



EMPLOYMENT TRIBUNALS

Claimant: Mrs U D Rasarathnam

Respondent: Cowfold Medical Group

Heard at: London South Croydon by CVP

On: 27 July and 26 October 2021

Before: Employment Judge Tsamados (sitting alone)

Representation

Claimant: Mr Rasarathnam, the Claimant's husband

Respondent: Ms P Cunningham, Senior Litigation Consultant

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was video by Cloud Video Platform (CVP). A face to face hearing was not held because it was not practical because of the Covid-19 virus.

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is as follows:

- 1) The complaints of unfair dismissal, damages for breach of contract in respect of wrongful dismissal and redundancy are unfounded.
- 2) The claim is dismissed.

REASONS

Claim and Issues

1. The Claimant, Mrs Rasarathnam, presented a claim to the Employment Tribunal against the Respondent, her ex-employer, on 9 August 2020. This followed a period of Acas Early Conciliation which both started and ended on 1 July 2020. Her claim raises complaints of unfair dismissal, entitlement to notice pay and entitlement to a redundancy payment. In its response,

received by the Tribunal on 8 October 2020, the Respondent has denied all of her complaints.

Evidence

2. The Claimant provided paper and pdf versions of her documents. The Respondent provided pdf versions of its documents.
3. I heard evidence from the Claimant by way of a written statement and in oral testimony. Her statement consisted of 7 pages within her bundle of documents which contained 137 pages. I will refer to pages within this bundle as "C" followed by the relevant page number where necessary.
4. I heard evidence on behalf of the Respondent from Mrs Olga Rodrigo, Mrs Heike Burnett and Mrs Anna Harrison by way of written statements and in oral testimony.
5. The Respondent also provided a bundle of documents which consisted of 281 pages. I will refer to pages within this bundle as "R" followed by the relevant page number where necessary.

Conduct of the hearing

6. This hearing was conducted remotely by video link using the HMCTS Cloud Video Platform ("CVP"). There were a number of occasions on which there were connectivity issues affecting the ability of one or more of the participants to see and/or hear each other. However, we persevered and were able to overcome these difficulties and conduct a fair hearing.
7. It was apparent from the start that the case was going to require more than one day to complete. Indeed, the parties had requested a further day but this had not been processed by the Tribunal administration.
8. I spent the morning of the first day clarifying the complaints and issues with the parties. I spent the afternoon hearing the Respondent's evidence. There was insufficient time to hear the Claimant's evidence. Before finishing for the day, with the parties' agreement, I listed the case for a further two days on 26 and 27 October 2021 in which to finish the evidence and submissions and to allow me time to reach and give my decision. I would add that re-read my notes of the first day, the witness statements and referenced documents prior to the resumed hearing.
9. On the first of those two days, I finished hearing the evidence and submissions. On the second day I sat in chambers to reach my decision. Unfortunately, I fell ill during the day and was not able to finalise or give my Judgment that day as intended. I have subsequently completed this task and apologise to the parties for the length of time it has taken me to complete and send out my Judgment. Unfortunately, this was caused by pressure of work as well as my part time sitting schedule.

Complaints and issues

10. The Tribunal's file contained what I describe as robust correspondence between the parties relating to case management preparation. I made it clear at the outset on the first day that I was not going to dwell on who was supposed to do what and when, if it had now been done. I said that my focus was on the ability to have a fair hearing or not.
11. It was apparent that both parties had belatedly provided the other with their witness statements and bundles of documents. There was no obvious reason why a fair hearing could not take place notwithstanding any earlier complaints as to case preparation.
12. Whilst the Claimant wanted me to note that she had brought a grievance against Mrs Harrison that had not been dealt with, I advised her that this was a matter to be determined if relevant on the evidence within her witness statement and the documents.
13. I raised my concerns that having read the Claimant's witness statement, bundle and some of her correspondence, it appeared to me that she believed that she was bringing a race discrimination complaint and wanted to rely on events going back to 2011. I clarified to her that this is not a discrimination case. That is not a complaint that she has raised in her claim form. Whilst those matters might form part of the background to her claim, her substantive complaint is one of unfair dismissal which appears to relate to a number of allegations arising in 2020 which led to her dismissal for gross misconduct in June 2020.
14. Ms Cunningham agreed and asked the Claimant if she wanted to bring a discrimination case? Mr Rasarathram replied that the evidence will lead to it being discrimination. I asked if by discrimination, the Claimant simply meant she was being treated differently to others. Mr Rasarathram replied that it was being treated differently and being segregated.
15. I repeated that this was not a discrimination case and advised the Claimant that if she wanted to bring such a complaint, she would have to make an application for leave to amend, the Respondent given the opportunity to reply and that application would then be heard on a different day or possibly on the papers. I added that this would mean that the hearing today would have to be postponed and any further hearing would be for dates many months in the future given the number of cases the Tribunal is dealing with.
16. I invited the Claimant to consider whether she wanted to proceed with the claim as it stands or to make an application for leave to amend in which case we will have to abandon today's hearing. Mr Rasarathram replied that we can deal with the unfair dismissal claim for the time being. I told him that we could not do that. It either continues as an unfair dismissal claim or we will have to stop and the application for leave to amend made. I then offered to adjourn to allow him and his wife to consider their position.

17. After approximately 10 minutes we resumed the hearing and the Claimant indicated that she wished to continue with her claim as one of unfair dismissal.
18. I went through the issues arising in the claim mainly for the benefit of the Claimant.
19. I explained that in an unfair dismissal complaint the Tribunal would essentially consider the reasonableness of the Respondent's actions as to how it dismissed the Claimant (the process) and why it dismissed her (the reason). The Respondent alleges that the Claimant was fairly dismissed without notice for gross misconduct. The Claimant alleges that she was unfairly dismissed.
20. I further explained if she is successful, the Tribunal would consider the extent to which any procedural flaws affected the outcome of dismissal and/or the extent to which the Claimant contributed to her dismissal. These matters if found would reduce the amount of compensation that could be awarded to the Claimant. Compensation was essentially for financial losses flowing from the dismissal. The Claimant indicated that she was not seeking re-instatement or re-engagement but compensation only.
21. Given certain matters raised in the Claimant's claim and witness statement, I advised her that the Tribunal could not award compensation for injury to feelings for unfair dismissal and, given that the Claimant was actually dismissed by the Respondent, this is not a constructive dismissal case.
22. I explained the order of proceedings to the Claimant and Mr Rasarathram in particular and asked if they had prepared questions to ask the Respondent's witnesses. At this point, at approximately 10.50 am, the Claimant rather surprisingly stated that she had not received their witness statements. Ms Cunningham expressed concern given that the statements had been sent some time ago and the Claimant had not raised this until now. The Claimant replied that she had done so on 23 July 2021 although she had mistakenly dated the letter 23 January 2021.
23. I adjourned until 12 noon to allow the Respondent to send the Claimant copies of the witness statements and for the Claimant to read them. I was mindful that the respondent's statements amounted to a total of 13 pages. During the break I ascertained that the Respondent sent its witness statements to the Tribunal and to the Claimant by email timed at 15.45 on 20 July 2021 and that whilst the Claimant raised a number of concerns in an email on that same day, none of them related to non-receipt of the statements. On return Mr Rasarathnam indicated that they had read the statements and so I proceeded to hear the evidence.

Findings

24. I set out below the findings of fact I considered relevant and necessary to determine the issues that I am required to decide. I do not seek to set out each detail provided to the Tribunal, nor make findings on every matter in dispute between the parties. I have, however, considered all the evidence provided to me and have borne it all in mind.

25. The Claimant was employed by the Respondent as a Dispenser from 8 March 2008 until her summary dismissal on 22 June 2020.
26. The Respondent operates a pharmacy dispensing service within a GPs surgery.
27. I heard limited evidence as to the size and administrative resources of the Respondent. However, the following emerged. The Respondent would appear to be a partnership consisting of a number of doctors operating as a GPs surgery. The partners appeared to be Dr Carter, Dr Webb and Dr Murphy. The Respondent employs a number of staff including a Practice Manager, a Finance Manager, a Senior Dispenser and a number of Dispensers. The Respondent operates from two sites: one at Partridge Green (known as the Oakleigh Surgery) and the other at St Peters Close.
28. At the time of the events leading to the Claimant's dismissal, Mrs Anna Harrison was the Practice Manager, Mrs Heike Burnett was the Finance Manager and Mrs Olga Rodrigo was the Senior Dispenser.
29. I was not provided with a copy of the Claimant's contract of employment, if she had one, or even a statement of written particulars of employment as required under the Employment Rights Act 1996. However, there is an Employee Handbook at R32-57 which does contain terms and conditions of employment, although I was not taken to it. There is also a disciplinary procedure at R59-67, to which I was referred. In addition, there is a document entitled Dispensary Standard Operating Procedure Pharmaceutical Assessment at R67 which I can see the Claimant signed in 2020 (at R68), but again I was not referred to it.
30. The Claimant's training certificates are at R70-80. These include a Dispensing Assistant Certificate, NVQ2 in Pharmacy Services, NCFE Level 2 Certificate in Understanding the Safe Handling of Medicines and Controlled Drugs ("CD"). In cross examination, the Claimant accepted that she understood those matters relating to the lifetime of the prescription as referred to at R80.
31. I was referred to a number of performance appraisals within the bundle of documents. These are at R87-91, 92-95, 101-104, 109-115, 116-119 and 126-129 and are dated between 2013 and 2018 and also to those contained within the Claimant's bundle of documents referred to in paragraph 33.
32. In questions put to the Claimant it was apparent, by reference to the various action plans at R90 and 94, that there were concerns that need to be addressed by the Claimant relating to practice areas, most notably the need for her to continue to focus on accuracy in dispensing, checking and endorsements and to accept criticism in a positive way.
33. The Claimant's position in response was that all dispensers make mistakes and that she learned from the appraisals, attempted to improve her practice and was sent on further training. In submissions, Mr Rasarathnam also pointed to the Claimant's appraisals from 2015 to 2018, at C41-57, in

particular the summaries at C48 and 52 and increased her working hours at C41-57. These were not addressed in evidence but he asserted that they were indicative of the Claimant being a competent worker and that what subsequently happened (in respect of the disciplinary action taken against her) amounted to a character assassination by the Claimant's line manager and middle manager.

34. On balance of probability, it appeared to me that these appraisals were indicative of issues arising in the past that were being addressed. Whilst they indicate ongoing issues, given that they do not appear to have been relied upon by the Respondent in reaching the later decision to dismiss the Claimant and do not aid a reasonable assessment of her guilt in respect of the allegations made against her during the disciplinary process leading to that decision, I do not believe that they are matters relevant for the purposes of the unfair dismissal claim.
35. In her witness statement, the Claimant sets out a catalogue of events going back to at least 2011 and in particular her difficulties with other members of staff including the previous Supervising Dispenser who left the Respondent's employment in 2018, whose management style she describes in very similar terms to those she attributes to Mrs Rodrigo. She also referenced documents in support.
36. Whilst I considered these matters, they are simply not relevant to the issues which I need to determine in respect of the claim before me, which at its broadest relates to matters concerning Mrs Rodrigo and more specifically the incidents which occurred in 2019 and 2020.
37. An incident occurred on 18 September 2019 between the Claimant and Mrs Rodrigo. The Claimant's position is set out in a letter which she sent to Dr Carter dated 23 September 2019 which is at C65-66. In essence, the Claimant alleges that Mrs Rodrigo behaved in an aggressive manner towards her, undermined her work by blaming her for mistakes done by others, worked in a chaotic and unstructured manner, causing an unsafe work environment where mistakes could easily happen, made changes without putting them in writing and expected everyone to be aware of the changes, and failed to maintain her privacy and confidentiality. Her letter then set out the incident on 18 September in which she alleges that Mrs Rodrigo attempted to blame her for an incident related to a CD when in fact the mistake was done by another dispenser. In particular, her letter states that as she was trying to point out the facts, Mrs Rodrigo threatened her with the words "don't piss me off" with her raised voice and her "usual attitude" towards her.
38. I note that at the start of the letter, the Claimant states that this is further to her brief discussion with Dr Carter and in particular that she states that at this stage she "would like this to be recorded but maintained informally and this record to be used if these concerns arise again".
39. This letter and the allegations contained within it were not put to Mrs Rodrigo in evidence and so I am unable to make any findings as to whether these

matters occurred. I was not pointed to any further correspondence within the bundles to indicate whether the matter in fact went any further than this letter.

40. On 19 September 2019, the Claimant had prescribed incorrect CD medication to a patient. I was referred to notes at R142-143 dated 19 September 2019 which Mrs Harrison said she had written on that day. Whilst the Claimant asserted that the notes, which were unsigned, could have been written at any time, there was no evidence to support this. On balance of probability, I accept that they were written by Mrs Harrison on that date.
41. In the discussion with Mrs Harrison that day, the Claimant immediately admitted that she had made the error because she had been chatting and was therefore distracted. However, the Claimant then stated to Mrs Harrison that it was Mrs Rodrigo's fault because she should have led by example and Mrs Rodrigo had made the same error the previous week. When Mrs Harrison asked for details of the previous incident, the Claimant was unable to provide any and Mrs Harrison was unable to investigate the matter further. Mrs Harrison then told the Claimant that other members of staff had drawn issue with the manner in which she was addressing Mrs Rodrigo and that they were unhappy working with the two together, to which the Claimant stated that the issue was caused by Mrs Rodrigo. In conclusion, Mrs Harrison said that they should meet together with Dr Carter and have a discussion on 23 September 2019.
42. The Claimant subsequently sent a letter dated 23 September 2019 to Dr Carter regarding Mrs Rodrigo's conduct and requested that it be placed on her personnel file but should not go any further. This is at R140-141. In essence, the letter sets out a number of concerns which the Claimant has about Mrs Rodrigo which she asserts led to the incident on 18 September. The letter ends by stating: "once again Mrs Olga was trying to blame (me) for an incident related to the CD, where the mistake was done by another dispenser."
43. This is clearly at odds with her admission of fault during the meeting with Mrs Harrison and her subsequent statement that Mrs Rodrigo was to blame. In cross examination the Claimant eventually accepted that the mistake was her fault but was unable to explain why Mrs Rodrigo was to blame beyond pointing to the contents of this letter.
44. The discussion with the Claimant, Mrs Harrison and Dr Carter took place on 24 September 2019. In her written evidence Mrs Harrison states the following. They acknowledged receipt of the Claimant's letter of 23 September and confirmed that she did not want to take the matter further. Mrs Harrison and Dr Carter discussed the contents of the letter to try to ascertain further information but the Claimant could not provide this. They went on to discuss CD not being included in the delivery of medications for collection at Oakleigh Surgery and the reason for the error. The Claimant stated that the reason for the error and interaction with Mrs Rodrigo was due to Mrs Rodrigo's conduct. Mrs Harrison and Dr Carter told the Claimant that this would be investigated further. The Claimant expressed her concern that she was going to lose her job and they reassured her that this was not the case. They were simply worried by the recent behaviour demonstrated by

the Claimant and Mrs Rodrigo and the need to ensure it does not happen again. Notes of the meeting are at R144-145.

45. On 20 December 2019, following further investigations, Mrs Harrison had a discussion with the Claimant about the need for her to follow dispensary processes and to accept management instruction. This letter is at R146 and states that on this particular occasion Mrs Harrison decided not to proceed with formal disciplinary action, but the letter is to be treated as confirmation that she has discussed her concerns with the Claimant and that the Claimant is expected to make every effort to address the shortcomings identified. The letter goes on to state that should there be any repeat of this conduct, or indeed any misconduct in general, the Claimant may be subject to formal disciplinary action. The letter enclosed a copy of the Respondent's disciplinary rules and procedures.
46. When the country was placed into lockdown because of the Covid-19 pandemic in March 2020, the Respondent decided to issue 3 months' worth of medication to all those patients aged 70 and over, given that they were at greater risk and needed to shield for 12 weeks. This significantly increased the workload of all employees, as the workload tripled with the one-off issue of 3 months worth of non-controlled drugs medication. It quickly became apparent in the first days of this new practice that mistakes were being made with the dispensing and so it was stopped immediately.
47. In April 2020, during a visit to Oakleigh surgery, the Claimant told Mrs Harrison that she felt there was a need for triple checks on CD items when lone working at the branch surgery. The Respondent had in place a procedure which is set out at paragraph 5 of the response at R29. Namely:
- "a. The dispenser picks the relevant drugs from the shelves;
b. If the packaging is broken the dispenser takes note and provides the correct information/medication quantity as per the prescription;
c. The dispenser scans the items into the computer. If the items are wrong the computer should bleep;
d. The dispenser labels and initials check box one;
e. A second dispenser checks the prescription against the labelled medication and initials check box two;
f. The original dispenser completes the dispensing process by sealing the items in a bag with the patients labelled details;
g. The dispenser that seals the item is responsible for making sure the correct medication has been picked, checked, labelled and placed in the sealed bag accordingly."*
48. Mrs Harrison told the Claimant that given this process there was no need for a triple check and that this would cause an additional cost to the business without reaping any reward. She told the Claimant that if she had a CD that required a second check, she could perform this with a colleague during morning when they attended with a daily drug delivery.
49. Whilst the Claimant did not give evidence on this matter or put the matter to the Respondent's witnesses, it does appear from the inter-parties correspondence at R275 that she denied that there was a process of triple checking in place and further that Mrs Rodrigo had said there was no need for triple checks on Tramadol.
50. By letter dated 8 April 2020, the Claimant wrote a letter to Dr Carter, in which she raised her concerns about Mrs Harrison's conduct towards her by questioning her in front of the other dispensers. This letter is at R154.

51. A meeting was held on 9 April 2020 between Mrs Harrison, Dr Carter and the Claimant. I was referred to the notes of the meeting at R155-159. The discussion at this meeting was about an incident on 7 April 2020 in which the Claimant issued CD medication to a patient failing to follow the dispensary's process. As a result the patient was given a larger amount of medication than that which had been prescribed to her. When this was investigated, the Claimant confirmed that she did not need any further training and was aware of the process to follow. At the meeting, the Claimant also referred to a letter she had written which she said she wanted simply to be left on her record. This would appear to be the letter dated 8 April 2020.
52. On 20 April 2020, the Respondent's partners wrote to the Claimant asking her if the issues raised in her letter of 8 April had been resolved during the meeting on 9 April, which she had stated at the time should be kept on her records, or whether she wished to pursue a formal grievance against Mrs Harrison. On 21 April 2020, the Claimant replied confirming that she did not wish to pursue anything but just wanted the letter to be kept on her record. The letter and reply are at R166 and 167.
53. What was clearly apparent from the evidence, and I believe it fair to say, is that there were interpersonal issues between the Claimant and Mrs Rodrigo. In evidence, Mrs Harrison said that whilst she found the Claimant to be a very pleasant individual, she was not open to criticism. She also stated that from September 2020 onwards, she had to take over management of the Claimant due to the deteriorating relationship between her and Mrs Rodrigo, so as to create a barrier between the two. The Claimant still reported to Mrs Rodrigo on a day-to-day basis but any issues were to be brought to Mrs Harrison instead of to Mrs Rodrigo. The Claimant was still expected to follow acceptable daily direction from Mrs Rodrigo but anything, such as personal leave requests or issues raised or to be raised by the Claimant would generally be discussed with Mrs Harrison. I had no reason to doubt Mrs Harrison's evidence. It is apparent from a number of documents in the Respondent's bundle that other staff had cause to comment on the way that the Claimant spoke to Mrs Rodrigo.
54. The Claimant alleged that there had been a high turnover of staff due to poor interaction with Mrs Rodrigo. There were a number of documents in her bundle which Mr Rasarathnam referred to in submissions. However, these documents were not put to Mrs Rodrigo in cross examination.
55. I referred Mrs Rodrigo to a letter at C60-61. This is a letter dated 15 January 2019 from a dispenser to 3 of the Respondent's doctors. It appears to follow on from this same dispenser's resignation letter to Mrs Rodrigo dated 4 December 2018, at C63. Whilst the resignation letter is in positive terms and expresses regret for her resignation to take up a new opportunity, the letter to the doctors sets out a number of concerns about Mrs Rodrigo's behaviour towards her and others. The author of the letters did not attend the hearing to give evidence.
56. In view of the lack of questioning from Mr Rasarathnam, my acknowledgement that he is a lay representative and what I could see of the Claimant's case, I asked Mrs Rodrigo if she was aware of these letters at the

time. She answered that she had only seen the letter at C60-61 a few weeks before the start of this hearing and that the only letter she saw at the time was the resignation letter at C63. That letter of course does not raise any concerns about Mrs Rodrigo.

57. I asked Mrs Burnett if she was aware of what I termed “the bad blood” between the Claimant and Mrs Rodrigo at the time of the events in question. She responded that she was not. Whilst she had some information about the nature of their relationship, this was limited to those documents that she had before her for the purposes of dealing with the subsequent disciplinary hearing as set out at R202.
58. In evidence, Mrs Harrison said that when she joined the practice it became apparent pretty quickly that there were interpersonal issues between the Claimant and Mrs Rodrigo. However, she was not aware of any employee who had left because of difficulties with Mrs Rodrigo. Whilst she was aware of the letter from the dispenser at C60-61, she did not see it at the time of events which led to the Claimant’s dismissal.
59. On 7 May 2020, a patient attended the surgery having been advised that her prescription for CD medication, Tramadol, was ready for collection. However the prescription was dated 8 May 2020 and the labels on the medication were dated 5 May. This meant that the prescription should not have been lawfully dispensed under the Human Medicines Act 2012, and the patient should not have been advised that it was ready for collection. This prescription had been dispensed by the Claimant.
60. Mrs Harrison received a report of the incident, which I was referred to at R186-187, as well as a report from Mrs Rodrigo relating to the dispensing of an incorrect amount of medication by the Claimant to another patient on 4 May 2020 at R168-171.
61. On 11 May 2020, Mrs Harrison held what she referred to as an informal conversation with the Claimant to discuss these incidents. I was referred to the notes of this meeting at R179-180. In her written evidence Mrs Harrison stated that the following matters were discussed at that meeting.
62. With regard to the first incident. She explained to the Claimant that it appeared that a post-dated prescription for CD had been dispensed. The Claimant knew what this was regarding and explained that she thought it was a medication for the recent 3 month prescription practice. This was something that the Respondent had brought in during the then Covid-19 lockdown but it had ceased in April 2020. She asked the Claimant to explain how this had happened. Initially the Claimant said she did not know, but then stated that the prescription did not have the date highlighted on it and that the dispensers do not check the date. The Claimant further explained that there was an old label on the system that she had used, namely from 27 April 2020 and that she had not use one from 8 May 2020. Mrs Harrison suggested to the Claimant that she must have used an old label from a previous prescription as the system would not have allowed her to print one with a future date. The Claimant agreed. The system has in place a preventative measure to ensure that future dated labels could not be printed, so Mrs Harrison asked the

Claimant why she had followed through with it when the system would have tried to prevent her from doing so. The Claimant replied that Mrs Rodrigo had told her to do it, that she had told her that the prescription was not yet due but Mrs Rodrigo instructed her to dispense it.

63. With regard to the second incident. Mrs Harrison asked the Claimant about a patient who said that she had only been issued with 14 tablets of 2 strengths of the same medication instead of 28 tablets of both strengths. The Claimant replied that she had no memory of this incident and that the patient must have lost the remaining tablets from each packet.
64. The meeting ended with Mrs Harrison thanking the Claimant for her time and stating that the Respondent would need to look into the situation further.
65. It seems clear from the content of the notes that this was an initial investigation meeting.
66. Mrs Harrison then undertook an investigation.
67. On 27 May 2020, she telephoned the patient involved in the first incident in the presence of Dr Carter. She asked her why she had come into the practice that day and the patient responded that she had received a text to say that her medication was ready and so she attended the practice to collect it but was not able to do so. I was referred to a note of this conversation at R189.
68. In her written evidence Mrs Harrison explain the following:
 - a. She sought to understand what had occurred by seeking to understand what process should have been followed and what steps had been taken. She understood there to be 3 broad issues that needed to be investigated: 1) the apparent dispensing of a CD, Tramadol, 3 days prior to its legal issue date; 2) excess quantities of an endorsed prescription being provided (as to which I was referred to a typed note relating to incident two at R196); and 3) incorrect, namely, lower quantities of medication being provided;
 - b. She understood that the process that should have occurred in respect of 2) and 3) above to be that once a prescription is printed:
 - i. The dispensary team pick the relevant drugs from the shelves and basket;
 - ii. If the packaging is broken the dispenser takes note and provides the correct information/medication quantity as per the prescription;
 - iii. The dispenser scans the items into the computer. If the items are wrong, the computer should bleep and alert the dispenser, as a second checker would;
 - iv. The dispenser labels and initials check box one;
 - v. Where a schedule 2 controlled drug is concerned a second dispenser checks the prescription against the labelled medication and initials check box two;
 - vi. The dispenser completes the dispensing process by sealing the items in a bag with the patients labelled details;

- vii. The dispenser that seals the item is responsible for making sure the correct medication has been picked, checked, labelled and placed in the sealed bag accordingly for patient collection.
 - c. She was unclear as to the protocol to be followed in relation to 1) above. She spoke to another dispenser who advised her of the following process:
 - i. The dispensary team pick the relevant drugs from the shelves and basket;
 - ii. If the packaging is broken the dispenser takes note and provides the correct information/medication quantity as per the prescription;
 - iii. The dispenser scans the items into the computer. If the items are wrong, the computer should bleep and alert the dispenser, as a second checker would;
 - iv. The dispenser labels and initials check box one;
 - v. Where a schedule 2 CD is concerned a second dispenser checks the prescription against the labelled medication and initials check box two;
 - vi. The dispenser completes the dispensing process by sealing the items in a bag with the patient's labelled details;
 - vii. The dispenser that seals the item is responsible for making sure the correct medication has been picked, checked, labelled and placed in the sealed bag accordingly for patient collection;
 - d. Dispensing a CD prior to its issue date is in breach of regulation 217 of the Human Medicines Act 2012 and also governed by the Care Commissioning Service ("CCS"), the independent regulator for health and social care in England;
 - e. Mrs Harrison asked the dispenser if there was a way to bypass the labelling software system (on the computer system). The dispenser advised her that this could be done by clicking through several warnings which could be "ok'ed" and override the stop feature to generate labels from previously issued prescriptions also known as duplicate labels. This could not be done in error, a dispenser would be aware of the process that they were completing because the system was very clear.
- 69. By a letter dated 13 May 2020, Mrs Harrison wrote to the Claimant confirming that she was suspended from work on contractual pay so as to allow an investigation into allegations of safe working practices in relation to the dispensing of medications. This letter is at R181.
- 70. On 14 May 2020 there was what is described as an "impromptu meeting" between Mrs Rodrigo, Dr Carter, Dr Murphy and the Claimant. I was referred to the minutes of this meeting at R182.
- 71. By a letter dated 14 May 2020, the Claimant wrote to the Respondent's doctors. This letter is at R183-184. In essence the claimant raised the following points in her letter: on 5 May 2020 the Tramadol prescription was already there for the Claimant to dispense; she pointed out to Mrs Rodrigo that the prescription was dated 8 May 2020 and they were not allowed to

dispense it until then; Mrs Rodrigo instructed her to dispense the prescription and said “just do it, it is only three days”; Mrs Harrison had told her on several occasions that she had to follow what her line manager told her to do and so she dispensed it; in order to conduct a fair and transparent investigation into her suspension, the Respondent should investigate all concerns raised by the dispensers as to the recording and administration of CD in respect of the recording not being maintained accordingly, mistakes made in the CD recording book and CD prescriptions piled up with overdue dates and having not been entered in the CD book to maintain legality.

72. In response to this letter, Mrs Harrison reviewed what she called, the audit trail, in respect of the Tramadol prescription. From this she determined the following: the prescription had an issue date of 8 May 2020; the Claimant created a duplicate label from a prescription previously dispensed on 14 April 2020; the duplicate label enabled the Claimant to dispense the medication on 5 May 2020; the Claimant endorsed the prescription; and the Claimant initialled the medication check box on the label. The documents relating to this would appear to be those at R174-178.
73. Mrs Harrison interviewed Mrs Rodrigo, Dr Harding and a number of other dispensers, including Sarah Wells. The relevant notes and statements would appear to be the documents at R186-197.
74. From the minutes of discussion that Mrs Harrison and Dr Carter had with Ms Wells, at R191-192, the following matters emerged.
75. During the busier time of the 3 month dispensing, Mrs Rodrigo in agreement with the dispensing team, had determined that the best way to enter CD medications having been dispensed and collected in the CD register, would be to place the prescription in the specific basket and leave it in the same place above the CD storage area. By doing this, rather than each individual dispenser completing the details straightaway into the CD record book, Mrs Rodrigo would herself enter all CD medications that had been collected later that day, as well as entering all the CD that had been delivered to the dispensary that same day, to ensure that the amounts were correct and tallied, the legal requirement being to do this within 24 hours. The Claimant disagreed and felt that CD should be entered at the time the patient came to collect the medication, even if there were long queues of patients waiting. She continued to do this, despite the team being asked not to. This resulted in confusion surrounding entries in the register, which Mrs Rodrigo took time to unravel.
76. When the 3 months of prescriptions were issued to the over 70s it soon became apparent that it would not be safe or appropriate to do so. As a result, the 2nd 2 months worth of CD prescriptions were cancelled. Two further separate prescriptions for CD were then issued but post-dated for 1 and 2 months later. These were stored in a separate wallet to all other prescriptions and the dispensers were highlighting the date on the prescriptions to make it clear. The prescriptions were only used to dispense the CD once the date on them had been reached. The prescriptions in the wallet were checked daily so that the medications could be ordered and dispense once the data been reached and only then.

77. Mrs Harrison then passed her investigation notes to Mrs Burnett, the Finance Manager, to determine the next steps. These would appear to be at R195-197.
78. By a letter dated 11 June 2020, Mrs Harrison wrote to the Claimant requiring her attendance at a disciplinary meeting to be held on 18 June conducted by Mrs Burnett with Dr Webb attending as a note taker. The letter set out the areas of concern to be discussed at that meeting, indicated that if substantiated they would be regarded as matters of gross misconduct which could result in her dismissal without notice and set out a list of the attached documents which would be used in support. The letter also advised the Claimant of her right to be accompanied by a colleague or a trade union official. This letter is at R201-202.
79. The matters of concern are set out below:
- “• It is alleged that on 05/05/2020 you dispensed a Controlled Post-Dated Prescription, namely Tramadol prior to the appropriate date as per The Human Medicines Regulations Act 2012.
 - It is alleged that you have completed a Safety System ‘Work around’ to enable the early dispensing of said medication using old system labels
 - Taking part in activities which caused the company to lose faith in your integrity namely, dispensing the incorrect medication quantities, further details being, it is alleged that you have endorsed prescriptions with incorrect quantities.
 - Failure to follow company rules and procedures, namely not following the correct drug dispensing procedures and not complying with The Human Medicines Regulations Act 2012.
 - Further particulars being, that it is alleged that on 07/05/2020 you failed to check/initial medication prior to completing the dispensing process. The company alleges that this matter, if proven, represents a gross breach of trust.”
80. The disciplinary hearing took place on 18 June 2020 with the Claimant, Mrs Burnett and Dr Webb in attendance. The Claimant was offered but declined the right of accompaniment. The notes of the meeting are at R205-215.
81. At the hearing the following matters arose:
- a. With regard to the Tramadol incident on 5 May 2020, the Claimant repeated her position as set out in her letter of 14 May. Mrs Rodrigo’s position was put to the Claimant, namely that she denied what the Claimant had said and was not on the premises at the time. The Claimant maintained her position;
 - b. The Claimant maintained in the light of Mrs Harrison’s audit trail that she had not printed the medication label ahead of the date on the prescription;
 - c. The Claimant further explained that the patient had called earlier in the week and that is why she had dispensed the prescription and had confirmed with Mrs Rodrigo what to do. The Claimant further stated that she had been in contact with a Day-Lewis locum pharmacist who offered her the opinion that this would be a “near miss” (Day-Lewis being a private pharmacy). Mrs Burnett subsequently determined not to pursue this further because it was a mere opinion of an unconnected party and therefore irrelevant;

- d. With regard to the allegation that the Claimant had used the previous label to print the prescription because the system would not let her do it automatically and she therefore had to have used a workaround. The Claimant stated that the label was already there and she had only done this by mistake. Mrs Burnett subsequently concluded that the audit of the clinical system was unable to substantiate this claim;
 - e. In relation to the 3rd bullet point issue (relating to an incorrect quantity of Amoxicillin being dispensed), Mrs Burnett asked the Claimant what occurred and she said the error was not hers but it was the patient's and/or other staff members. She stated that the patient must have been provided with the correct medication and taken it prior to attending the premises or, alternatively, another dispenser must have opened the medication boxes and put no marks on it indicating that they had taken part of the medication from it. The Claimant further stated that she had been told not to double-check part boxes and was therefore following the process. In addition she stated that another staff member had been there but she was not able to identify that person.
82. In evidence, Mrs Burnett also stated that the Respondent had no connection with Day-Lewis and that their opinion would not have mattered in the decision-making process. She further indicated that the CCG, as the NHS body that oversees GP practices was the independent body to contact. She stated that given the evidence that she had as to the process that should have been followed and the process that was followed, there was no need to obtain an opinion from an external pharmacist and, further, it would have been inappropriate to do so given that the Respondent was investigating allegations of gross misconduct.
83. By a letter dated 22 June 2022, at R216-217, Mrs Harrison wrote to the Claimant advising her of the outcome of the disciplinary hearing. Whilst this letter is signed by Mrs Harrison, Mrs Burnett said in evidence that she made the decision and provided the outcome document to Mrs Harrison.
84. In essence, the letter set out the following:
- a. The matters of concern discussed;
 - b. The Claimant's explanations;
 - c. The findings;
 - d. The right of appeal to Dr Webb within seven working dates of receipt.
85. With regard to the findings the letter said as follows:
- a. At the time of dispensing the post-dated prescription, the Claimant was working alongside another dispenser and not Mrs Rodrigo as alleged. Mrs Rodrigo was not at work nor was she on the premises to have provided the Claimant with an instruction to dispense the prescription. The patient confirmed that they had not contacted the surgery to collect their medication prior to a text notification triggered by the completion of the dispensing processes on 5 May 2020;

- b. Dispensing a post-dated prescription was in breach of the Human Regulations Act 2012 and practice policy and procedure;
 - c. Using old system labels did allow for a safe system workaround as the system would have stopped the Claimant printing any label prior to the date on the prescription. This further confirms a lack of following practice processes as per the signed Standard Operating Procedure reviewed on 29 August 2019 and signed by the Claimant on 28 April 2020. Along with the basic lack of checking shelved medication prior to dispensing;
 - d. The explanation provided by the Claimant as to incorrect quantities of Amoxicillin had been issues was unsatisfactory. The letter found that the Claimant's explanation that another dispenser could have added "owed" medication to be just as unacceptable given that prescription was also endorsed with her initials, which is completed at the time of checking and bagging the medication.
86. In evidence, Mrs Burnett stated that she had not been satisfied with the Claimant's explanations as she had contradicted herself throughout and appeared to pass the blame to other members of staff rather than acknowledging the mistakes and showing an intention to improve so that the error would not happen again. Her version of events was not supported by any of the documentation and the Claimant did not appear to appreciate the severity of her actions. She also stated in evidence that, whilst she considered lesser sanctions, she felt that in the circumstances she was left with no option but to make a recommendation to dismiss the Claimant for acts of gross misconduct, which was recorded in the form of a marked up copy of the hearing minutes. However, I was not provided with a copy of the marked up hearing minutes.
87. By a letter dated 26 June 2020, Mrs Harrison wrote to the Claimant enclosing her final payslip including her outstanding annual leave to date and P45. This letter is at R218.
88. The Claimant wrote to the Respondent by letter dated 26 June 2020, at R219. The letter is headed "Without Prejudice – To be Recorded" and the heading is "Re: Notice served for Unfair Dismissal". The letter stated that as her "Good Will and Trust" and "Duty of Care" has now been exhausted and breached, she has no option but to serve this notice. Whilst I did not fully understand the purpose of the letter, it appears to simply be just that, notice of unfair dismissal. As such it is not a without prejudice document to which any privilege attaches.
89. By a letter dated 2 July 2020, Dr Webb replied to the Claimant's letter of 26 June. This is at R220. In her letter Dr Webb indicated that she had interpreted the Claimant's letter as a letter of appeal and set a hearing date of 8 July 2020 at which she would hear the appeal accompanied by Dr Murphy as minute taker. She asked the Claimant to provide her grounds of appeal.

90. The Claimant responded by letter dated 6 July 2020, at R221, again headed "Without Prejudice – To be Recorded" and "Re: Notice Served -Unfair Dismissal". This letter is in similar terms to her previous letter but further advised that the matter is better dealt with via ACAS and the Employment Tribunal at this stage. I did not fully understand the purpose of the letter and could not see that it was privileged. But in effect it appears to say that the Claimant was not going to appeal.
91. Indeed, the Claimant's position in evidence was that she did not appeal because the Respondent had already made up its mind and sent her P45. However, it does appear that the letter enclosing the P45 would have crossed in the post with her letter of 26 June 2020.
92. Mrs Rodrigo said in cross examination that she had previous experience of dispensing medication but not in the context of a GPs surgery. She stated that all systems were similar and so she quickly picked up the Respondent's system. Mrs Rodrigo also stated that she was a qualified dispenser holding an NVQ2 qualification. Whilst in submissions the Claimant raised matters relating to Mrs Rodrigo's alleged lack of qualification this was not borne out by Mrs Rodrigo's own evidence and I did not believe it to be relevant to the issues that I needed to determine.
93. The Claimant alleges that Mrs Rodrigo was at the surgery on the day of the incident in question and told her to dispense the prescription even though it was before the prescription date. In cross examination, Mrs Rodrigo denied this and stated that whilst she was at work that day, she left before the prescription was dispensed. She left work at about 3.30 pm and was at home by 4.30 pm. When pressed in cross examination, she stated that she usually left work between 3.30 and 3.40 pm to collect her daughter from school and that it then takes her a further 20 minutes to get home.
94. Mrs Rodrigo explained in evidence that you require a minimum of 2 staff to dispense prescriptions, one to scan the stock when it arrives in the morning and to record it on the computer using the barcode of each item, and one to dispense medication from a legal prescription, on the right date, the right item and when scanned the computer recognises the medication and produces a label. If there is anything wrong with the medication or prescription the computer system alerts the user to it.
95. In view of the lack of what I would call direct questioning as to the nature of the Claimant's case I also put a number of other matters to Mrs Rodrigo in blunt terms. I explained that I was only doing this because the Claimant had not and I wanted her to be absolutely clear what was alleged and to have the opportunity to respond in those terms.
96. I said to Mrs Rodrigo the Claimant's case was that they did not get on and that she instructed the Claimant to issue the prescription before the date shown and had lied about this because of the conflict between them. Mrs Rodrigo replied that she was not there at the time and she would never have instructed anyone to do this.

97. I also said to Mrs Rodrigo that the Claimant's further case is that at the disciplinary hearing when she realised that Mrs Rodrigo was not at work on the day in question, she reflected and said that in fact the conversation regarding the prescription had taken place a few days earlier and that her evidence was a lie. Mrs Rodrigo replied that she would never do so.
98. In evidence, I was referred to an exchange of text messages between Mrs Rodrigo and her partner on 5 May 2020 at R 179. These messages indicated that whilst Mrs Rodrigo may have been at work that day she sent a text to her partner at 16.37 hours stating that she was at home. Mrs Harrison said in evidence that this was not a text message that was relied upon at the disciplinary hearing, having not come to light until shortly afterwards. She explained that what the Respondent had in mind at the time of the hearing was that Mrs Rodrigo was not scheduled to work on the day in question when the Tramadol prescription was dispensed and she had given evidence that she had left for the day by that point.

Submissions

99. I was provided with written submissions by Ms Cunningham which she spoke to orally. Mr Rasarathram referred to submissions which he said were contained within the Claimant's witness statement and also gave oral submissions. I do not intend to set these out fully in this Judgment but I have taken them all into account and will refer to them only where appropriate to do so.

Relevant Law

100. Section 98 of the Employment Rights Act 1996:

"(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—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) [In any other case 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."

Conclusions

Unfair Dismissal

101. Section 98 of the Employment Rights Act 1996 sets out how an Employment Tribunal should decide whether a dismissal is unfair. There are two basic stages. Firstly, the employer must show what was the reason, or if more than one, the principal reason, for the dismissal. The reason must be one of the four potentially fair reasons set out in section 98(2) or some other substantial reason of a kind such as to justify dismissal. Secondly, the Employment Tribunal must then decide in accordance with section 98(4) whether it was fair to dismiss the employee for that reason.
102. I first considered whether the Respondent had shown a potentially fair reason for the Claimant's dismissal within section 98(1) and (2) ERA 1996. It is clear from my findings that the Respondent has shown that the potentially fair reason is to do with the Claimant's conduct.
103. I then turned to consider whether this was a sufficient reason for the Claimant's dismissal within section 98(4) ERA 1996. This involves an examination of both the way in which the Respondent dismissed the Claimant (the process followed) and the reason for the dismissal (the substance).
104. I had regard to the Respondent's own disciplinary procedure as well as the benchmark set out in the Acas Code of Practice 1: Disciplinary and Grievance Procedures (2015).
105. It is clear from my findings that the Claimant was advised of the allegations made against her following an investigation which involved interviewing her, as well as all relevant witnesses, she was informed of the resultant charges against her and given the opportunity to respond to those charges at a disciplinary hearing at which she was afforded the right of accompaniment, although she did not avail herself of this right. She was then advised on the outcome of the hearing in writing and given the opportunity to appeal. The Claimant did not appeal and on balance of probability I do not accept her explanation for not doing so, given that she did not receive her P45 at the same time as the dismissal letter and it appears more probable than not that the subsequent letter enclosing the P45 crossed in the post with her subsequent correspondence. I did not that the right of appeal was to Dr Webb, who was notetaker at the disciplinary hearing, but no point was taken of this by either party in evidence or submissions and, in any event, the Claimant did not exercise her right of appeal.
106. I therefore find that the dismissal was procedurally fair.

107. I then considered the reason for dismissal applying the test within section 98(4) ERA 1996, as above, and the test contained within BHS v Burchell [1979] IRLR 379, EAT relating to conduct dismissals. This requires me to consider the following:
- a. Whether the employer believed that the employee was guilty of misconduct;
 - b. Whether the employer had in mind reasonable grounds upon which to sustain that belief; and
 - c. At the stage at which the employer formed that belief on those grounds, whether s/he had carried out as much investigation into the matter as was reasonable in the circumstances.
108. I am satisfied that the Respondent carried out a reasonable investigation in the circumstances and having regard to the issues involved, its size and administrative resources. This was a relatively small employer, a GPs Surgery, and did not appear to have an HR adviser. The Respondent interviewed the Claimant and all relevant witnesses and the Claimant was afforded the opportunity to respond to the charges against her.
109. I am also satisfied that from this investigation, the Respondent reached reasonable conclusions on which to form the belief that the Claimant was guilty of misconduct and held a genuine belief of her guilt. The charges related to the incorrect dispensing of medication to patients. This could have resulted in risk to patients as well as being in breach of the Human Medicines Regulations 2012. The conduct found involved a number of serious failings in the dispensing of CD medication and was sufficiently serious to undermine the relationship of trust and confidence that the Respondent had in the Claimant.
110. There was nothing to suggest that the decision to dismiss had not been authorised by the Respondent's partners, as asserted by the Claimant. Taking into account the Respondent's size and administrative resources, as well as the nature of the practice, I accepted the Respondent's submission that there was nothing unusual for the Practice Manager to sign off letters on behalf of the partners, particularly during the height of the COVID-19 lockdown when its day to day functioning would have been impacted and the GPs attention prioritised on treating patients. This was a reasonable approach to take.
111. When assessing whether the Burchell test has been met, the Tribunal must ask itself whether what occurred fell within the "band of reasonable responses" of a reasonable employer. This has been held to apply in a conduct case to both the decision to dismiss and to the procedure by which the decision was reached. (Sainsbury's Supermarkets v Hitt [2003] IRLR 23, CA). There is nothing to suggest that the procedure followed fell outside the band of reasonable responses. Whilst not all employers would have dismissed the Claimant in these circumstances, it is not possible to conclude

that no reasonable employer would have done so. As a result the Claimant's dismissal falls within the band of reasonable responses.

112. Indeed, when considering this I took care to remind myself that I must not to substitute my own decision for that of the employer when applying the test of reasonableness.
113. For the sake of completeness, I also addressed a number of submissions made by Mr Rasarathnam in reaching my conclusions. For the sake of completeness, these are set out below:
 - a. As to the Claimant's appraisals from 2015 to 2018, at C41-57, in particular the summaries at C48 and 52 and the increase in the Claimant's working hours C41-57. Mr Rasarathnam asserted that these were indicative of the Claimant being a competent worker and that what subsequently happened amounted to a character assassination by the Claimant's line manager and middle manager. I found no basis for this assertion and I have already given my view of the significance of the appraisals above. What was apparent was that there were a number of historic issues involving the Claimant and dispensing concerns of an ongoing nature, although these were not taken into account by the Respondent in reaching its decision to dismiss her;
 - b. That the Respondent had misled the Tribunal. He cited the letter at C17 dated 5 January 2012, which he said had nothing to do with the case and was one of several letters included by the Respondent in the bundle so as to mislead the Tribunal and to waste its time, as well as the reference to the earlier concerns regarding the Claimant. I found no basis for this assertion and whilst documents as to earlier concerns were in the bundle, they were not taken into account in reaching the decision to dismiss the Claimant;
 - c. Mrs Rodrigo's certificates at C58 & 59. Mr Rasarathnam stated that these were qualifications that she had before she commenced employment with the Respondent and he asserted that she had no experience in dispensing, but yet after a course of that duration she was told she was competent to do her job. He further asserted that Mrs Rodrigo did not like it when the Claimant advised her or told her anything or attempted to help her. He further alleged that the Claimant had made a whistle-blowing concern and nothing was done about it. In response I explained to him that these were not matters that had been raised in evidence with the Respondent or Mrs Rodrigo in particular and so I could not consider them. In any event I have made my findings as to Mrs Rodrigo's qualification above;
 - d. That Mrs Harrison and Mrs Barnett had no dispensing experience. Mr Rasarathnam asserted that they had spoken to an external pharmacist and the CCG but those persons were not included in the disciplinary proceedings, so the Claimant had no opportunity to question them and they would have been independent. I was not fully clear what Mr Rasarathnam meant. But from my findings, it is correct that Mrs Barnett spoke to another dispenser because she had limited knowledge of the

dispensing process. It is not unreasonable of the Respondent to do so or to determine not to call that person to the disciplinary hearing to give evidence as long as the Claimant was made aware of what they had said, which indeed she was in the documents sent to her prior to the disciplinary hearing;

- e. That Mrs Harrison nor Mrs Barnett were not suitable persons to be involved in the disciplinary investigation because they had no dispensing experience. Ms Cunningham submitted that there was no requirement to hold any qualification in order to conduct an investigation. I do not find it unreasonable of the Respondent to appoint persons having no dispensing experience to be involved in this process. From the evidence it is clear that they took steps to apprise themselves of the relevant practice and procedural matters involved in the dispensing of prescriptions.
- f. As to triple checking. Mr Rasarathnam queried why, if Mrs Harrison talks of triple checks within her witness evidence, there is only 1 signature on the Tramadol box. This was not something that appears to have been pursued during the disciplinary hearing and so I believed it was not a relevant question to ask of Mrs Harrison during cross examination. The nub of the matter under scrutiny with regard to the Tramadol incident was that it had been dispensed 3 days before the date of the prescription in the circumstances in which it was. In any event as best I could I have reached findings as to the relevance of triple checking above;
- g. That the Claimant's dismissal was unfair because the letter of dismissal was signed by Mrs Harrison. It is clear from the evidence that the relevant decision-makers were the partners of the respondent practice on recommendation from Mrs Burnett. I accepted the evidence that Mrs Burnett advised Mrs Harrison of her decision which was then notified to the Claimant in the dismissal letter. I accepted the submission by Ms Cunningham that having regard to the size and administrative resources of the Respondent practice it would not be unusual and, more to the point, unreasonable for the Practice Manager to sign off letters, particularly during the Covid lockdown at that time;
- h. That the Respondent did not consider the CD recording book. In her letter of 14 May 2020, the Claimant requested that the Respondent take a look at the CD recording book which she alleged was full of mistakes. This was also raised during the disciplinary hearing although Mrs Burnett explained that during the Covid 19 pandemic there had been an instruction to dispensers not to record matters in the book for want of time. Mr Rasarathnam submitted that the failure to consider the CD record book rendered the investigation unfair. However, I do not accept that argument. There was no obvious relevance of the CD book to the allegations against the Claimant or the reasons for her dismissal and in any event there was nothing to suggest it was unreasonable of the Respondent not to consider it;

- i. As to Mrs Rodrigo's text to her partner at R179. Mr Rasarathnam submitted that this text exchange indicated that Mrs Rodrigo was at work on 5 May 2020 and her message to her partner that she was home at 16.37 hours was self-serving and indicated that she had sent it because she most probably knew she had done something wrong. However, the text message did not come to light until after the disciplinary hearing and it was not relied upon at that hearing. In any event I could not arrive at the same conclusion that Mr Rasarathnam did and I have accepted Mrs Rodrigo's evidence as set out in my findings above;
- j. As to procedural breaches. Mr Rasarathnam submitted that it was unfair of the Respondent to put forward evidence of matters involving the Claimant over the last 10 years and an attempt to mislead the Tribunal. Further he submitted that it was in breach of the ACAS Code to ask Mrs Harrison to lead the disciplinary hearing when the Claimant had taken a grievance against her and not to involve the practice doctors at the disciplinary hearing. In addition he submitted that this latter failing was a gross breach of duty of care. I do not accept that these matters rendered the dismissal unfair within the context of the test of reasonableness of the Respondent's actions.

114. As a result I conclude that the Claimant's dismissal was fair. The complaint of unfair dismissal is unfounded and is dismissed

Notice Pay

115. This is usually referred to a complaint of wrongful dismissal.
116. In order to justify summary dismissal there as to be a repudiatory breach of contract. In order to amount to a repudiatory breach, an employee's behaviour must disclose an intention to disregard the essential requirements of the contract of employment – Laws v London Chronicle (Indicator Newspapers) Ltd (1959) 1 WLR 698, CA. The employer faced with such a breach can either affirm the contract and treat it as continuing or accept the repudiation, which results in immediate, ie summary, dismissal.
117. The degree of misconduct necessary in order for an employee's behaviour to amount to a repudiatory breach of contract is a question of fact for a court or tribunal to decide.
118. In Briscoe v Lubrizol Ltd [2002] IRLR 607, the Court of Appeal approved the test set out in Neary & Anor v Dean of Westminster [1999] IRLR 288, ECJ (Special Commissioner), in which it was found that the conduct "must so undermine the trust and confidence which is inherent in the particular contract of employment that the [employer] should no longer be required to retain the [employee] in this employment".
119. I recognise that there are no hard and fast rules and that many factors may be relevant, for example, the nature of the employment and the employee's past conduct and whether within the terms of the employee's contract of

employment certain acts have been identified as warranting summary dismissal.

120. I also recognise that certain acts such as dishonesty, serious negligence and wilfully disobeying lawful instructions can justify summary dismissal at common law.
121. In London Central Bus Company Ltd v Nana-Addai & Nana-Addai v London Central Bus Company Ltd 29th September 2011 UKEAT/0204/11 & UKEAT/0205/11, the Employment Appeal Tribunal took the opportunity spelt out the differences in the two tests of unfair dismissal and wrongful dismissal. Unfair dismissal is a right created by statutory. Cases such as Burchell have made it clear that in an unfair dismissal case, it was for a tribunal to identify what was the reason for the dismissal and to decide whether or not the employer's decision to dismiss was based on a reasonable conclusion after making such enquiries and investigation as was appropriate and then to ask if the dismissal fell within the band of reasonable responses. Wrongful dismissal is a contractual right. The question is, has the employee committed a fundamental breach of his/her contract of employment so radical in its nature that it justified summary dismissal without compensation for notice? Thus, in a case of wrongful dismissal it is for the tribunal itself to decide what happened and not the employer's perception of what happened.
122. Mr Rasarathnam did not deal with the complaint of wrongful dismissal in submissions. Ms Cunningham's position is that the dismissal was for gross misconduct entitling the Respondent to summarily dismiss the Claimant.
123. I have no doubt from my findings that the matters for which the Claimant was dismissed amounted to gross misconduct entitling the Respondent to summarily dismiss her.
124. The Claimant committed serious failings in the dispensing of medication to patients which could have had potentially serious effects on the well-being of those patients. Indeed, this formed ongoing concerns that the Respondent had about the Claimant's practice which it had attempted to address in the past. The Claimant offered explanations by which attempted to blame Mrs Rodrigo, with whom she clearly had interpersonal issues, as well as her other colleagues and even patients, for her own short-comings. These explanations did not hold up to examination.
125. The complaint is therefore unfounded and is dismissed.

Redundancy

126. Whilst the claimant had also brought a claim of entitlement to a redundancy payment, this was not pursued in evidence or submissions and in any event I have found that she was dismissed by reason of conduct.
127. The complaint is therefore unfounded and is dismissed.

Judgment

128. It therefore follows that the Claimant's claim is dismissed.

Employment Judge Tsamados
Date 24 January 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
15 February 2022