates of sickness absence which were in issue, namely 18-21 January 2017, 17-20 December 2017, and 6-12 July 2018. A further disciplinary hearing took place on 2 January 2019 to consider these other matters.
32. At this hearing the minutes record that the Claimant stated he was not aware that he could not use the staff travel benefit whilst he was on sick leave. He also stated that he had not been aware of the Respondent's policy in relation to staff travel. He repeated this before the tribunal and said that he was unaware of the Respondent's policies. Although he did not dispute they were on the staff intranet, his account was that he did not have access to them as he did not work with a computer and did not know they existed. Ms Blue's evidence was that he was given a copy of the staff travel policy when he commenced employment with the Respondent. I accepted Ms Blue's evidence on this point which was entirely credible. It was also clear that the Claimant was aware of the staff travel policy on the basis of his own account, as he knew of its existence and indeed had used it on a number of occasions.
33. Ms Blue concluded that the Claimant was guilty of gross misconduct because he had fraudulently used dependency leave to extend his annual leave and had deliberately travelled using his staff discount at this time, whilst knowing he should have been at work. And that in addition he had on previous occasions also used the staff travel discount whilst on periods of annual leave.
34. Ms Blue wrote to the Claimant with the outcome of the disciplinary on 14 January 2019. The letter confirmed that the Claimant was summarily dismissed due to gross misconduct. The misconduct was said to be *'Booking flights, travelling to Gatwick airport and taking a flight to Algiers instead of reporting to work while knowing he was rostered to work on 11 August 2018. Calling the Respondent's absence line, First Care, stating that he had an 'private problem' and taking 11 August 2018 as dependency leave'. And 'Using staff travel while on sick leave contrary to policy EG300 on (i) 18 and 21 January 2017; (ii) 17 and 20 January 2018 and (iii) between 6 and 12 July 2018'*.
35. The Respondent accepted that this letter included an error in dates in that it stated that the Claimant had been off work on sick leave on 17-20 December 2018, when it should have read **2017**. However, I find that this did not cause the Claimant any confusion as it would have been apparent from the content of the disciplinary hearing that this was an administrative error. Furthermore, the Claimant addressed

the dates 17-20 December 2017 in his appeal letter thereby demonstrating that he did not suffer any confusion and understood the allegations made against him.

36. The Claimant appealed Ms Blue's outcome on 19 January 2019. In his appeal letter he expressed "deepest regrets and sincerest apologies for [his] misconduct for using staff travel inappropriately." Ms Sharon Jackman considered the Claimant's first appeal. She held an appeal meeting with the Claimant on 29 January 2019. The notes of this meeting record that the Claimant accepted that he had breached the Respondent's policies, but that he felt the sanction was too severe. In his appeal hearing with Sharon Jackman the Claimant stated that if he had known he did not have leave before he got to the airport, he would have come to work'. The Claimant also said that when he emailed Ms Dhaliwal on the 13 August 2018 he thought that she had forgotten. However, his email did not say this. His email said he was 'sorry' and '*I tried everything but I couldn't come at work on Saturday. Would you be able to use a lieu day?*'.
37. He went on to accept this was wrong and that he was sorry for his bad judgment. In his appeal letter dated 19 January 2019 he stated '*I would like to extend my deepest regrets and sincerest apologies for my misconduct for using staff travel inappropriately... I know that this lapse in judgment was a bad one, but please keep in mind my track record up until now and extenuating circumstances leading to my misconduct...*'.
38. Ms Jackman dismissed the Claimant's appeal. There was a delay of almost two months in giving the outcome of the appeal. This was eventually delivered to the Claimant in a letter dated 20 March 2019. The reason for this delay in part was due to a transfer in the IT systems BA used to a new system called IAG Cargo system which limited Ms Jackman's access to her emails for a short period, and also in part due a re-structure which meant she spent time away from her substantive role.
39. The Respondent's policies allowed for a second right of appeal. The Claimant was notified of this right Ms Jackman's appeal letter on 20 March 2019. Although this letter did not expressly state the Mr Alder's email address, I note from the email of the 25 March 2019 from the Claimant to Mr Alder that the Claimant was able to obtain the correct email address and exercised his right of appeal by sending an email to Mr Alder on 25 March 2019 appealing Ms Jackman's decision. In this email he stated '*that this lapse of judgement was a bad one*' but asked for leniency. Mr Burton was assigned the role of final appeal officer. The Claimant's final appeal hearing took place on 11 April 2019. The Claimant was sent a letter attached to an email notifying him of the date of hearing on 5 April 2019 and therefore had 5 days to prepare for it.
40. The Claimant requested to be accompanied to his final appeal by Ms Lucy Danny from the Richmond Fellowship because he was suffering from anxiety and

depression. This request was refused by the Respondent on the basis Ms Danny was not within the category of individual who were allowed to accompany individuals in accordance with the Respondent's policy. However, Ms Danny was invited to submit evidence or a statement in respect of any information that was important to his appeal. In the event, no evidence or statement was provided by Ms Danny. The Claimant was however accompanied by an individual called Akram who was an employee of the Respondent. During a break in the appeal hearing Akram asked Mr Burton to show some compassion in the appeal decision. He also he also made the point again later in the appeal hearing. I find that he did not say anything further to Mr Burton without the Claimant being present.

41. Mr Burton concluded that dismissal was the appropriate sanction and did not uphold any of the Claimant's other grounds of appeal. This was communicated to the Claimant in an outcome letter dated 23 April 2019.

The Respondent's policies

42. The Respondent's contractual policy which deals with time off for dependents, EG406, states that it is to be used for unforeseen matters where there has been an unexpected or sudden emergency. It confirms that employees who misuse it may be subject to disciplinary action for gross misconduct.

43. The Respondent's Staff Travel Guide and its Absence Management Policy (EG300) states that employees 'must not use non-contractual personal rebate travel concessions during a period of absence due to sickness...' without written permission from their line manager. EG300 states that using staff travel during a period of sickness absence without authorisation is misconduct.

44. The definition of dependency leave, as stated in the Respondent's Time off for Dependents Policy – EG406 is 'a right allowing employees to take a reasonable amount of time off to deal with certain UNEXPECTED or SUDDEN EMERGENCIES...'.

45. The Respondent also had a disciplinary policy in place at the time (EG901).

46. There was no dispute that these policies applied to the Claimant's during his period of employment with the Respondent. I accepted the Respondent's evidence that these policies were available on the staff intranet and that the Claimant was given the staff travel policy when he joined the Respondent's employment.

47. The Claimant told me that he was not aware of these policies and that he did not have access to the staff intranet. I do not accept this evidence. The Claimant was aware of the staff travel discount and had used it on multiple occasions. He was aware of First Care and the existence of dependency leave. On balance I therefore accept the Respondent's evidence that he was provided with copies of the relevant

policies and had access to them on the staff intranet. I also had sight of a screenshot of the staff booking page which one must access to book a flight through the staff travel policy. This has an 'important' message box that refers to a breach of the policy or misuse of the discount being taken seriously and 'for serving employees will lead to disciplinary action under EG901'.

The Law

48. The burden of proof lies on the Respondent to show, on the balance of probabilities, what the reason or principal reason for dismissal was and that it was a potentially fair reason under S. 98 (2) ERA.

49. S.98 ERA provides:

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
(2) A reason falls within this subsection if it—
... (c) is that the employee was redundant, or ..."

50. The Respondent contends that the reason for dismissal was gross misconduct, which is a potentially fair reason within S. 98(2)(b) ERA. If the Respondent shows a potentially fair reason, such as misconduct, for dismissing the claimant then the question of fairness is determined in accordance with s.98 (4) ERA which states:

"(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..."

51. I am also guided in my deliberations, because this is said to be a conduct dismissal, by the leading case of British Home Stores v Burchell [1978] ICR 303 which sets out the issues which I should

consider including whether the Respondent had a genuine belief in the conduct complained of which was founded on a reasonable investigation and whether a fair process was followed. The investigation should be one which is fair and reasonable and the band of reasonable responses test applies to that part of the process as well as to the overall consideration of the fairness of the sanction (Sainsburys Supermarkets Limited v Hitt [2003] IRLR 23).

52. If the Burchell test is answered in the affirmative, I must still determine whether the decision of the employer to dismiss the employee rather than impose a different disciplinary sanction (or no sanction at all) was within the range of reasonable responses that a reasonable employer could reach.

53. In considering the fairness of the dismissal, it is important that it looks at the process followed as a whole and the appeal should be treated as part and parcel of the dismissal process: Taylor v OCS Group Limited [2006] ICR 1602. I am also required to have regard to the ACAS code of practice on disciplinary and grievance procedures

54. It is important that the Tribunal does not substitute its own view for that of the respondent London Ambulance Service NHS Trust v Small (2009) EWCA Civ 220 at paragraph 43 says: *"It is all too easy even for an experienced ET to slip into the substitution mindset. In conduct cases the claimant often comes to the Et with more evidence and with an understandable determination to clear his name and to prove to the ET that he is innocent of the charges made against him by his employer. He has lost his job in circumstances that may take it difficult for him to get another job. He may well gain the sympathy of the ET so that it is carried along the acquittal route and away from the real question – whether the employer acted fairly and reasonably in all the circumstances at the time of the dismissal."*

Conclusions

55. The Respondent has shown the reason for dismissal related to the Claimant's conduct and that there was a genuine belief in the same.

56. I do not accept the Claimant's assertion that his dismissal was due to the fact he contacted Safecall in light of a conversation he had with Mr Archer about the his use of Yammer. This conversation was recorded by the Claimant and the record was before the tribunal. Having listened to the recording, I do not find that this conversation was inappropriate in any way on behalf of Mr Archer. Mr Archer was not angry or bullying the Claimant during this conversation. Further, Mr Archer was not involved in the investigation of the Claimant's dismissal. The issue regarding

the Claimant being upset and contacting Safecall was investigated separately by the Respondent and brought to an amicable solution. There is no evidence before me that Mr Archer was upset about the Claimant contacting Safecall about him, or that he acted maliciously, or in a harassing manner against the Claimant as a result of this.

57. The Claimant has produced no evidence to support his assertion or to undermine the Respondent's stated reason for dismissal. The Claimant's evidence did not set out any specifics of this allegation, he simply felt that the management '*did not like him after this*'. Nor did the Claimant raise this issue in either the disciplinary hearing or the appeal hearing. Further, it was not disputed that Mr Burton was independent to the extent that he did not work closely with the other managers involved in the disciplinary process. He was not aware of or involved in the Claimant's contact with Safecall.
58. For these reasons, I find that Mr Archer and the consequences of the Claimant contacting Safecall did not influence the Respondent's decision to dismiss in any way.
59. In addition, the fact the Claimant had been interviewed for Team Leader by Ms Blue on 24 July 2018 and subsequently got the promotion indicates there was no ill will towards the Claimant on the part of Ms Blue or the Claimant's management as a result of the Safecall having been made.
60. The Respondent conducted an extensive investigation into the Claimant's use of the staff travel policy. Throughout the investigation the allegation was maintained by the Respondent. Other than the Claimant's assertion, there was no indication in the evidence before me of any other reason influencing the decision to dismiss. The decision letter and the subsequent outcomes from both appeals stated that the reasons were the Claimant's misuse of the staff travel policy whilst on sickness leave and that the Claimant fraudulently used dependency leave to facilitate an earlier departure date to fly away from the UK. Ms Blue gave evidence that it was the Claimant's actions on the 11 August 2018 and then her subsequent investigations into the Claimant's previous use of the staff travel discount that were the reasons that underpinned her decision to summarily dismiss the Claimant. I find that Ms Blue a credible and honest witness, and I accepted her evidence on this point.
61. The investigation conducted by the Respondent was within the reasonable range. Ms Dhaliwal was interviewed. The Claimant was interviewed at length. The Respondent's documentary records were considered both in the initial investigation and then again by Ms Blue. Further, there was no suggestion from the Claimant that the Respondent could have done anything more in order to investigate the matter. I consider that Ms Blue could have investigated the second

set of allegations relating to the leave periods in January 2017, December 2017 and July 2018 more thoroughly as she could have asked Ms Mundy about whether or not permission had been sought to travel. However, as she did consider the information in the staff records and on staff tracker and did put these allegations to the Claimant in a second disciplinary hearing who was able to give his account and accepted *'that he thought travelling on off days at the end of sickness was ok but now knows [this is] not the case'* and that *'he had no idea about policy'*, I do not consider that this takes the investigation outside of the reasonable range.

62. I then considered whether there were reasonable grounds to sustain the belief in the misconduct. Although, initially the Claimant simply did not accept that this was misconduct, by the time of the appeal the Claimant accepted that he had used the staff travel discount when he was due to be at work and that he had signed off as needing dependency leave when he realised he was still rostered to work. Thus the Claimant had admitted the misconduct by the time of the appeal. The Respondent also had considered the account of Ms Dhaliwal that a day in lieu had not been granted to the Claimant on the 11 August 2018. This was verified by the Claimant who said during the investigation meeting that as he had not heard back from Ms Dhaliwal he thought the leave he had requested had been granted. Further the transcript of the call with First Care demonstrated that the Claimant was asked if dependency leave was the appropriate type of leave to cover his absence, to which the Claimant agreed.
63. In addition, the Respondent's policies are clear on prohibiting the use of the staff travel discount during periods of sick leave. And that dependency leave is for unforeseen situations.
64. There were thus clear grounds for believing the facts of the misconduct.
65. Before the Tribunal the Claimant suggested that he did not mean to say sorry and accept that he had acted wrongly. He explained that he was saying this because he wanted his role back again and he did not know he had done something he should not have done. However, the issue I have to consider is whether there were reasonable grounds for the Respondent to believe the misconduct at the time of the dismissal which included the Claimant's admission of his misconduct. I accept there were.
66. The Claimant raised a number of specific issues regarding the procedural fairness of the dismissal, which I considered in turn.
67. The Respondent relied upon earlier instances of alleged misuse of the staff travel policy despite these not having been raised with the Claimant contemporaneously. The Respondent did not investigate these matters until the August 2018 occurred. Although this meant there was a delay in the consideration of these events, I do

not consider that this was sufficiently unfair to take the decision to dismiss outside of the reasonable range when considered in the context as additional allegations that were only considered significant after the misconduct that occurred in August 2018 was investigated.

68. The Claimant was told that he could be accompanied to the initial disciplinary hearing, this was made clear in the letter inviting him to the hearing.
69. There was no evidence of any conclusion between Ms Blue and Ms Jackman, although they did work together on a daily basis. However, in any event there was a further appeal to Mr Burton who was not alleged by the Claimant to have been a close associate of those involved in the earlier parts of the disciplinary process. It also follows that the change of personnel from Mr Alder to Mr Burton to hear the final appeal was not biased or indeed collusion or evidence of a closed mind on the part of the Respondent.
70. The Claimant was accompanied to the final appeal hearing by a colleague. Although the Claimant may have felt more supported by Ms Danny, I do not consider that the refusal to let Ms Danny attend the hearing to support the Claimant made the disciplinary procedure unfair. The Claimant was not alone at the hearing and was invited to provide evidence as to his health and the effect this had on him. Further, I find that the comment made by Akram, the Claimant's work colleague who accompanied him to the second appeal meeting, when he spoke privately with Mr Burton was helpful to the Claimant. Therefore it did not bias or taint the fairness of the appeal process.
71. I do not accept that Ms Blue pretended to be sick on the 15 November 2018. I have found that she did leave work that day due to being unwell. In any event the delay this occasioned was very short and did not affect the overall procedural fairness of the disciplinary process.
72. The removal of the staff travel perk from the Claimant is not a matter that appears to be unreasonable in the circumstances of investigating misuse of this perk. Further, and to the extent that this is relevant as background to the disciplinary process it does not affect its fairness.
73. I find that the Claimant was informed that he had a second right of appeal as this was set out in the first appeal outcome letter. Further the Claimant had at least five days to prepare this appeal and I find this time period in the context of a second appeal right was reasonable.
74. The fact the Respondent only informed the Claimant about the issue on 5 September 2018, despite the misconduct occurring on 11 August 2018 is reasonable in light of the fact the Claimant was on annual leave for most of this period until 29 August 2018.

75. The final point that the Claimant makes is that there was delay in the process. The process did take a significant period. It was five months until the dismissal outcome was notified to the Claimant and then a further three months until the final appeal was concluded. This is a lengthy period. However given the circumstance I consider this to be reasonable. The Respondent had to investigate the first allegation and then the further incidents of staff travel policy misuse that came to light. Further, the Respondent's policies allowed for two rights of appeal both of which were exercised. Therefore I do not find that the delay was so significant as to make the dismissal unfair.

76. Finally, I have to consider if the decision to dismiss was outside of the range of reasonable responses. I remind myself that the Tribunal must not substitute its view as to what disciplinary penalty is appropriate in these circumstances. I have taken into account the Respondent's size and the administrative resources available to it. However, I consider that the decision to dismiss was within the reasonable range.

77. The Claimant told the Respondent that he was sorry he had misused the staff travel perk and that it was his bad judgement. He also was aware at the airport that he did not have the day off, and yet chose to fly out of the country in any event and not to turn up to work. Given the absence caused by this and the misuse of the staff travel discount to obtain a flight, I find the decision to dismiss did fall within the range of reasonable responses open to this Respondent.

78. The Claimant's dismissal was therefore fair and his claim that it was unfair contrary to s. 94 ERA is dismissed.

Employment Judge Price

Date 8 November 2021 _____

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

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