



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4100172/2020 (V)

**Hearing held by video on 1, 2 September 2020 (hearing) and 3 September
2020 (in chambers)**

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Employment Judge M Whitcombe

Mrs Gillian MacDonald

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**Claimant
Represented by:
Ms D Flanigan
(Solicitor)**

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Western Isles Health Board

**Respondent
Represented by:
Mr A Watson
(Solicitor)**

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JUDGMENT

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The claim for unfair dismissal is not well-founded and is dismissed. The claimant was fairly dismissed for gross misconduct.

REASONS

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Introduction and background

1. This is a claim for unfair dismissal. The claimant was formerly employed by the respondent as a Clinical Support Worker within the Radiology Department

of the Western Isles Hospital on the Isle of Lewis from 11 January 2016 until her dismissal for gross misconduct on 2 September 2019.

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2. The claimant's dismissal arose in the following context. On 17 April 2018 an incident occurred between the claimant and Dr Peter Bell, Consultant Radiologist. The claimant brought formal grievance proceedings in relation to that incident. The claimant alleged that Dr Bell had been abusive and aggressive towards her. Dr Bell alleged that it was the claimant who had shouted and been aggressive towards him. Ultimately, the claimant's account was not accepted and her grievance was rejected. The grievance investigation report dated 21 January 2019 also recommended that consideration should be given to disciplinary action against the claimant for having brought vexatious claims against Dr Bell. Disciplinary proceedings against the claimant duly followed, resulting in her dismissal for gross misconduct on 2 September 2019. That outcome was confirmed in a letter dated 6 September 2019. The claimant's appeal against dismissal was unsuccessful.
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Claims and issues

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3. The sole claim is for unfair dismissal.

Liability issues

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4. Several of the criticisms of fairness made in the claim form (ET1) had been dropped by the end of this case. The live issues under consideration were essentially those outlined in the well-known cases of **BHS v Burchell** [1978] IRLR 379, with necessary modifications to reflect the change in the burden of proof of fairness since the date of that decision, **Taylor v OCS Group Ltd** [2006] IRLR 613 and **Iceland Frozen Foods Ltd v Jones** [1983] ICR 17.
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- a. Has the respondent established that it had an honest belief in a set of facts amounting to a potentially fair reason for dismissal, in this case

allegedly the claimant's conduct (s.98(2)(b) of the Employment Rights Act 1996)? By the end of the case the claimant conceded that the respondent held an honest belief in misconduct.

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- b. Did the employer have in its mind reasonable grounds on which to sustain that belief?
 - c. Had the employer carried out as much investigation into the matter as was reasonable in all the circumstances of the case.
 - d. Was the appeal sufficient to rectify any procedural defects which had occurred at the disciplinary stage?
 - 10 e. The overall question whether dismissal was within the range of reasonable responses open to a reasonable employer?

5. Neither side has any burden of proof in relation to fairness under section 98(4) of the Act. It is a neutral burden.

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Remedy issues

6. Although the claim form sought reinstatement, that remedy was not pursued at this hearing. In relation to compensation, the respondent alleged a failure by the claimant to take reasonable steps to mitigate her loss and also that any award of compensation should be reduced in order to reflect contributory fault and the chance that a fair procedure would have led to dismissal in any event (a "**Polkey**" reduction).

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Evidence

7. I was provided with a joint file of documents running to 374 pages in bookmarked pdf format. I am very grateful for the obvious work that went into preparation for the hearing and for the skill and flexibility shown by both representatives.

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8. I also heard evidence from the following witnesses in the following order:

- a. William Findlay, Nurse/Allied Health Professionals Director and Chief Operating Officer, who chaired the panel which took the decision to dismiss the claimant.
- b. Gordon Jamieson, Chief Executive, who chaired the panel which heard the claimant's appeal.
- c. The claimant herself.

9. All of those witnesses gave evidence on oath or affirmation. Evidence in chief was given by adopting written witness statements. All of the witnesses were cross-examined. I found all three witnesses to be straightforward and helpful, giving their evidence to the best of their recollection.

Findings of fact

10. The following facts were either agreed, undisputed, or the conclusions I reached on the balance of probabilities.

11. The claimant's duties as a Clinical Support Worker in the Radiology Department entailed about 2 days a week on clinical work and about 3 days a week dealing with clerical work.

12. The claimant's line manager in the department was Jane Macdonald and her co-workers were Shuna Mighton and Marie Morrison. At the relevant times the consultant in the department was Dr Bell, Consultant Radiologist. He was an extremely experienced locum consultant. His office was just behind the reception area where the claimant often worked.

The claimant's account of the incident on 17 April 2018

13. In an undated letter received by the respondent on or about 24 September 2018 the claimant said that she had suffered "a vicious attack of verbal abuse, which was also quite aggressive". She also complained that Dr Bell had accessed her medical reports and attacked her for being in a trade union.

14. In the claimant's grievance statement she set out the following version of events. The claimant was working on the reception front desk when, over the course of about an hour, Dr Bell would come into the office, stare at her, mutter under his breath and then walk away. By about 10am the claimant grew tired of that and decided to go into Dr Bell's office to discuss it with him. The claimant knocked on his door, asked whether she could speak to him and then closed the door behind her. The claimant asked Dr Bell in a polite and professional manner whether she had done something wrong. The claimant was not prepared for Dr Bell's reply which was along the following lines. He said how much he hated the claimant, that he did not want to talk to her or to have anything to do with her, to work with her or even look at her. He went on to explain that he had read the claimant's medical reports and that there was nothing wrong with her – she was not sick. The claimant felt violated and sick at the news that Dr Bell had seen her medical records. Dr Bell went on to say that none of the claimant's colleagues liked her or wanted to work with her and that they were scared of her because she was a member of a trade union. Dr Bell also alleged that the claimant was late into work every morning. The claimant said that the "onslaught" lasted for about 20 minutes but "seemed like forever". She added, "*I use the word onslaught because that is what it was. He was so aggressive in the way he was verbally abusing me that his eyes were bulging and his arms were flapping about everywhere during the whole episode. Although he was sitting in his chair and I was standing up I felt like he was towering over me, beating down on me. I actually ended up leaving the room while he was still going, I just couldn't listen any more.*"

Subsequent action

15. The claimant worked the following day but from the start of the following week she commenced a lengthy period of sick leave until August 2018. The claimant's case was that while on sick leave she hand-delivered two typed grievance letters to the respondent on 2 May 2018. One was addressed to

the medical director Dr McKellar and the other was addressed to the Director of Human Resources Jenny Porteous. The respondent's case was that those letters were never received and that the claimant did not deliver them at all. I prefer the respondent's evidence on this point and find on the balance of probabilities that the claimant did not submit a grievance by hand on or about 2 May 2018. I reach that conclusion because it is inherently unlikely that *both* of the letters could go permanently missing as a result of any accidental mishandling of post in the relevant reception area. There is no evidence to support a finding that the letters were deliberately destroyed or ignored. Since the claimant's case was that the letters were hand-delivered only, and not sent by recorded delivery or email additionally or instead, there was no other evidence to show that they were sent. It is also highly unlikely that the claimant would have allowed months to pass without even an acknowledgement of either of the two grievance letters if she really had submitted them on 2 May 2018. In those circumstances I prefer the respondent's position on the balance of probabilities: no grievance was lodged on 2 May 2018 and the respondent did not ignore the grievance as the claimant has suggested.

16. For those reasons, I find that the claimant's grievance was not lodged until 21 September 2018. The claimant was given the option of informal resolution, which would have been acceptable to Dr Bell. She declined that option. A formal investigation process was commenced by Colin Gilmour, the Head of Health Improvement. I have already summarised the contents of the claimant's own grievance statement. It is necessary to refer also to some of the other evidence gathered by the investigation.

Other accounts of the incident on 17 April 2018

17. Dr Bell said that he had been speaking to Marie Morrison in the office about a case booking. In passing he had told her about some planned leave. The claimant told him to write it on the whiteboard, something which he had not done before and which had been done by the reception staff on previous

occasions. Dr Bell responded to that effect and left the office. Dr Bell then returned to his own office to carry on with work. He then said this: “A *short while later Ms MacDonald stormed into my office uninvited slammed the door shut and then started shouting at me. I sat still and did not move or gesticulate and said nothing until her tirade ended and responded by asking if that was all. I did not raise my voice. I said that if that was all that we should draw a line under it and try to develop a purely professional relationship with no casual chitchat. She left my office.*” Dr Bell stated that two members of staff were in the adjoining staffroom and heard the whole thing. He indicated that they would confirm that it was the claimant who did all the shouting and who slammed the door.

18. Marie Morrison had once been the subject of another complaint made by the claimant and she made that fact clear when interviewed as part of the grievance process. It had been made about 18 months earlier and although Ms Morrison had thought that mediation was being organised nothing had happened. So far as the incident on 17 April 2018 was concerned Marie Morrison’s recollection was as follows. She said that Dr Bell probably had a bit of a problem with the claimant and another member of staff because they kept “*butting in*”. The claimant had done so a couple of times on that particular day. The claimant has also turned “*quite aggressively towards Dr Bell when he was leaving the office*” and told him that “*you have to put it up on the board*”. Dr Bell’s reply had been, “*that’s what I came in here to ask you to do*”. A little later Ms Morrison had been taking a break in the staff room immediately next to Dr Bell’s office. She observed the claimant tapping twice on Dr Bell’s door (which was always open) before going inside and slamming the door shut. Ms Morrison was unsure of the length of time for which the claimant was in Dr Bell’s office but did not think that it was as long as 20 minutes. All that she could hear was the claimant’s “*angry tone of voice*”, and it was the claimant who was “*going on and on*”. Ms Morrison said to a colleague, “*She’s so angry. You can’t leave Dr Bell in there on his own. He’ll end up with what I got hanging over me.*” Ms Morrison made it clear that she could not hear the words used but could hear the claimant using an angry

tone of voice. She thought that if Dr Bell was speaking then he was not speaking very much because she could only hear the claimant. She also thought that she would have heard Dr Bell if he had raised his voice. Eventually, the claimant “*stormed out*” of the office and glared at Ms Morrison before saying, “*that was a very interesting conversation I just had*”. The claimant looked very angry as she said that.

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19. Christina MacPhail had also been in the staff room at the relevant time. She said the claimant had, “*knocked on Dr Bell’s door and barged in*”. She had then heard the claimant shouting and even though the door to Dr Bell’s room had been closed the claimant’s voice could be heard from the staffroom. Ms MacPhail said that she could only hear the claimant shouting and could not hear Dr Bell at all. Mr Gilmour (the investigator) asked whether the claimant had sounded angry or upset. Ms MacPhail said that the claimant’s tone was angry and that she was shouting. Ms MacPhail also indicated that Dr Bell was not shouting and that if he was talking then she could not hear him at all. All that she could hear was the claimant shouting.

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20. That was the evidence gathered from the four people closest to the incident: the claimant, Dr Bell, Ms Morrison and Ms MacPhail. No other witness had any first-hand knowledge of it, although some were able to repeat what they had been told by the claimant herself after the event.

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Grievance outcome

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21. Mr Gilmour did not uphold the claimant’s grievance because of a “*lack of corroborated evidence*”. The claimant’s account and Dr Bell’s account were diametrically opposed. Both of the two other witnesses supported Dr Bell’s account in that although they could not hear precisely what had been said they were certainly clear that the claimant, and only the claimant, had been shouting and that she was angry. They did not hear anything consistent with the claimant’s description of Dr Bell’s behaviour. The claimant did not acknowledge that she had raised her own voice at all and had alleged that Dr

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Bell was the only one to have acted inappropriately. I refer back to the vivid description of Dr Bell's "onslaught" given by the claimant in her grievance statement and summarised above. It follows that Ms Morrison and Ms MacPhail not only failed to corroborate the claimant's account, they contradicted it.

Disciplinary process

22. At the conclusion of the grievance investigation report Mr Gilmour made four recommendations. The relevant one for present purposes was, "*in my opinion as investigating officer I recommend that consideration be given as to whether there should be disciplinary action taken against [the claimant] for bringing vexatious claims against [Dr Bell]*". This is consistent with the respondent's Bullying and Harassment Policy which states that, "*if, following investigation, a complaint has been found to be malicious, vexatious or frivolous, the organisation reserves the right to consider disciplinary action against the complainant.*" In a letter to the claimant dated 12 February 2019 Mr Findlay confirmed that, "*I am requesting that the consideration of these claims being vexatious is to be considered before a Disciplinary Panel.*"

23. There were delays in convening an effective disciplinary hearing but it is not necessary to go into them for present purposes since the claimant no longer criticises delay in the process. The disciplinary hearing took place on 2 September 2019. The panel was chaired by Mr Findlay. It also included Stuart King (Employee Relations Officer) and Elizabeth Shelby (Nurse Consultant). Also present were Mr Gilmour (Health Promotion Manager and grievance investigator), the claimant, Ken Matthews (UNISON Regional Officer and the claimant's trade union representative), the witness Shuna Mighton and a notetaker.

24. It is an unusual feature of the disciplinary hearing that the claimant said very little. While there is nothing unusual in the fact that her representative Mr Matthews presented her case, the claimant did not herself give evidence in

any substantial way. She responded to one or two direct questions but did not give any detailed explanation of her reasons for making the complaint against Dr Bell in order to meet the allegation that the complaint had been made vexatiously.

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25. It also appears from the note that Mr Matthews placed considerable emphasis on the absence of evidence of collusion between the claimant and Ms Mighton. It appears to have been his argument that the two issues of collusion and vexatiousness could not be separated. However, and as Mr King observed during the disciplinary hearing, they are two different things. While Mr Gilmour (the grievance investigator) had also made some observations on the possibility of collusion between the claimant and Shuna Mighton, the disciplinary charge was narrower: simply that the claimant had made her allegations against Dr Bell vexatiously.

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26. It was also suggested on behalf of the claimant that there had been collusion on the part of Dr Bell and the witnesses who supported his account (Marie Morrison and Christina MacPhail). The disciplinary panel considered that this point had been addressed sufficiently by Mr Gilmour in his investigation, and that Dr Bell had merely informed both individuals that he had named them in his own statement. In the view of the disciplinary panel that fell well short of collusion.

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27. After a break, the decision of the disciplinary panel was announced in the presence of the claimant and her representative. They found that the claimant's allegations of bullying and harassment against Dr Bell were of a vexatious nature and that the misconduct was of sufficient significance that the claimant would be dismissed with immediate effect. As promised, the outcome was confirmed in a subsequent letter dated 6 September 2019. The allegation was summarised as follows: "*it is alleged that your own allegations of bullying and harassment against Dr Peter Bell, consultant radiologist, may have been a vexatious nature.*" The panel concluded that the interviews with witnesses were consistent with Dr Bell's version of events and contradicted

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the claimant's version of events, in that the two witnesses outside the room stated that they could hear the claimant being loud, angry and shouting but could not hear Dr Bell respond or even raise his voice. The disciplinary panel concluded that the claimant had fabricated the incident with Dr Bell and the panel was, "disappointed that you failed to satisfactorily address this incident in either your case presentation, or in your summary." The panel did not find it credible that there had been collusion between Dr Bell and the two witnesses supporting his account. The panel considered lesser sanctions such as restrictive action, training or redeployment. However, given that the claimant failed to admit any wrongdoing at all, despite compelling evidence, or to show any sign of remorse, the panel had no confidence that her behaviour would improve and was concerned about further issues in the future. The panel considered that the offence was of such magnitude and cast such doubt on the claimant's honesty and integrity that an alternative sanction to dismissal would not be appropriate. The claimant was reminded of her right to appeal.

28. The claimant exercised her right of appeal and set out her grounds in a statement of case dated 23 January 2020. It is not necessary for present purposes to analyse those grounds in detail but they included **BHS v Burchell** arguments. The appeal hearing took place on 23 January 2020, chaired by Gordon Jamieson, Chief Executive. Also present were Ann Maclean (Employee Relations Officer) and once again Messrs Findlay, Gilmour, Matthews (the claimant's representative) and a notetaker. Once again the claimant did not take the opportunity to give any substantial evidence to demonstrate why her original allegation against Dr Bell had not been vexatious.

29. Following that appeal hearing, Mr Jamieson decided that it would be important and appropriate to explore the issue of collusion between witnesses, which had once again been a focus of Mr Matthews' arguments on the claimant's behalf. It had also been a suggestion made by Shuna Mighton in her evidence to the disciplinary hearing, although she was not

brought as a witness at the appeal hearing.

5 30. At a reconvened appeal hearing on 5 March 2020 Marie Morrison and Christina MacPhail were present as witnesses. Mr Matthews had an opportunity to ask questions of those witnesses on behalf of the claimant. Mr Jamieson wished to “*see the whites of their eyes, and put them under a bit of pressure*”. Mr Jamieson considered their evidence consistent, credible and persuasive when they rejected any suggestion of collusion. While they had spoken about the incident, he was not persuaded that they had been
10 “hatching a plot, to twist the truth”. He got no impression of plot hatching and their credibility stood up to scrutiny.

15 31. By this stage Dr Bell had left the respondent’s organisation but he attended the meeting by phone. He was unwilling to answer direct questions from the claimant or her representative but Mr Jamieson offered, as chair of the hearing, to ask the questions which Mr Matthews had prepared for Dr Bell. Dr Bell was happy with that approach too. However, Mr Matthews considered that this was an unfair denial of his right to cross examine and declined the offer of asking his questions through the chair.

20 32. Mr Jamieson considered the text message which the claimant had sent to Jane Macdonald on the day of the incident. He considered that the text merely repeated the claimant’s position after the event and did not amount to contemporaneous evidence of it.

25 33. Mr Jamieson concluded that the claimant had lied about the incident and that her complaint was vexatious in that it was without foundation, or at least untrue to a significant extent, and that her lie had damaged relationships beyond repair.

30 34. The decision of the panel was communicated in a letter dated 9 March 2020. It emphasised that of the four accounts of the interaction with Dr Bell, the claimant’s stood alone. The two independent witnesses supported Dr Bell and

5 directly contradicted the claimant. The claimant had not put forward any independent evidence to corroborate her account. The account of the individuals who were just outside the room was preferred to the claimant's own text message and there was no credible evidence of collusion between Dr Bell and the witnesses who supported his account.

Submissions

10 35. The representatives made their submissions primarily in writing and oral submissions were mainly used to reply. In those circumstances I do not propose to set out the submissions here. All that should be necessary for these reasons to be "**Meek**-compliant" is for me to deal with the key points made in those submissions.

15 Legal principles

36. The respondent relies on conduct as the potentially fair reason for dismissal. I have already set out the **BHS v Burchell** principles in the section headed "Claims and issues" above.

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37. I am well aware that I must not substitute my own view of the appropriate disciplinary outcome for that of the respondent. I must assess the respondent's conduct by reference to the range of responses which might be adopted by a hypothetical reasonable employer in the same situation. I recognise that different reasonable employers might respond in different reasonable ways to the same situation. If the dismissal falls within that range then it is fair. Only if it falls outside that range is it unfair. The "range of reasonable responses" test applies as much to procedural points as it does to the overall question whether to dismiss (**Sainbury's Supermarkets v Hitt** [2002] EWCA Civ 1588).

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38. Where an employee has exercised a right of appeal the Tribunal must consider the totality of the process (**Taylor v OSC Group Ltd** [2006] IRLR

613). A defective disciplinary hearing might be corrected by an appeal. The issue is not the characterisation of the appeal as a review or a re-hearing, but rather whether the process as a whole was fair.

- 5 39. Gross misconduct is a repudiatory breach of contract, such as a breach by the employee of the implied term of trust and confidence. The focus is on the damage to the relationship between the parties (***Adesokan v Sainsbury's Supermarkets Limited*** [2017] EWCA Civ 22).

10 **Reasoning and conclusions**

40. In closing submissions it was confirmed on behalf of the claimant that she no longer pursued any of the following arguments:

- 15 a. that delays in the respondent's grievance and/or disciplinary processes made the dismissal unfair;
- b. that the dismissal was unfair because the respondent failed to carry out a new and separate investigation into the claimant's misconduct, additional to the grievance investigation and its recommendations;
- 20 c. that the dismissal was unfair because the making of a vexatious complaint was not within the (non-exhaustive) list of *examples* of gross misconduct in the respondent's "Employee Conduct Policy";
- d. that the dismissal was unfair because the claimant had not been suspended following the suggestion that she might have made a
- 25 vexatious claim.

Honest belief in misconduct

41. By the end of the case it was conceded on behalf of the claimant that the respondent held an honest belief that that the claimant's allegations against
- 30 Dr Bell had been made vexatiously. The first limb of the ***BHS v Burchell*** test is therefore satisfied and the respondent has established a potentially fair reason for dismissal (conduct).

The reasonableness of the investigation

42. The remaining criticism made of the investigation into the claimant's conduct is that it failed sufficiently to examine the possibility that collusion (or some other undue influence) tainted the evidence of the two witnesses who were found to corroborate the account of Dr Bell.
43. On this issue I find that the respondent's investigation was entirely reasonable. In my judgment it was reasonable for the disciplinary hearing to proceed on the basis that the evidence of Christina MacPhail and Marie Morrison was not tainted by collusion and could safely be relied upon. The evidence given by Shuna Mighton on the issue was vague and provided no real basis for further investigation. According to paragraph 65 of the notes of the disciplinary hearing Ms Mighton said that she "*had raised the possibility that other members of staff in the department had colluded with each other*", before going on to describe occasions on which Dr Bell had asked members of staff to speak with him in his office about something that they would be questioned on during the investigation. That is consistent with Dr Bell merely informing them that he had named them as witnesses who could give relevant evidence of what they had heard on the day in question. It does not go as far as to suggest that he had pressured, influenced or persuaded them to alter their evidence. No further investigation was reasonably required in those circumstances.
44. Alternatively, and even if it were not reasonable for the respondent to rely on the conclusion of the grievance investigation that the evidence of those witnesses could properly be relied upon, then this is a matter which was certainly corrected on appeal. Mr Jamieson subjected the witnesses to intense scrutiny in a formal hearing. By then, Dr Bell was no longer employed by the respondent or in a position to influence anyone, if he ever had been. It would have been easy for a witness who had been pressured, persuaded or influenced by him to say certain things as part of the grievance investigation to alter their position at the disciplinary appeal. They did not do so. Taken as

a whole, the respondent's disciplinary process certainly included a reasonable investigation into the possibility that collusion or some other undue influence had tainted the evidence of witnesses who contradicted the claimant's account.

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Whether there were reasonable grounds for a belief in guilt

45. The disciplinary charge was that the claimant had made her complaint about Dr Bell "vexatiously". The respondent's witnesses explained what they meant by "vexatious" in this context and the claimant did not dispute their definition of the term. To the respondent, it meant that the claimant's complaint was untrue to a significant extent or that it had been made without proper foundation, dishonestly and with an intention to discredit Dr Bell. The question is therefore whether there were reasonable grounds for a belief in guilt of those things.

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46. There were only four people in a position to hear the incident. The claimant and Dr Bell were in the room together and their accounts were diametrically opposed, each accusing the other of being the aggressor. Two other witnesses (Marie Morrison and Christina MacPhail) were outside the room. Their evidence was apparently credible and there was no cogent evidence of bias, undue influence, collusion or hostility towards the claimant to undermine their independence or the probative value of their evidence. The suggestion of collusion could reasonably be discounted following the appeal (if not before) and the claimant did not argue at the disciplinary or appeal hearings that Maria Morrison's evidence was tainted by a pre-existing hostility towards her. A reasonable employer could give considerable weight to their evidence.

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47. Marie Morrison and Christina MacPhail could not hear the precise words used but they *could* hear the claimant speaking in an angry tone at some length. They did *not* hear Dr Bell at all, and it can be taken that they would have done so if he had engaged in the aggressive "onslaught" described by the claimant. Further, according to the claimant's evidence Dr Bell was still talking when

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she left the room, which would have enabled the other witnesses to have heard exactly what he was saying at that point and the way in which he was saying it. They heard nothing inappropriate. Dr Bell's account was therefore corroborated by two independent witnesses. The claimant's allegation of abuse and aggression on the part of Dr Bell was not corroborated by anyone and was flatly contradicted by three other witnesses, two of them independent.

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48. The central issue for present purposes was not, of course, whether the claimant was shouting and aggressive. That was not the charge, although the possibility was an important part of the overall context. The issue was whether the claimant's allegation of an aggressive onslaught by Dr Bell was made dishonestly, without proper foundation and without any belief in its truth in order to damage Dr Bell. I find that the starkly different accounts of the claimant on the one hand and the three other witnesses on the other could not simply be explained by honest differences in perception of the same event. Someone must have been lying about it. The respondent had reasonable grounds for concluding that the claimant was lying and that her allegation had been made without any proper basis. The weight of the evidence was against her and her evidence stood alone. Given the obvious friction between the claimant and Dr Bell the respondent also had reasonable grounds for believing that the claimant had intended to damage him by making the allegation.

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49. The claimant submits that the respondent failed to give sufficient weight to the similarity between comments allegedly made by Dr Bell during the altercation itself and the remarks subsequently made by him as part of the grievance investigation. In my assessment that alleged similarity was not a factor of great weight because the words used by Dr Bell were not really the main point. The main point was whether the claimant's allegation of an aggressive onslaught of abuse by Dr Bell was vexatiously made. The issue was more the way he spoke than the words he used.

50. Further, no one heard anything aggressive or abusive from Dr Bell, but three witnesses including Dr Bell alleged angry and aggressive behaviour on the claimant's part, which she denied. If Dr Bell was credible when he said that he was not aggressive, and credible when he said that the claimant was aggressive, then why should he not also be credible regarding the remarks he made during the altercation? There were reasonable grounds to believe Dr Bell on that point too.

51. In any event, I find that the respondent was reasonably entitled to place much greater weight on the fact that Dr Bell's account was corroborated in its essentials by two other witnesses whereas the claimant's account was uncorroborated.

52. Looked at as a whole, I find that the respondent had reasonable grounds for a belief that the claimant had made the allegation against Dr Bell vexatiously, at least in so far as it alleged (in vivid language) an onslaught and a vicious attack of verbal abuse. If that had occurred, then the independent witnesses would probably have heard it, or at least Dr Bell's tone. It was not the sort of matter on which someone might be honestly mistaken. It is inconceivable that the claimant could honestly have believed that Dr Bell was carrying out an aggressive and abusive "onslaught" lasting for 20 minutes, continuing as the claimant left the room, if in fact it had been the claimant and only the claimant with a raised and angry voice. There were reasonable grounds for an inference that the claimant was lying and that she had made her allegations knowing them to be false. There were similarly reasonable grounds for an inference that the claimant had lied in order to discredit Dr Bell. It was she, and not Dr Bell, who had been angry and aggressive. That hostility towards Dr Bell was audible to third parties during the incident and there were reasonable grounds for inferring that the same hostility lay behind the making of a false allegation against him without any belief in its truth.

53. For those reasons, I find that the respondent had reasonable grounds for a belief in guilt, and that the **BHS v Burchell** test was satisfied in that respect

too.

Sanction

5 54. The respondent having reached those conclusions with reasonable grounds
following a reasonable investigation, the sanction of dismissal fell well within
the reasonable range. The claimant had acted dishonestly and in a way which
did irreparable damage to the relationship of trust and confidence between
employer and employee. Her false allegation had the potential to cause huge
10 personal and professional damage to Dr Bell, as well as undermining working
relationships in the department generally. A reasonable employer could
certainly regard the situation as one of gross misconduct justifying summary
dismissal.

15 *Conclusion*

55. My conclusion is therefore that the claim for unfair dismissal is not well
founded. It must therefore be dismissed.

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Employment Judge: M Whitcombe
Date of Judgment: 8 September 2020
Entered in register: 10 September 2020
and copied to parties

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