



# EMPLOYMENT TRIBUNALS

**Claimant:** J Sarr

**Respondent:** CIS Security Limited

## RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD REMOTELY (London Central)**

**On: 3&4 November 2021**

**Employment Judge:** Employment Judge Henderson (sitting alone)

### Appearances

For the claimant: In Person

For the respondent: Ms T Plant (HR Director)

## JUDGMENT

**The claim for unfair dismissal does not succeed. The claimant's dismissal was fair and reasonable in all the circumstances.**

**The date provisionally agreed with the parties (15 December 2021) to assess compensation is not now needed as the claim was unsuccessful.**

## REASONS

### Background

1. This was an unfair dismissal claim (under section 98 Employment Rights Acts 1996 (ERA)) brought by the claimant in an ET1 dated 8 May 2021 (following Early Conciliation through ACAS from 26 February to 9 April 2021).

2. For the purposes of this claim, the claimant has been continuously employed by the respondent as a Security Supervisor since January 2016 and therefore has the right to claim unfair dismissal. The claimant had also previously been employed by the respondent from 2001 to 2012.

## The Issues

3. As neither party was legally represented, I clarified with them the issues for determination in this case; attempting to explain these in non-legal language as far as possible. I explained that in an unfair dismissal claim there were two key elements: the “why”, that is, the reason for the dismissal and whether this was potentially fair and the “how”, that is, the way in which the dismissal was carried out and whether this was procedurally fair and reasonable.
4. The claimant (C) was dismissed, without notice, on 29 January 2021. The respondent (R) said this was for gross misconduct: namely, loss of trust and confidence; taking extended breaks; misuse of a contractor access card on 14 Jan 2021 and for bringing R into disrepute with its client, Regent University London (RUL). C denied such conduct.
5. I explained to the claimant that the Tribunal’s role in this case was not to determine whether or not he had actually committed the alleged misconduct, but was to determine whether the dismissal was unfair on the basis set out above (ie the “why” and the “how” as set out in the relevant statute).
6. I explained the principles in **BHS v Burchell** for misconduct dismissals. It was agreed that the issues for determination by the Tribunal were:

-Had R conducted a reasonable investigation into the alleged misconduct? C said that the investigation was flawed because: a) he had been targeted for investigation by Simon Murphy, his line manager, with whom he had a poor working relationship; b) D Woodley (Investigating officer) and Mr Murphy had obtained several witness statements from the claimant’s colleagues on the night shift Team, but these statements had not been shown to him until after he had commenced Tribunal proceedings; c) the claimant said these witnesses had been intimidated by Mr Woodley and d) other colleagues had committed similar offences and had not been questioned/investigated; if yes,

-Based on a reasonable investigation, had R formed a genuine belief in the misconduct? If yes,

-Had R conducted a fair disciplinary process? The claimant raised similar points as per the investigation- he said that only two witness statements were shown to him at the disciplinary meeting. If yes,

-Was dismissal a fair sanction within the range of reasonable responses open to this employer? C said that other colleagues had committed similar (or worse) misconduct and had only received Final Written Warnings, which was the

sanction he believed he should have received, especially given his long service with R;

-Was the appeal process fair? C said that Tony Graves (Appeal Officer) had not allowed all the grounds of appeal raised by C to be heard at the appeal on 16 Feb 2021.

### **Conduct of the Hearing**

7. The hearing was conducted remotely over 2 days, using the Cloud Video Platform (CVP).
8. As neither party was legally represented, I explained the process to be followed for the hearing and how evidence was given on oath; that each party would have the opportunity to cross-examine the other side's witnesses etc. and would have the opportunity to make a closing statement/summary at the end of the hearing.
9. The respondent provided (in electronic form) an Agreed Bundle of documents relevant to the issues (470 pages in total). I confirmed that the claimant and the all the witnesses had access to this Bundle. Page references in this Judgment are to that bundle unless otherwise specified.
10. I heard evidence on behalf of the respondent from Dominic Woodley (Account Manager for RUL), who had carried out the investigation; Neil Moscrop (Head of Intelligence and Operational Support) who carried out the disciplinary hearing and made the decision to dismiss and Tony Graves (Operations Director) who heard the appeal. I also heard evidence from the claimant.
11. All the witnesses confirmed (on oath) the content of their written witness statements as their evidence in chief to the Tribunal. I was also presented with written witness statements on behalf of the claimant, from Jessica Olla and Jeremy Ledgister, but neither attended the hearing. I explained to the claimant that whilst I would take the content of these statements into account, I could only give them limited weight as the individuals had not attended in person and the respondent had not been given the opportunity to cross examine them.
12. I also heard oral submissions from both parties. At the end of the hearing, in the late afternoon of the second day, I reserved my Judgment, which I now provide with full Reasons. In accordance with Tribunal practice, I also agreed with the parties a Provisional Hearing Date for Remedies (the assessment of compensation) on 15 December 2021. I explained that if the claimant did not succeed in his unfair dismissal claim then this date would not be needed.

### **Findings of Fact**

13. I explained to the parties that I only needed to hear evidence which would enable me to decide the Issues as set out above. I heard detailed evidence on several matters but I only make such findings of fact below as are necessary for me to determine the Issues.

14. As the evidence I heard also refers to several of the claimant's colleagues who were neither parties to, nor witnesses in these proceedings, I have used their initials in this Judgment and Reasons rather than their full names, bearing in mind the Judgment and Reasons will be available on the online Register.

#### Background

15. The respondent is a company which provides security services to various clients at various locations in the UK. The claimant commenced his assignment at RUL as a Security Supervisor on 1 November 2018. This involved him looking after the night/weekend team. The claimant accepted in his evidence that as Supervisor he set the rota for the members of his team on the night shift; that he was responsible for authorising the breaks taken and that it was his responsibility to ensure that a satisfactory security presence was maintained on the site at all times, and in the control room, as required by the client. He confirmed that the contractual break period was 90 minutes per 12 hour shift; however, he said that it was common practice for staff to be allowed to take extra time for breaks if it was quiet. This was not accepted by the respondent.
16. The claimant's line manager, as from September 2019, was Simon Murphy, who was Head of Security at the RUL site. The claimant's evidence, which was supported by the written statements of Ms Olla and Mr Ledgister, was that Mr Murphy had poor relations with the Night Teams, who felt that he did not address their concerns and did not take time to meet with them in person, but managed them from a distance. The Night Teams also felt that Mr Murphy favoured the Day Teams and targeted the Night Teams' performance for criticism. Mr Ledgister had lodged a formal grievance against Mr Murphy. The claimant accepted that he had not himself lodged any formal grievance against Mr Murphy, though he said he had raised concerns about Mr Murphy with Mr Woodley. However, the claimant never put this fact to Mr Woodley in cross examination.
17. The respondent's witnesses all gave evidence to the effect that Mr Murphy was an excellent manager and had achieved good results for the company.

#### The incident on 13/14 January 2021

18. In January 2021, RUL had asked Mr Murphy to review and remove contractors' access to the student halls of residence by use of their access cards. This meant that contractors could only access student accommodation when accompanied by a security officer. Mr Murphy had accordingly suspended the contractor cards on 13 January as requested.
19. There was no dispute that at this time, because of the National Lockdown due to the Covid 19 pandemic, there were very few students on the RUL site.
20. In the early morning of 14 January 2021 (over the 13/14 January nightshift) Mr Murphy noted that someone had attempted to use one of the suspended

contractor cards (Card C 44) to access the Oliver flats at 01:54, but access had been denied.

21. Mr Murphy had asked the claimant, as the Supervisor on duty at the relevant time if any contractors had been on site and if he knew who had attempted to use the card. The claimant had said that no contractors had been on site and he had no knowledge of who had attempted to use the suspended card.
22. Mr Murphy was concerned that an unauthorised person had been on site and had attempted to access the Oliver flats so he began to review the CCTV footage and the access control system. While doing so, Mr Murphy discovered that card C 44 had been used on the previous morning (from 01:47 to 05:14) to gain access to Oliver flats, prior to his suspending the contractors' cards. (The log for card C 44 was shown at page 268). Mr Murphy then looked at the record for the claimant's own access card and noted that his personal access card had been used at similar times and in linked locations to the use of card C 44. This suggested that the claimant may have been the person using the contractors' card C 44.

#### The Investigation

23. Mr Murphy then met with Mr Woodley and Ms Vincent (Regional HR Adviser) to discuss his findings to date and to seek advice on next steps to be taken. Mr Woodley advised Mr Murphy to speak to the members of the Night Team who had been on duty over 12/13 and 13/14 January to see if they could provide any further information.
24. The Night Team for 12/13 January was the claimant, CF, CB-M and KD (at the Reid Hall desk). The Night Team for 13/14 January was the claimant, CF, AC and KD (at Reid Hall). Pages 278-307 showed the Daily Occurrence Book (DOB) entries for the relevant periods
25. Mr Murphy reported the outcome of his informal discussions with CF, CB-M and AC in an email dated 15 January 2021 to Ms Vincent and Mr Woodley (pages 254-266). All three, confirmed that no contractors had been on site at the relevant times; however, Mr Murphy expressed his shock at discovering, following these discussions that the control room, which was supposed to be manned 24/7, had been left unmanned for 3 hours 30 minutes consecutively on 13 January and for 1 hour 7 minutes in total on 14 January.
26. Mr Woodley said in his oral evidence that as a grievance had been raised against Mr Murphy by Mr Ledgister (one of the Night Team members), it was regarded as more appropriate for him to carry out the formal investigation into the incident on 13/14 January, which he duly did.

27. On 18 January 2021 Mr Woodley conducted a fact-finding interview with the claimant with Ms Giles of HR in attendance (Pages 316-322) which was summarised in an email at pages 329-331.
28. Mr Murphy's observations concerning the attempted use of card C 44 and the correlation of the claimant's location (based on his own access card) were raised with the claimant. When he was asked where he had been between 01:00 and 05:00 on both 13 and 14 January he said that, other than when he went downstairs for food, which would have been for less than an hour, he would have been, either in reception or in the two break-out rooms behind reception using his phone or doing his own personal college work.
29. When asked why the control room was left unattended for considerable lengths of time, the claimant stated that he would have been in reception or in the area between reception and the control room and so could oversee both areas. Mr Woodley noted that these areas were in view of the CCTV, but that this did not show the claimant present at the relevant times. During that meeting it also became apparent that there may well have been inaccuracies on the DOBs (which were completed by the claimant) concerning the timing of the claimant's breaks.
30. The claimant categorically denied using any contractor cards and denied being away from the control room/reception area.
31. Mr Woodley reported that after checking the CCTV behind reception which showed the breakout offices, he observed that the claimant did not go to those rooms but left the reception area in the general direction of the Oliver flats and did not return until after 5 am on both nights.
32. As minimal information had been gained from Mr Murphy's informal conversations with the Night Team staff, Mr Woodley decided to call them in for a formal fact-finding interview on 20 January 2021 (pages 337-356). These meetings were with those who had been on the night shifts for 13 and 14 January, but also included OS and ODS, who formed part of the Night Team. Mr Woodley accepted that he had subsequently extended the investigation to 8 or 9 people on the Night Team, which included Mr Ledgister and Ms Olla. He said this was to cover the ongoing discovery that the control room had been left unmanned for considerable periods and that members of the Night Team had been taking extended breaks.
33. The claimant challenged Mr Woodley in his cross-examination that the extension of the investigation gave rise to inconsistencies, in particular, that Mr Woodley had not spoken to another colleague, A. Mr Woodley said that this was because A had not been on the relevant night shifts.
34. It was also noted that at these facts-finding meetings with Mr Woodley, Mr Murphy was the note-taker. Mr Woodley said that he did not regard this as being irregular given Mr Murphy's role as Head of Security.

35. The claimant put to Mr Woodley in cross-examination that Mr Murphy's presence and also the manner of questioning at the fact-finding interviews was intimidatory towards the witnesses. The claimant especially cited the following wording which was used by Mr Woodley in the majority of the interviews, "*we have multiple pieces of evidence that we are going to discuss which implicate a number of members of the team as either themselves carrying out acts of misconduct or knowingly allowing these actions to take place on their shifts. Is there anything you would like to let me know before I continue?*"
36. I find that there is nothing contained in the interview notes which suggest that any of the witnesses were intimidated by this particular phrase, and indeed the interviewees did not respond to that question with any particular revelations. I also find that whilst Mr Murphy's presence at the fact-finding interviews was not consistent with the decision for Mr Woodley to carry out the investigations instead of Mr Murphy, there is no suggestion from the interview notes that Mr Murphy intervened so as to render the interviews unreasonable or unfair.
37. In his summary of the fact-finding interviews, Mr Woodley noted that AC, CF and OS had all acknowledged (some more reluctantly than others) that the claimant had regularly been taking breaks of about 4 hours each night for several months/almost a year. Further, the interviews revealed that claimant often allowed others on the team to take 2.5 hour breaks, if it was quiet. No one had thought to report this to Mr Murphy.
38. The claimant also put to Mr Woodley in cross-examination that he had been suspended on 15 January. Mr Woodley denied this and said that the suspension commenced on 18 January following his fact-finding interview with the claimant and this had been confirmed in a letter of 19 January 2021 (page 267). Mr Woodley explained that as the allegations related to gross misconduct and as the claimant was the supervisor of the relevant members of staff who would be interviewed, it was appropriate for the claimant to be asked not to attend the site. I find that this was a reasonable step for the respondent to take in the circumstances.
39. Mr Woodley said in his oral evidence that he had also viewed all the CCTV footage for the relevant two nights and that this information had been summarised (with plans and commentary showing the claimant's location at particular times) for the purposes of the Tribunal hearing at pages 357-379. The information had been available at the disciplinary and appeal meetings, but not in exactly the same format.
40. This information showed that the claimant had not been in the interview rooms behind reception, where he had claimed to be. Given the emerging information concerning extended breaks taken by the claimant and other members of the Night Team and the discrepancies concerning the claimant's account of where he had been during his extended breaks and given the correlation between where the claimant had been observed and the attempted use of card C 44 in

the Oliver flats, Mr Woodley decided to refer the matter for a disciplinary hearing.

41. As neither party was legally represented at the hearing, the evidence was often unclear and unstructured. However, I find that a reasonable investigation was carried out by Mr Woodley which was not targeted against the claimant and was not conducted in an intimidatory manner. I find that the investigation was extended beyond the members of the night shifts on 13 and 14 January, but I find that this was reasonable given the emerging evidence showing a pattern of extended breaks taken by all members of the Night Team, leaving the control room unmanned for significant periods.
42. I also find, given the content of the fact-finding interviews and Mr Woodley's observation of the CCTV footage and his tracking of the claimant's location over the night of 13/14 January, that he did form a reasonable and genuine belief that the claimant had attempted to use card C 44 on 14 January and that he had been taking extended breaks and leaving the control room unmanned.

#### The Disciplinary Hearing

43. The disciplinary hearing was scheduled for 25 January 2021 and was to be heard by Mr Moscrop, who was not connected with the RUL site. The claimant had been notified of his right to be accompanied but attended alone by choice.
44. On 22 January 2021 the claimant was sent information/evidence in preparation for the disciplinary hearing (pages 382 and 383), which included 2 witness statements, whilst this was not clear, these appeared to be from CF and AC, who had been on duty on 13/14 January.
45. The disciplinary hearing was commenced on 25 January (notes of the meeting were at pages 384-388) but was adjourned to allow for specific facts to be verified. This was in the light of the claimant's denials in relation to the alleged conduct and the claimant's own allegations that the evidence against him had been fabricated. In particular, Mr Moscrop noted the claimant's insistence that he had not been absent on extended breaks but had been in one of the two meeting areas behind the reception desk, other than when he was on toilet breaks. The claimant was also adamant that there were no gaps in cover in the control room as had been alleged.
46. The claimant also noted in the disciplinary hearing that Mr Ledgister had not been interviewed by Mr Woodley. Mr Moscrop explained that Mr Ledgister had not been working on the relevant night, but the claimant said that he was "part of the team" and should be interviewed.
47. Following the adjournment, Mr Woodley was asked to make further investigations as regards the matters raised by the claimant (page 336). Mr Moscrop requested that further investigation be carried out to: 1) verify the location of all people authorised on site for the period before and after the use of card C 44 and their proximity to that location; 2) a full breakdown from CCTV



and card use of the exact time sequence regarding the entire period after the claimant could be seen leaving for his meal break, in order to verify his account of his location;3) a full breakdown of who can be seen entering and leaving the control room for the duration of both shifts, in order to verify the claimant's version of events, namely that the control room was manned at all relevant times and 4) interviews with any other team members if relevant.

48. Mr Woodley replied to these requests on 26 January (page 335). Mr Woodley attempted to speak to Mr Ledgister, who declined to answer any questions due to his mental health issues. Mr Woodley also spoke to KD who said that he was not aware of any misconduct, especially as he was located at Reid Hall. Mr Woodley's further investigations also noted lengthy periods when the control room was left unmanned and when the front doors were left on free access which meant that anyone could have entered the site unnoticed.
49. As regards the claimant's statement that he was always in the reception areas including the two rooms behind reception (other than for food and toilet breaks), Mr Woodley concluded having viewed the CCTV throughout both shifts that the claimant had gone through reception in the direction of the Oliver flats and had not returned until the end of the time in question i.e. 4 hours later.
50. Mr Woodley also noted that having reviewed the CCTV timeline, there were instances where other members of the team took extended breaks. The claimant had asked for all the information from the further investigation to be sent to him which was done on 28 January (page 434).
51. The disciplinary meeting was reconvened on 29 January (notes of the meeting are at page 389). This was a relatively short meeting, again with the claimant unaccompanied by choice. The claimant acknowledged at the commencement of the meeting that the further information obtained by Mr Woodley had been sent to him.
52. At that meeting the claimant maintained his denial that he had used card C 44. He said that the timings on the CCTV meant that he would not have had time to get to Oliver flats to use the card at the alleged time. The note of the meeting suggests the claimant being somewhat evasive with regard to his location on the relevant night. When he was asked to confirm that he had remained in the reception area, he replied "I was in the vicinity". When Mr Moscrop enquired further, the claimant said that he may have "moved around" but insisted that he was always available to the members of his team and that there was no risk to the respondent's business. When Mr Moscrop asked the claimant to confirm that he had not used contractor's cards or taken extended breaks, the claimant responded only to the allegation concerning the contractor cards and did not address the question of extended breaks. The claimant also alleged that Mr Murphy had been "working overtime to get rid of me" and claimed that Mr Murphy should also be investigated.
53. These answers do not demonstrate a straightforward approach by the claimant to answering the questions put to him.

54. The meeting ended at around 11:30 AM. At 4:16 p.m. Ms Vincent confirmed on behalf of Mr Moscrop, that the claimant was dismissed with immediate effect from 29 January 2021 for use of contractor cards; taking extended breaks and leaving the control room unattended for protracted periods of time and for lack of integrity in response to the investigation and disciplinary process, which had led to a lapse in the respondent's trust and confidence in the claimant.

Decision to Dismiss

55. Mr Moscrop said that he had reached the decision to dismiss after consultation with Ms Vincent, but that the decision was his own. He said that he had taken into account the claimant's length of service with the company, but also noted that the claimant was the Supervisor responsible for the safety and security of the site and for the conduct of his Team.

56. He said the claimant had never once acknowledged any validity to any of the claims regarding his conduct on-site. He had insisted on an account which was demonstrably at odds with the CCTV footage and with other verification carried out by Mr Woodley. He had denied taking extended breaks, despite evidence to the contrary from members of his team. The claimant was dismissive of this evidence and alleged that it had been fabricated by Mr Murphy as a means to remove him from the site.

57. Given the extent of the discrepancies between the claimant's account and all the other information obtained by Mr Woodley, Mr Moscrop concluded on the balance of probabilities that the claimant's account was not a truthful one. The claimant provided no alternative explanation regarding his movements insisting that he had been in or behind the reception area, even when the objective evidence suggested that this was not the case. Given the claimant's refusal to accept any responsibility for his conduct; his lack of integrity and given his senior role as a Supervisor, Mr Moscrop decided that dismissal was the correct sanction. He had considered a final written warning, but felt this was not appropriate given the breakdown of trust and confidence between the respondent and the claimant.

58. In response to questions from me, Mr Moscrop confirmed that he was relying on the section on gross misconduct in the Employee Handbook (pages 88/89): in particular on references to dishonesty; falsification of documents (namely the inaccurate entries in the DOB) and breach of trust and confidence.

59. As regards the claimant's allegation of inconsistent treatment as regards other colleagues (who received final written warnings), Mr Moscrop noted that the investigation and disciplinary action against other members of the claimant's Night Team had commenced later and therefore decisions as regards these colleagues were taken in or around March 2021 after the decision to dismiss the claimant. Mr Moscrop also noted that these colleagues were not Supervisors which was relevant to the claimant's situation.

60. The claimant appealed against his dismissal in an email dated 2 February 2021 citing six separate grounds which included: 1) hash (sic) and unfair treatment; 2) inconsistency from management through the investigation and disciplinary process; 3) lack of support from management; 4) lack of engagement and duty of care for management; 5) risk level and reputation damage to the company; 6) withheld evidence contrary to the ACAS code of conduct.

#### The Appeal Hearing and Outcome

61. The appeal hearing was held on 16 February 2021 with Mr Graves, hearing the appeal. The claimant was not accompanied despite being given the right to do so. Notes of the appeal meeting are at pages 397-407.

62. As regards the harsh and inconsistent treatment, the claimant raised the example of an officer who had attended the site despite being tested positive for Covid 19. He said this person had put the lives of many people at risk and put the company into disrepute but had only received a final written warning for his misconduct. The claimant noted that the allegations against him had occurred in the middle of the night at a time when the university was closed and no one was coming in because of the Lockdown. He had not put the business or the University at risk.

63. Mr Graves said that this employee had some Covid symptoms, had taken a PCR test but had attended on site before receiving the result (which were eventually negative). The employee had been sent home immediately, having been on site for only an hour; he had been disciplined and received a final written warning. However, the employee had acknowledged what he had done was wrong and had recognised the risk he had taken. The final written warning was an appropriate sanction in that case.

64. The claimant also stated that he had worked with the company since 2003 and should have been given a final written warning. Mr Graves clarified that there had been a break in continuous employment and the claimant had re-joined the company in 2016.

65. The claimant said that he felt singled out especially in the light of the more favourable treatment to the individual who had Covid symptoms. The claimant reiterated that he had been a good and loyal worker for the respondent working his way up the ranks. He believed that this had happened because Mr Murphy had planned it and wanted him removed from the site. The claimant repeated that he had a clean record with the respondent and had served the company "beyond expectation". He accepted that the respondent had supported him in his academic endeavours and also when members of his family had been unwell. The claimant also acknowledged that Mr Woodley had given him an excellent reference in December 2020 (at page 460) which had assisted the claimant in obtaining his place on a Masters course in mental health.

66. The claimant also complained that Mr Murphy had only chosen to speak to two members of the team and not the whole team which he felt was inconsistent. Mr

Graves reminded the claimant that initially the investigation had been restricted to those who had been on shift on 13 and 14 January 2021. It had been at the claimant's insistence that the wider team had been questioned by Mr Woodley.

67. The claimant raised in the Issues that Mr Graves had not allowed him to cover all the points of his appeal. Having read the notes of the appeal meeting, whose accuracy the claimant did not challenge, I note that Mr Graves went through each of the points raised in the claimant's appeal. In fact, the claimant said at the commencement of the meeting that he did not have his own appeal email in front of him as his laptop had broken down. I do not find that Mr Graves refused to cover all the points raised in the claimant's appeal.
68. Mr Graves reiterated the evidence obtained by Mr Woodley with regard to the CCTV footage and the timeline of the claimant's movements and to the fact that the claimant was not seen on camera between around 1:47 and 5:15 (around 4.5 hours). The claimant responded by saying that he did not go into the Oliver flats and raised an issue as to whether he could get the flats within the relevant time frame. I note that the claimant did not answer the question as to where he had been for 4.5 hours.
69. Eventually, after further questions from Mr Graves, the claimant accepted that he had been in a classroom in the Pilcher building (which was next to the Oliver flats) doing research on his mental health course. He accepted that he had never mentioned this at either his investigation or his disciplinary meetings, but said he had been focused on refuting the allegation concerning the use of the contractors' card C 44.
70. The claimant said that he had expected a final written warning for leaving the control room for the lengths of time alleged, though he said he had made sure that "everything was sorted before I left". He continued to deny using card C 44.
71. In response to questions from me, Mr Graves accepted that as the respondent's Operations Director he had been made aware of the investigations being carried out, but said that he had consciously avoided obtaining any detailed information because he may need to be available for an appeal. I accept his evidence on this point and find that his knowledge of the fact of the investigations taking place did not impact on the fairness of the appeal.
72. In his cross-examination of Mr Graves, the claimant raised various complaints concerning the reliability of OS's evidence and why this was believed by Mr Moscrop. However, I note that this was not one of the matters raised by the claimant in his appeal before Mr Graves.
73. The claimant also put to Mr Graves that the clients had not been harmed by his conduct, however Mr Graves referred to the fact that following the investigation into the Night Teams' conduct in leaving the control room unmanned for significant periods, the respondent had to pay compensation to the client of £5000. This had, therefore, resulted in both financial and reputational loss to the respondent.

74. The appeal outcome was sent to the claimant on 23 February 2021. The claimant's dismissal was upheld. Mr Graves noted in the outcome letter that the claimant's references to lack of support from management were not strictly relevant to the allegations of misconduct. However, that does not mean that they were not discussed at the appeal meeting, as alleged by the claimant. In fact, the appeal outcome specifically records the discussions during the appeal hearing.
75. Mr Graves also recorded that the claimant had said for the first time at the appeal hearing, that he had been in the Pilcher classroom for 4.5 hours preparing for his academic course. The claimant had said that he had not considered mentioning this before because he was more concerned with refuting the allegation about the use of contractor card C 44 to gain access to the Oliver flats. Mr Graves did not accept this explanation and deemed this to support his conclusions (and those of Mr Moscrop) that the claimant had not been honest with the respondent concerning his absences from the control room.
76. In his oral evidence, Mr Graves said that he had looked at the compelling evidence produced in the investigations. The claimant had been the most senior person on site at the relevant time; it was his responsibility to manage the Night Team, but the claimant had refused to accept any responsibility for his actions. The claimant had not been truthful about his whereabouts until the appeal hearing and had shown no remorse or acceptance of any misconduct.
77. As regards inconsistency of treatment, Mr Graves said the other members of the team had also all been investigated and disciplined. The sanctions had been removal from the RUL site and final written warnings, but not dismissal. He said that this distinction was because the claimant was the supervisor and therefore the most senior person on the site. It was vital that the respondent could trust him and the claimant's conduct had demonstrated that this was not the case. I accepted Mr Graves's evidence on this point. Mr Graves confirmed that he had reached his decision after consultation with HR but that the decision was his own.

The claimant's evidence at the hearing

78. During his oral evidence, the claimant made a significant admission, which had not been made in any previous investigations or meetings with the respondent and which had not been contained in the claimant's witness statement.
79. The claimant said that he and the other security officers on the Night Team had reached an "arrangement amongst ourselves" whereby they would each take turns to have lengthy breaks to do whatever they wanted, such as research or watching whatever they wanted to. The claimant said that he made sure that he was always accessible by radio and if there was an emergency he could be found quickly.

80. The claimant said that since the National Lockdown, there were very few people on the site, especially at night and over the weekends and he did not believe that his and his colleagues' actions put the security of the site at any real risk. However, he accepted that he had not discussed this practice with, or sought any authorisation from, a more senior manager and had reached his own conclusions to this effect, believing them to be correct.
81. The claimant accepted that he could have said at an earlier stage in the investigations/disciplinary process that he had been carrying out his course research in the Pilcher classroom at the relevant time. This would have explained the CCTV footage as the Pilcher classroom was in the same direction as the Oliver flats.
82. The claimant said that he had not done so because he was afraid that Mr Woodley may withdraw the favourable reference he had given to enable the claimant to carry out his Masters course. The claimant said that his study on mental health would be of great benefit to the Nation and he did not want to prejudice this. I do not accept the claimant's post-rationalisation of his conduct as being in the public interest.
83. Even when making these admissions, the claimant would not accept that he had been dishonest, but described his conduct as "being economical with the truth". The claimant accepted that an employer would expect an employee to tell the truth and he accepted with hindsight that he should have done so. However, his concerns about being suspended and excluded from the site and his concerns about his livelihood and being able to support his family had led him to conceal his whereabouts. The claimant also expressed disappointment and surprise that his colleagues had disclosed the nature of their arrangement to the respondent.
84. The claimant used eloquent language in his submissions referring to the "sweat and blood" he had given to the company over many years; his consistent denial that he had used the contractor card; the fact that the people he had relied on had let him down. He said that he hoped that if a mistake had been made, the company would enable him to correct it and not dismiss him. He said that the decision had been made on an incorrect basis and that dismissal was not within the reasonable range of responses and he should have been given a final written warning and a second chance.
85. The claimant also consistently referred in his submissions to the Tribunal giving him "justice for the little man". However, as I had explained to the claimant on numerous occasions the Tribunal's role was not to determine whether or not he had been guilty of the specific misconduct alleged but to apply the tests as set out in **BHS v Burchell** (see the issues above) to decide whether the dismissal had been unfair under the provisions of section 98 ERA.

## Conclusions

### Reasonable investigation

86. Based on the findings of fact set out above, I find that the respondent had carried out a reasonable investigation into the alleged misconduct. The initial act of alleged misconduct was the use of the contractor card C 44, however, at a very early stage the investigation was extended to cover the claimant taking extended breaks and leaving the control room unmanned. This had been put to the claimant at an early stage and he had been given an opportunity to address this allegation, which he had consistently denied for the reasons set out in his late admission in his oral evidence (see above) namely being afraid that Mr Woodley would withdraw/change his reference.
87. The claimant has not shown on a balance of probabilities that he had been targeted for investigation by Mr Murphy or that Mr Murphy had any specific agenda to remove the claimant from the RUL site. I have also found that the fact-finding interviews were not carried out in an intimidating manner.
88. I do not accept the claimant's evidence that he was unaware of the evidence of his colleagues. In fact, given his evidence to the Tribunal, the claimant would have been well aware of what his colleagues could tell the respondent, concerning the long-standing arrangements made between them to take extended breaks.
89. I also note the fact that the disciplinary meeting was adjourned specifically to further investigate various points raised by the claimant. The result was that Mr Woodley produced cogent objective evidence (based on the CCTV footage and the cross-referencing to the use of access cards) which suggested to him, on the balance of probabilities that the claimant may well have used the contractor card, but more importantly demonstrated that the claimant took extended breaks and left the control room unmanned.
90. I find that the respondent carried out a reasonable investigation in all the circumstances.

### Genuine belief

91. With reference to the findings of fact set out above, I find that Mr Woodley (following his investigation) had formed a genuine belief in the alleged misconduct, both as regards the use of the contractor card and also as regards extended breaks and absence from the control room.

### Fair disciplinary process

92. The allegations made by the claimant with regards to the disciplinary process overlap considerably with his complaints about the investigation process. Given my findings of fact above I find that the respondent did conduct a fair disciplinary process. As noted, this was adjourned to further investigate various points raised by the claimant.

93. I have accepted the respondent's evidence that the investigation/disciplinary process as regards the remainder of the Night Team was out of sequence and that these later investigations /disciplinary hearings had not been concluded at the time the decision to dismiss the claimant was taken.
94. I find that a fair and reasonable disciplinary process had been followed in the claimant's case.

Sanction of dismissal

95. Based on my findings of fact set out above, I find that dismissal was within the range of reasonable responses open to the respondent in the circumstances.
96. Both Mr Moscrop and Mr Graves explained that the key reason for dismissal was the breakdown of trust and confidence in the claimant. As Supervisor, he was the most senior officer on the client's site and it was important for the respondent to have total trust in him. The way in which the claimant conducted himself during the investigation and disciplinary process and for most of the appeal process demonstrated his lack of integrity.
97. Despite the claimant's attempts to minimise his conduct, the claimant effectively had lied to the respondent during the investigation/disciplinary process. He had consistently said he was in the rooms behind reception, when he was in fact, in the Pilcher classroom (near the Oliver flats) and therefore, well away from the control room.
98. By taking this course of action, he exposed himself to discovery as the CCTV footage did not support his false version of events. The claimant said he had not told the truth in order to protect his place on his academic course, fearing that Mr Woodley would withdraw his favourable reference. Whilst the claimant might be able to post-rationalise this in his own mind, objectively his conduct justifies the respondent's loss of trust and confidence in him.
99. The claimant made a judgment call when he decided not to be wholly truthful: he thought he would receive a final written warning. He was wrong and must take the consequences of his actions, however unacceptable these may now appear to him.
100. I have accepted Mr Graves' evidence explaining the difference in the sanctions given to the claimant and those given to his colleagues. The claimant was the supervisor and in overall charge of the site. It was not unreasonable of the respondent to expect him to comply with a higher standard of integrity, given his more senior position. The claimant consistently raised the question of his lengthy and previously good service with the respondent, saying that this should have prevented him from being dismissed and resulted in a final written warning. However, the position can be read differently: given his length of service with the respondent and his senior position and responsibility, they had expected better from him.



101. Therefore, when it was perceived that he was not being truthful, this led to the respondent being disappointed in the claimant's conduct and therefore losing trust and confidence in him.
102. Further, the claimant's own evidence to the Tribunal revealed for the first time the full extent of his lack of integrity. This evidence revealed that he had actually made arrangements with his team, without any prior authorisation, to take lengthy breaks which exceeded their contractual entitlement and left the control room unmanned and the security of the site potentially exposed.
103. The claimant said he did this because his own view was that during the Lockdown, it was not necessary to ensure a 24/7 presence in the control room. He had reached this conclusion without any discussion with his managers or other senior officers of the respondent. This conduct alone, although not known to the respondent at the time, would have justified his summary dismissal.
104. The claimant has always denied that he used the contractor card C44 and in his own mind has chosen to take this as the only reason for his dismissal. First, as I explained on numerous occasions, it was not for the Tribunal to decide whether or not the claimant had actually carried out the alleged misconduct. Secondly, it was clear from a very early stage that the alleged misconduct also included the claimant's extended absences from the control room/adjacent area and his apparent lack of integrity.
105. The claimant chose during the investigation and disciplinary process (as set out in the findings of fact above) to focus on the allegation relating to the use of the contractor card. It may be that by doing so he felt that he was telling the truth, because he always maintained he had never used the card. However, this was disingenuous. By not accepting until the appeal hearing, that he had been in the Pilcher classroom (and therefore well away from the control room) he was in effect lying to the respondent. As a result, the respondent's conclusion about the claimant's lack of integrity/dishonesty was correct.
106. I have accepted the respondent's explanations as to why other employees who were found guilty of misconduct were given final written warnings and not dismissed. The claimant's role as a supervisor required a higher standard of responsibility and behaviour and further, the other employees recognised and admitted their misconduct, which the claimant did not do.

#### Appeal Hearing

107. I have found that the appeal hearing was a fair and reasonable one.

108. The claimant's dismissal was fair and reasonable in all the circumstances.

Employment Judge Henderson

**JUDGMENT SIGNED ON: 12 November 2021**

**JUDGMENT SENT TO THE PARTIES ON  
12/11/2021**

**FOR THE SECRETARY OF THE TRIBUNALS**