



EMPLOYMENT TRIBUNALS

Claimant: Mr. R Aspinall

Respondent: Mr. R Taylor T/A Lemanis Enterprises

Heard at: London South Hearing Centre

On: 17/18/19 May 2022

Before: Employment Judge McLaren

Representation

Claimant: Ms. A Scriven, Solicitor

Respondent: Ms. C Scarborough, Counsel

JUDGMENT

The decision of the tribunal is that

1. The claim for unpaid holiday is dismissed on withdrawal by the claimant.
2. The claim for unfair dismissal does not succeed.

REASONS

Background

Issues

1. In his claim form the claimant brought 3 claims. These were a claim for unfair dismissal, a claim for holiday pay and a failure to provide written particulars

of employment. The claim for holiday pay was withdrawn as part of closing submissions.

2. The legal issues that arise had been agreed as follows

Unfair dismissal

- a. Did the Respondent genuinely believe the Claimant to be guilty of misconduct?
- b. Did the Respondent have reasonable grounds for that belief?
- c. Did the Respondent conduct such investigation into the matter that was reasonable in the circumstances of the case?
- d. Was the dismissal procedurally fair?
- e. Did dismissal fall within a range of reasonable responses open to the Respondent?
- f. if the dismissal is unfair, should any Polkey reduction be made (i.e., a reduction to reflect the % chance that the Claimant would have been dismissed even if a fair procedure had been followed)?
- g. Would it be just and equitable to reduce the amount of the Claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to 3.122(2) ERA; and if so to what extent?
- h. Did the Claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to 3.123(6) ERA?
- i. Should any uplift be applied due to the Respondent or Claimant not following the ACAS code? *S1 ERA 1996*
- j. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars? The respondent concedes this.
- k. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to

make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

- I. Would it be just and equitable to award four weeks' pay?

Evidence

3. I heard evidence from the claimant on his own behalf and from 3 witnesses for the respondent. These were Richard Taylor who owns the business, Aimee Langley, now the Operations Manager, and Paul Bishop who chaired the disciplinary meeting with the claimant. I was provided with a 1092-page bundle and a 107-page mitigation bundle. In reaching my conclusion I considered the evidence I heard and the documents I was taken to.

Finding of facts Background

4. The claimant was employed by the respondent from November 2008 to work at Lympe Castle, a grade one listed 12th century building which is a wedding and corporate events venue. The main Castle has two bars and wedding reception rooms. There are three holiday cottages in the castle grounds and a flat. Mr Taylor, who is the sole proprietor, trades as Lemanis Enterprises.
5. The respondent has around 50 staff. This is a mixture of casual and regular staff. The claimant was hired by Mr Taylor as an experienced individual and at the date of his dismissal he was being paid £66,000 per annum. Mr Taylor considered this to be a high salary both for the role and the locality and he believed the claimant was well paid for what he considered to be a demanding role.
6. A copy of the claimant's CV was in the bundle and this demonstrated that the claimant had held a number of roles the majority of which had been management ones and a number of which had been with large organisations. Indeed, in one of the grievances the claimant (page 341) described himself as having "31 years of managerial and senior management roles". I found it was reasonable for Mr Taylor to believe that the claimant was an experienced and senior manager. I also find it reasonable for Mr Taylor to consider he could rely on the claimant's skill in a senior management role within his business.

Mr Taylor's involvement and authority

7. Mr Taylor owns the business. He was working in London as a management consultant at the time he hired the claimant. He was frequently abroad and visited the castle once or at the most twice a month in the first years of the claimant's employment.
8. Mr Taylor's personal circumstances changed in 2013 to 2017 when he began working as a freelance consultant, however, he continued to travel and still visited the castle only once or twice a month. The frequency of visits was

confirmed by Ms Langley. The claimant himself identified that Mr Taylor was not often at the castle and suggested that even when he did visit, he spent only 5% of his time at the castle, spending the rest of this time at the pub or the bistro. I accept that Mr Taylor's visits were comparatively infrequent.

9. The claimant suggested, that despite the limited number of visits, Mr Taylor was very much more involved than that. He said that Mr Taylor rang once or twice a day on average every week. Mr Taylor said that he called 3 or 4 times a week and I accept that there was comparatively regular communication between the two on the telephone.
10. The claimant gave evidence that somebody, often himself, was required to meet Mr Taylor once a week going up to various locations to do so. He also sent Mr Taylor numerous emails every day. There were almost no emails of this nature in the bundle. These weekly mandatory meetings were not referred to in the claimant's witness statement, nor was the point put to Mr Taylor. I accept that Mr Taylor had another very busy job which involved frequent travel abroad. On the balance of probabilities, I find it unlikely that these meetings, which are first referred to in evidence before the tribunal, occurred as the claimant said. I find that Mr Taylor kept in regular telephone contact but visited infrequently and had little in person contact with the claimant.
11. Despite this limited level of contact, the claimant said that Mr Taylor was in charge, nothing could be done without his say so and, (page 111) "Mr Taylor 99.9% of the time controls everything". In his interview with Mr Bishop the claimant identified that Mr Taylor never got involved in the day-to-day.
12. The claimant also said that colleagues did not take instructions from him, they were all well able to do their jobs and therefore there was nothing for him to instruct them on. The bundle contained at page 984 an email sent by the claimant to Mr Taylor in which he seems to be complaining that he had told Ms Langley that they did not need a third person, but they were not getting the hint. I do not find that this indicates that Mr Taylor was the only one who could give instructions to staff, I find it merely demonstrates that the claimant shared concerns Mr Taylor.
13. Other colleagues believed that the claimant was in charge. In the interview between the first HR consultant and Ms Cook she describes the claimant as the manager of everybody. Ms Langley describes the claimant as her line manager, and it was agreed that he hired her.
14. I accept Mr Taylor's account that he was not involved in the day-to-day running of the business, nor was he managing it. That was the claimant's job. This is in line with the evidence from Ms Langley and Mr Taylor who have been consistent throughout. The claimant contradicted his evidence on this point and was not consistent and for that reason I prefer the account of others.

The Claimant's job title

15. There is a dispute as to the claimant's job title and the scope of his role. It is accepted that there was a no written contract of employment or written particulars which describe the claimant's job. The respondent describes him

as general manager, the claimant states that Mr Taylor was the general manager who always ran things and he, the claimant, was the estate manager.

16. While the bundle contains at page 934 a letter that describes the claimant as estate manager, in the suspension letter and during the investigation process the claimant is described as general manager by the first HR consultant. In answer to her question (page 106) about understanding his role as a general manager, the claimant says he has been in this position for 10 years. He also refers to his colleagues not knowing his job as they'd never been a general manager. Again, in that interview he is asked about his role as a general manager and appraisals, and he does not make any comment. In his meeting with Mr Taylor on 2 August Mr Taylor again talks about him being the general manager and the claimant does not dispute that.
17. Ms Langley gave evidence that she and her colleague, the operations manager at the time, reported to the claimant, along with the head of maintenance and the chef. Staff who were assisting at events reported either to herself or her colleague on the day of the event. This is contrary to an organisational chart that was included in the bundle at page 961 which showed Ms Langley, the operations manager, head of maintenance and the chef as all being on the same level as the claimant and all reporting to Mr Taylor. This document was produced by the claimant during the litigation process. The claimant did not produce it at any time during the disciplinary process. It does not align with the other evidence I heard, and I find it is not an accurate reflection of the reporting lines as they operated. I find that staff reported to the claimant.
18. I accept the evidence of Mr Taylor and Ms Langley which is supported by the claimant's contemporaneous account of events that he was the most senior member of staff on site, demonstrated in part by the large gap between his salary and the next highest paid member of staff, and that staff reported to him. I find that prior to these proceedings, the claimant was happy to accept, whatever his actual job title was, that he was general manager and I find that this reflects his position within the organisation. He was in charge.

The claimant's job duties

19. At the time of his dismissal the respondent identified the Claimant's responsibilities included the following: -
 - Human Resources: the recruitment of employees; management and training of employees; regular appraisals; maintenance of holiday records; rotas and timesheets; for ensuring adequate personnel records were kept including health and safety, employee handbook, grievance procedures etc.
 - Regulatory compliance in relation to hygiene; health and safety; accident reporting; HMRC; VAT records.
 - Security of the business and premises including IT security; data protection; passwords; security of on-site cash and CCTV records.
 - Financial management including responsibility for daily, weekly, and monthly
 - accounts; cash reconciliation and on-site cash management; managing till systems.
 - Marketing of the premises as a wedding and events venue.

- General administration.
20. The claimant gave evidence that he was not qualified to carry out a lot of these obligations, he was not HR trained nor was he a financial specialist. He also suggested that others had obligations to carry out part of these duties. I find that in her interview with the first HR consultant, which is part of the investigation process, Ms Langley described her activities as mainly running the weddings, attending the wedding and events; dealing with the run-up to the day, social media, everything and anything really. I find this latter phrase is a reference to anything connected to planning a wedding event. That is the context in which it is made and is consistent with the evidence generally.
 21. In his witness statement and before the tribunal the claimant said that Ms Langley and her colleague the operations manager, were responsible for producing a lot of the paperwork including paperwork for staff and that they were responsible for hiring not him. During the investigation process he presented a different picture, describing Ms Langley and the operations manager as wedding planners who have never been managers. At another point he describes Ms Langley as a wedding organiser.
 22. Ms Langley accepted that there was some overlap in duties between all three roles in the office in relation to weddings as they could all take enquiries and do show round. She was clear that she was not responsible for recruiting staff directly, payroll, ordering stock liaising with external operators such as HMRC or the HSE or contractors or suppliers. All these tasks were carried out by the claimant and his role was more office-based than the others.
 23. Ms Langley did do some paperwork connected with staff, but this was a form the claimant had asked her to complete on which she wrote down basic data about staff. Platform was then given to the claimant who was responsible for setting up an HR file and processing all the details for payroll. Neither Ms Langley nor the operations manager were responsible for cash management or cash reconciliation but she explained there were occasions when either she or her colleague counted cash from the two bars at the end of an event although these occasions were extremely rare.
 24. Counting the takings and being responsible for cash management and reconciliation are different responsibilities. It was Ms Langley's evidence that the claimant took responsibility and complete ownership of cash reconciliation. It was agreed that the claimant did not use the tills, nor was he present at the events. I find this was the case as it is consistent with the claimants' role as the most senior member of staff in charge of running the business rather than running weddings as the other 2 staff did.
 25. Ms Langley's description of her job duties have been consistent throughout both in the note to the disciplinary investigation, in her witness statement and in her evidence. Her description of her job role is consistent with how the claimant described her at the time. I prefer this evidence to that of the claimant because it is consistent and is backed up by documents and accords with views expressed by the claimant prior to the litigation. I find, therefore, that the claimant's role was as described by the respondent. He was responsible for all these matters set out above.

26. I find that the claimant was therefore in effect the boss, he was charged by Mr Taylor with running the business while he was an absentee owner, albeit with oversight and catch ups by phone several times a week with the claimant about how the business was going. Any more active role on his part did not occur until 2019 when he began to be concerned about the state of the business, although the claimant continued to be in charge even then. Training and the scope of the role
27. It was agreed that the claimant was not provided with any formal training by Mr Taylor on any aspect of this role, for example HR. Mr Taylor took the view that the claimant had on-the-job training and was experienced, and he relied instead on the claimant's experience and having the necessary selfimprovement to acquire what he needed to do his job. The claimant did not ask for training at any point during his employment.
28. The only conversation Mr Taylor could recall about training was when the claimant mentioned that he was not clear on the working time regulation legislation and they had a conversation about that. The claimant having said he had no training then said in his evidence that he had fire and first aid training every three years. His evidence on the point of training was contradictory. He also agreed that he had in previous roles been deemed sufficiently competent to train other managers, albeit this was a considerable number of years ago.
29. As I have found that the claimant was general manager, I find that he had a level of personal responsibility to seek out training and to attend training update courses as appropriate. I also find he did attend some on first aid and fire training as he volunteered .I find he was clearly able to identify training needs and organise his own attendance. It is not something that Mr Taylor would have to request him to do . It is reasonable for an individual occupying a position such as this to be expected to keep themselves up-to-date and to take the necessary steps to do this, as he did in some areas..
30. Questions were raised as to the scope of the claimant's role and whether this was reasonable. I accept the evidence of Mr Bishop who was asked to comment on this, that it is not uncommon for the general manager of a small business to have a wide-ranging remit. I also find that the tasks set out are the managerial side of those tasks not a deep specialist expertise.
31. After the claimant's dismissal the functions of the office were reorganised. As a second member of the office staff had also left, tasks were redistributed. An accounts manager was hired who undertook the payroll, VAT returns and other financial aspects of the claimant's former role, although the accounts manager role was expanded to include a greater audit function of financial information.
32. Ms Langley became Operations Manager and combined part of her former role as events manager with greater operational responsibility, which included some of the admin tasks formally carried out by the claimant. Immediately after the claimant's employment ended there was another events manager within the organisation, but that role does not exist today and there are currently two people in the office. These are the operations manager and the accounts manager.

33. I conclude that, while the accounts manager carries out a more in-depth financial function, the tasks carried out in the office have largely remained the same as they were at the time the claimant was employed. These tasks were simply redistributed between three individuals, albeit combined in a different way. I find that there is no reason why the tasks that were assigned to the claimant could not have been carried out by the claimant based on his skills and experience. I find that the scope of the job was a reasonable one that could be managed by one individual. This is evident from the fact that the tasks that are carried out to date have expanded and yet the work is now done by two individuals when it was previously done by three.

Events in 2018

34. By 2018 Mr Taylor explained that he began to develop concerns about the castle as a business as it was not yielding a net revenue as it had in previous years. The bars were underperforming, and wedding bookings were in decline.

35. Mr Taylor says that he spoke to the claimant who could give no explanation for this. Mr Taylor says that about this time staff expressed general discontent at the way in which they were managed by the claimant. Mr Taylor accepted that at the same time the claimant would complain about his two members of staff and described them negatively. Mr Taylor's response was that as the claimant was their manager it was up to him to deal with concerns he had about his staff. As matters stood at the beginning of 2019 no action been taken either formally or informally on the concerns raised by staff about the claimant or by the claimant on his concerns about his staff. Mr Taylor continued to have confidence in the claimant. They had a close relationship, with the claimant describing Mr Taylor as like an older brother to him.

36. In December 2018 Mr Taylor asked an independent contractor to contact the castle and to feedback his observations. He reported some concerns and that the claimant had been very short with him and as a result he would not be booking the castle for his daughter's wedding. As a result of this feedback, Mr Taylor felt that he needed to keep a closer eye on the business. Unfortunately, the downward trajectory continued and by March 2019 wedding bookings had fallen in comparison to previous years.

Events in 2019 leading up to suspension

37. In response to his concerns, Mr Taylor asked the claimant to provide him with the reconciliation reports on the bar takings (the Z readings) and for regular updates on booking enquiries. At some point in May 2019, Mr Taylor asked the two office staff, Ms Langley and the operations manager, to provide him with till reconciliation reports while the claimant continued to provide the Z readings. Mr Taylor asked the office staff not to tell the claimant they were doing this. He accepted that in doing this he was asking staff directly managed by the claimant to report directly to him and to do so behind the claimant's back. For the period from March to the end of June 2019 there was a consistent negative discrepancy, on 1 June £191, on 2 June £192 and £83 on 21 June.

38. In 2019, on a visit to the castle, Mr Taylor was spoken to by two members of staff who told him that the claimant was being unpredictable and unreasonable. At their request, Mr Taylor had an informal chat with the claimant. The claimant's response was the staff were lazy. He did not raise complaints about ganging up or the other staff losing their tempers or shouting at him with Mr Taylor at the time.
39. Mr Taylor then contacted the claimant on 24 June 2019 to query the differences that he had observed. The email exchange is at page 337/338 of the bundle. In this Mr Taylor raised a number of specific questions and the response he received is that the claimant could not explain this and that he just put on the sheet what the girls counted, that there were always over rings with so many people at the tills and its busy and the tills being old-fashioned was a reason why people made mistakes.
40. On 29 May 2019 the operations manager raised a formal grievance against the claimant. She had already decided that she was leaving the castle as she had been offered a position in hospitality which she felt would suit her better. Ms Langley believed that the relationship with the claimant was a factor in her colleague looking for other work, but she accepted that it always been her colleagues long stated ambition to move out of events management. In the interview between the operations manager and the first HR consultant, the operations manager states that the claimant's behaviour is one of things that prompted her to leave. I accept that this was the case and that, although she did have plans to move on, the claimant's behaviour influenced her decision to do so.
41. This grievance was at page 53 of the bundle. It stated that over the last 6 to 8 months the claimant had become increasingly hostile towards herself and her colleague and had been verbally aggressive to the point of bullying. She had been accused by the claimant of ganging up on him when she had simply asked him to provide information on something. She set out two comments that the claimant had made which she described as being spoken to in an abusive manner.
42. Mr Taylor spoke to the operations manager on 1 July to understand her grievance letter. She told him that there had been several unpleasant incidents involving the claimant and other staff in the office with a notable increase in bullying and verbal threatening, outbursts of anger along with bad language, and name-calling. The operations manager also described anecdotal instances of comments from suppliers and others about dismissive comments. This tied in with what Mr Taylor had been told by the independent consultant he had engaged in December 2018.
43. Mr Taylor decided that this needed to be investigated by an independent HR consultant. A month after the grievance, during which period Mr Taylor had made a few visits the castle and believed he was seeing a clearer pattern in relation to the till readings, he decided to suspend the claimant to allow the independent investigation to take place.
44. The claimant was suspended on 4 July 2019 (page 54/55 of the bundle). This letter stated that Mr Taylor had received complaints of bullying and

misconduct which required further investigation. He had instructed an external human resources consultant to carry out investigations. The letter said that at that stage the claimant could not be provided with full details of the allegations of the scope of the investigation and Mr Taylor reserve the right to change at the allegations as appropriate in the light of investigation. The letter confirmed that it did not constitute disciplinary action, nor did it imply any assumption that the claim was guilty of any misconduct

Grievances Raised by the Claimant

45. On 7 July 2019 the claimant raised a grievance against Ms Langley and the operations manager. His complaint described them as the two wedding coordinators. He said that in the last 18 months their attitude had changed and his health had suffered due to chronic and severe verbal abuse which he would class as a type of bullying. He asked for the independent HR consultant to investigate his complaint about these two individuals and what he described as the barrage of shouting.
46. On 11 July 2019 the claimant also raised a written grievance against Mr Taylor stating that in the past 10 years he had suffered abusive phone calls, strong language, and insults, but in the last six months there had been very bad working conditions and environment. This is at odds with the semi fraternal relationship he described in evidence to the tribunal, and he had not made any complaint about this in the prior 10 years, raising it only when he faced a grievance.

The Investigation by the first HR Consultant

47. The independent HR consultant carried out an investigation process and then prepared what was described as a disciplinary investigation report which is at pages 56 – 59 of the bundle. This summarised the evidence that she had reviewed, that is the letter of complaint from the operations manager and the two grievances raised by the claimant. Seven individuals had been interviewed.
48. Ms Langley described to 2 incidents to the investigator. One related to a request she made that the claimant leave a note in the events diary for her attention. The claimant's response was to say that he would put the date back in the diary. Ms Langley persisted with her request, and she said that the claimant got angry with her to the extent that the operations manager intervened, and the claimant then screamed at both Ms Langley and the operations manager to shut up and that he was fed up with them. Both Ms Langley and the operations manager left early that day in reaction to what they felt had occurred.
49. The other occasion was in relation to Ms Langley questioning the claimant as to whether staff were paid overtime working bank holidays. As she recounted the incident it started with her saying that staff would not work New Year if they were not paid overtime, the claimant said they did get overtime time and said that he could prove it. She then asked him to do that, and he got out some old staff files from 2015 and in her evidence, he slammed these on the desk in front of her. Ms Langley describes this as intimidating and humiliating.

50. The claimant was asked about these and was able to recall them from the information given to him without any further details being requested as to dates. He described them as examples of Ms Langley and her colleague ganging up on him and not accepting his reasonable response i.e., he will take some action in relation to the diary and his explanation that staff were paid double time.
51. I was taken to certain parts of the transcripts, and I conclude from this review that the accusations made by the operations manager and the allegations made by the claimant were put to each relevant witness and they were given an opportunity to comment upon these.
52. The consultant concluded that five witnesses had directly observed the claimant's verbally aggressive behaviour towards more junior, staff only one witness had not seen this, although it had been reported to him. The claimant had agreed that he would say "shut your face" to his female colleagues although he said this was done in a light-hearted way and he did not believe there was an issue with it. He also said that this was a witch hunt and staff were making this up. He was very placid and quiet but other staff were very argumentative.
53. The report concluded that there was sufficient evidence to suggest that this should proceed to a disciplinary hearing. The claimant's response that everyone was bullying him was held not to be convincing when no one else had seen evidence of this. The suggestion that this was a witch hunt and that everyone was making this up was also held not to be convincing.
54. During the investigation the question of storage of papers was brought up as the investigator had seen HMRC records for staff visible and overflowing in a sink within a room in the castle. The claimant's explanation was that Mr Taylor would not provide him with lockable cupboards. The consultant did not believe this explanation. She found the claimant quick to blame everyone else in her meetings with him and to blame his boss.
55. The conclusion was that disciplinary proceedings should be instigated and that was evidence of aggressive and bullying behaviour which needed to be addressed. It also concluded that the investigation highlighted further areas that might need to consider disciplinary in relation to the claimant's overall management of the business.
56. It was put to Mr Taylor that the questioning style adopted by the independent HR consultant was to ask leading questions of the witnesses and that she was biased. Mr Bishop was also asked for his view on this point. His evidence was that while some of the questions could be put in a different way, he believed that the interviewer was showing empathy to witnesses in order to put them at their ease and to obtain the necessary information.
57. I find that the HR investigator carried out a thorough, fair, and unbiased investigation process. I find that while her manner of asking questions as set out in the transcript does suggest sympathy for the witnesses that she is speaking to, this is a technique to establish empathy, as Mr Bishop suggests.

It does not show that she had prejudged any outcome or was biased against the claimant. Her language is not dismissive. The interviews are not one sided.

Investigation into the claimant's first and second grievance

58. The same investigator also produced a grievance investigation report at page 345/346 of the bundle. In considering the grievance, the investigator reviewed the two grievance letters, although the second which is the grievance against Mr Taylor had been submitted as a draft on which the claimant was getting legal advice before formally submitting, the CV the claimant had provided, as well as the interviews she had carried out with seven members of staff. She concluded that the claimant had never given these individuals any performance feedback or begun any disciplinary process in relation to their behaviour.
59. The claimant said that he had not been supported by Mr Taylor in doing this. Mr Taylor's account was that there have been occasional complaints from the claimant but had never been asked about their performance meetings or appraisals and he would have been supportive. He was never asked about taking disciplinary action against them, but he would have been supportive.
60. The investigator asked Mr Taylor about the complaints from the claimant that abusive phone calls, strong language, and bullying. She made Mr Taylor aware that the claimant had said this behaviour was causing him to become ill. Mr Taylor stated in that interview and confirmed in his evidence that he would call the claimant once or twice a week when he was able to do so. In each of those calls the F word would come up once or twice. He explained that he himself worked in a robust environment where such language was common, and he considered that as the claimant had been in business for 20 years, he would have heard bad language before. He explained to the HR investigator that he was not swearing at the claimant, it was done for emphasis and was used as an adjective. I accept his evidence on this point that he did not swear at the claimant.. The claimant's account of Mr Taylor's conduct is at odds with his own description of their relationship. I find it unlikely that if the claimant genuinely considered that he had been bullied and sworn at for a decade he would regard Mr Taylor akin to an older brother.
61. The investigator concluded that the claimant was very quick to blame everybody else and blamed his bosses frequently. She concluded that he seemed to blame others rather than take responsibility. I find that she had therefore addressed the issue of Mr Taylor's behaviour and had reached a reasonable conclusion that there was no evidence that would lead her to recommend a disciplinary process be started against Mr Taylor.
62. I find that the investigator fully and properly investigated all the matters that were being raised in both the grievances and had reached a fair and reasonable conclusion having followed a fair process which included a reasonable investigation on which to base her findings.

Meeting on 2 August and the Disciplinary invitation

63. On 2 August Mr Taylor met with the claimant in a face-to-face meeting. The transcript of this meeting was at page 280 – 289 of the bundle. At this meeting

the claimant was shown some additional information. This was a document that had been prepared identifying which required items had been located for staff who were employed. This showed that for the majority of staff there was no right to work check, many did not have a P 45, none had contracts, job offer letters, appraisals, risk assessments, fire training or holiday records.

64. The claimant's response is recorded in the notes of meeting that he could walk inside the office and find most of these records in less than a second, but many of the records should have been looked after by the operations manager. He was trying to bring in internal records but that was down to the operations manager and the events manager. In this interview he said of Risk assessments "we wouldn't do that", and job offers were down to the operations manager. The timesheets were in a folder and people were not looking hard enough for them. The point about the right to work records was put to the claimant specifically and his answer was that the events and operations managers did the contracts, he just gets a form.
65. The claimant's evidence on right to work checks then varied several times from the first explanation that it was not his responsibility. At one point the claimant said that such checks applied only to foreign workers. This was a statement that he had also made the meeting with Mr Bishop when he said that we know that staff are English when asked about the apparent lack of photo ID for staff. In cross-examination he then said that in fact he checked the files three or four times a year to identify missing documentation, flagged up using post-it notes what was missing and passed this to his colleagues for them to get the missing documentation. In re-examination when he was taken to the document at page 161, he said that he had photo ID records for every employee which would be either a passport or an ID card.
66. Given these different accounts, I prefer the responses given by the claimant at the time. When asked about this during the process he essentially said it was either not his responsibility or that it only applied to some of the staff, the implication being that he would not do this for the others. I find that he did not keep such records and did not carry out the process he described in the tribunal. Had he done so he would have said this either to Mr Taylor or to Mr Bishop when asked but he did not.
67. In this meeting Mr Taylor made a number of comments. He stated he was not prejudging the outcome, it's his decision at the disciplinary hearing and what it constitutes. He stated that the claimant should think about what he wanted to do. The independent HR consultant also spoke to the claimant and recommended he think about his options because the issues were very serious and her advice to Mr Taylor was that he should consider them as potential gross misconduct. She suggested to the claimant that he might want to think about whether he wants to go to a disciplinary or consider resignation.
68. These comments were made after she had completed the report and I find that they do not amount to prejudging any outcome or invalidate her investigation in any way. They reflect the advice already set out in the report that these were serious issues.

69. The claimant responded that he was not going to resign, and Mr Taylor then replied that the claimant needed to think about himself in the marketplace. It was a big decision for him to think about, but the claimant could also think about what his future would look like. Mr Taylor commented that if it went disciplinary, depending what happened, it could get to an employment tribunal and would drag on for years and years which was not sensible. The claimant made it clear that he would fight any gross misconduct finding.
70. On the 6 and 7 August the claimant raised grievances about the length of time being taken to investigate the original grievance and that the HR consultant advised him to contemplate resignation.
71. On 10 August the claimant was invited to attend a formal disciplinary hearing for six specific allegations. These were bullying of staff, neglect of management responsibilities, placing Mr Taylor and/or the business at risk by non-compliance with statutory obligations, misappropriation of bar takings, conduct during the suspension and breakdown of trust and confidence.
72. The invitation to the disciplinary meeting at pages 202-206 set out the details of each allegation and enclosed the documents on which the respondent relied, as well as the ACAS advice leaflet on bullying and harassment in the ACAS code of disciplinary and grievance procedures.
73. The claimant raised a further grievance on 10 August (page 359/363) about the failure to provide him with a written statement of particulars. On the same day he also made a subject access request.
74. On 19 August 2019 Mr Taylor sent an email to the HR consultant which was inadvertently copied to the claimant. That email at page 247 of the bundle stated I'm thinking we should force the issue and hold the disciplinary this week and issue the dismissal on the 29/8.
75. Mr Taylor recognised, as the claimant identified in his response on 20 August, that this potentially showed the dismissal was a foregone conclusion. He therefore concluded that he should stop the disciplinary proceedings at this point and should hand the matter over to a second independent consultant to investigate the whole matter and advise him.
76. I find that Mr Taylor had gone too far in this email, however, he then took a reasonable step to rectify this. His action had no impact on the first HR consultant's investigation or report. Mr Taylor's comments do not mean that this report was prejudiced, inappropriate or could not be relied on.

Investigation and report by Mr Bishop

77. Mr Bishop was appointed. He had one meeting with Mr Taylor and he understood from that meeting that his remit was to review the information, to interview any staff and to do what he considered necessary to determine the exact steps. He was asked to chair any resultant hearing and to make a recommendation to Mr Taylor on further actions. I accept that he acted independently of Mr Taylor and had a free hand to reach the conclusion that he felt was appropriate. There is no evidence of anything else. I find that the

entire responsibility for the process, investigation and decision were delegated to him. He could have freely reached any conclusion.

78. He met with the first HR consultant on 30 August having reviewed her paperwork which included comprehensive transcripts of the interviews that she carried out and concluded that she had done a thorough and fair investigation. He was asked why he had not redone her investigation and gave evidence, which I accept, that he believed it was a fair and reasonable investigation that was appropriate and thorough. I find he had satisfied himself on that point before concluding that he did not need to carry out his own investigation of the same points. Mr Bishop was satisfied that the investigator was not biased or one sided in her interviews.
79. The claimant did not agree. For example, on 5 September (page 259) he explained to Mr Taylor he was not happy with anything that the first investigator has had a hand in. He expected Mr Bishop to undertake his own interviews and his reason for this was he believed the conversations had been one-sided. He set out names of 13 people who he wished to be interviewed as well as five people to be reinterviewed. One of the 13 people included the claimant's ex-wife. He also asked for dates of the bullying allegations although he had answered questions about these with no apparent recall difficulty in the investigation meeting.
80. At page 343 of the bundle was an email of 22 July which Mr Bishop saw. Its subject was the claimant's former wife and reported her contact with the first investigation consultant. In this contact the ex-wife had said that she was worried about the claimant's health, that the events manager and operations manager were unreliable witnesses and that she could tell them that Mr Taylor was a bully.
81. Mr Bishop decided that he would not interview this individual as part of his investigation/disciplinary process because he formed the view from this note that the ex-wife would be a biased witness.
82. Mr Bishop made contact with the claimant on 7 September (page 260) and he invited him to attend a hearing on 13 September. He set out five allegations that he was taking forward, bullying and/harassment of staff, misappropriation of bar takings, serious neglect of manager responsibilities, placing a manager and/the business risk by failing to comply with statutory obligations and breakdown of trust and confidence. Mr Bishop had determined that he would not pursue allegations relating to the claimant's conduct during suspension. This illustrates his authority and independence.
83. He had received the email of the 5 September and concluded that it was not necessary at this stage to undertake further interviews. He did, however, on the same day send the claimant further documents. These were the notes of the meeting of 2 August and Inland Revenue communications in relation to a Mr Emery, together with till receipt reconciliations undertaken since the claimant's suspension. I find that the claimant was provided with all relevant documents in advance of the meeting with Mr Bishop.

84. The claimant asked on 8 September to meet with Mr Bishop to discuss the allegations, that he believed the investigation was incomplete, and the matter of Mr Emery did not concern him at all. He also said he was asking for information which had not been given to him, that is the dates of the alleged bullying. He had nonetheless answered questions on this when put to him by the first HR investigator. He felt that for it to be a fair process Mr Bishop needed to take his statement. The claimant seemed to be suggesting in his email of 7 September that he was unclear about the documentation relating to the tills that was sent to him. He confirmed, however, in answer to questions he did understand all the records that were sent to him by Mr Bishop.
85. Mr Bishop responded saying that he did not feel it was appropriate to communicate with the claimant any further before the hearing on the 13th. Mr Bishop accepted that he could have carried out further interviews prior to meeting the claimant, but that he chose to meet the claimant first and then decide if he needed to meet other people. The first report on which he relied contained an interview with the claimant. Mr Bishop did have the claimant's account before he went into the disciplinary meeting. He took over from the point at which the process had been paused. The nature of the allegations was clear, and Mr Bishop had the claimant's response to these before he proceeded to hold the disciplinary meeting.
86. The claimant agreed at the outset of the meeting that the first part would deal with any outstanding grievances. The allegations were read out and it was agreed that he would respond to each one. The meeting lasted, on the claimant's account for possibly even longer than two hours. He confirmed that he went into everything with Mr Bishop and had the opportunity to raise all of his grievance issues.
87. In addition to giving the claimant an opportunity to make any points he wished, Mr Bishop asked the claimant a number of questions, going through the various allegations. In relation to other staff being bullied by him the claimant said that it was a conspiracy by other staff and that it was Mr Taylor who was threatening staff at the prospect of job loss. He maintained that this was a witch-hunt. It was for this reason that Mr Bishop agreed to re-interview some other staff before making his findings on this point.
88. On the tills, the claimant's explanation for the discrepancies was this was due to over rings at the bars. He was asked to explain the differences and said that he was just asked to write down what he found. His response was also that he was not the only one who counted the tills. In evidence today, the claimant said that the document relied on by the respondent in relation to the under and over ringing was a 100% fabrication. That was not something he had raised before. I accept that the respondent sent accurate records of the till takings and that these show discrepancies on a regular basis.
89. Mr Bishop asked a number of questions that related to the allegation of serious neglect of manager responsibilities. The claimant was asked about employment files and nationality and responded they did not employ anybody who was foreign but asking for the passport would be down to others. He was asked why he said that Mr Taylor stopped him from doing performance management and said that Mr Taylor would not want to accrue any excess

payment which was not needed. They needed HR advice to do this, and Mr Taylor would not go there. At another point however, the claimant said he couldn't do appraisals because he worked a 40 week and had no time to do them. He also said that Mr Taylor didn't want them done and he, the claimant, had raised this a few times. Mr Taylor did not agree, and I prefer his account as he has been consistent throughout, whereas the claimant has given different accounts of events throughout the process. For this reason, where there is a conflict of evidence, I generally prefer the evidence of Mr Taylor and do so in relation to appraisals.

90. The claimant was asked about his practice of submitting the VAT five minutes before it was due. He agreed he did this on the day or the day before. In answer to why he didn't have any contracts of employment or risk assessments and there were issues with tax documentation he said he never had any training. At no point did the claimant take any responsibility for these failings which occurred while he was in charge.
91. The claimant was asked about documents being kept out and not in locked areas. He said he couldn't lock things in the castle because it grade 1 listed building. I find that once Mr Taylor had been made aware of this, as he said in the meeting on 2 August, locks were then put on rooms in the castle at a very low cost. I find that the claimant had not asked about locks but had simply placed large volumes of documents in rooms to which anyone had access. This included sensitive staff material.
92. In the tribunal the claimant also commented on the photograph of the documents in the sink. He said it was obvious that someone had been brought in to take photographs of the archive and suggested that they were in some way manufactured. It was unclear what he meant by this. He did, however, accept that he had definitely put documents related to staff tax issues in the sink, using it as a flat surface. He also agreed he had left them out like this for at least a week as he was working on them.
93. Having met with the claimant Mr Bishop met with the individual from maintenance and a chef. It was Mr Bishop's view that neither provided a wholly supportive endorsement of their manager, that they were reserved and were quite uncomfortable providing answers. He concluded that the answers from witnesses the claimant had put forward as likely to support him were not supportive of the claimant's case. Mr Bishop also reinterviewed Ms Langley and Mr Taylor. He also visited the castle himself and saw confidential personal data in the sink and piled up on windowsills in plain view with no security measures at all.
94. Mr Bishop produced a report (page 315/326) which went through the information that he had considered and his conclusions on each finding. He concluded that one allegation, that of misappropriation of bar takings should not be upheld. He did conclude, however, that his role as senior manager meant that long-term negative discrepancies was an example of gross negligence. To be clear this is not an allegation of dishonesty. The claimant is not being accused of taking money but of being negligent, as the person in overall charge, for not addressing the reason for continual discrepancies and for not fixing the issue. The fact that many others had access to the tills, which

the claimant raised several times as a failure to investigate, is an irrelevant line of enquiry.

95. Mr Bishop concluded that he would find against the claimant on all other allegations. He concluded that there was a breakdown of trust and confidence because the range of bullying and harassment had touched so many staff in a relatively small team, coupled with the range and depth of that negligence in management responsibility. His report considered the claimant's long service and unblemished record, and he turned his mind to alternatives to dismissal, specifically demotion or further training. However, he could not reconcile either with the clear breach of trust and confidence finding which he had made.
96. The report was passed to Mr Taylor who considered it and, at page 331 – 336, sent a letter terminating the claimant's employment. In doing so he followed the advice of Mr Bishop and had no input into the recommendations which he accepted. I find that he would have accepted a different outcome if Mr Bishop had reached a different conclusion. Mr Taylor's conduct throughout the process was to seek to be fair to the claimant and to make sure he was doing the right thing. This was not a witch hunt but a detailed investigation in which the claimant had every reasonable opportunity to put his side of things.
97. The claimant was advised of his right to appeal which he chose not to exercise.

Section 1 statement terms and particulars

98. While it was agreed that the claimant did not have a contract of employment which contained the appropriate statutory particulars, the reason for that default were disputed. Mr Taylor's evidence was that it was the claimant's obligation to put in place appropriate contractual documentation. He would not have refused a request for external resource to do this had he ever been asked.
99. The claimant's evidence was that he had asked Mr Taylor about this at the beginning of his employment but was told that Mr Taylor would not pay for external consultant to do this. The claimant was clear he did not have the skill to do this himself. The claimant also gave evidence, however, that Mr Taylor had told him to download a precedent from the Internet and then fill in the correct details and he had refused to do this.
100. As I have found that the claimant was the de facto general manager and that his job role included being responsible for making sure appropriate HR paperwork was in place, I find that it was his obligation to take these steps. I also accept Mr Taylor's evidence that he was not asked about this. On the balance of probabilities, it seems to me unlikely that Mr Taylor, as a management consultant for a large organisation, would not agree to put in place necessary statutory documentation. On the claimant's account, far from being unwilling to have documentation in place Mr Taylor had asked the claimant to use pro forma templates from the internet but the claimant had not done so. For the reasons of consistency referred to above I prefer Mr Taylor's evidence on this point.

Relevant Law and submissions

101. There are five potentially fair reasons for dismissal under section 98 of ERA 1996: capability or qualifications, conduct, redundancy, breach of a statutory duty or restriction and "some other substantial reason" (SOSR).

102. Section 98(4) of ERA 1996 provides that, where an employer can show a potentially fair reason for dismissal:

"... 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.

103. By the case of Sainsbury's Supermarkets Ltd v Hitt 2003 IRLR 23 tribunals were reminded that throughout their consideration in relation to the procedure adopted and the substantive fairness of the dismissal, the test is whether the respondent's actions were within the band of reasonable responses of a reasonable employer. In this case the Court of Appeal decided that the subjective standards of a reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed. The tribunal is not required to carry out any further investigations and must be careful not to substitute its own standards of what was an adequate investigation to the standard that could be objectively expected of a reasonable employer.

104. Both representatives referred me to the above. On behalf of the claimant, it was submitted that the investigation by the respondent was woefully inadequate and outside the range of reasonable responses. The investigation was criticised on the basis that Mr Bishop relied on the investigation carried out by the first HR consultant, that Mr Bishop did not interview all the relevant witnesses, and in particular did not interview the claimant's former wife because he had concluded on the basis of an email that she was not a reliable witness.

105. The investigation carried out by the first HR consultant was said to be biased and outside a reasonable range of responses with dismissive and biased language being used. The process is challenged as inconsistent because Mr Taylor admitted to swearing et cetera which was the claimant's grievance against him and no action was taken, whereas the claimant was dismissed for what was said to be his interactions with other staff. In relation to the bar takings no interviews are carried out with any other employees' who had access to the tills and nobody else was considered. The claimant's guilt was predetermined. The claimant's job duties were wide in scope, and he could not reasonably be expected to be responsible for all these areas and he was not provided with appropriate training or a clear reporting structure. In relation

to the missing staff records, the claimant indicated where they could be found, and this was not investigated.

106. The process was also unfair looked at it in the round because Mr Taylor had predetermined the decision at the 2 August meeting and confirmed this on 19 August email. Neither Mr Bishop nor Mr Taylor properly considered mitigation and alternatives to dismissal. The ACAS code was not followed and there should be a 25% uplift in any award. There was no contributory fault.
107. The respondent submitted that Mr Taylor had tried to ensure fairness. This is a small business which the claimant was running. He was the operative intelligence behind the business. As the owner, Mr Taylor inevitably began to form an opinion that he took steps to ensure that he acted fairly by engaging external consultants.
108. As to the identity of the decision-maker, I was referred to GM packaging (UK) Ltd V Mr S Haslam 2014 WL 287809 (2014) which was an appeal against the reasonableness of a dismissal. On its facts the organisation outsourced the disciplinary process to external HR consultants. The reason for dismissal was a set of facts/beliefs in the mind of the consultants, although the recommendation of dismissal required approval from the employer. The tribunal had concluded that since the authority of the general manager was required for dismissal, then it was his reason for dismissal that had to be ascertained. The Employment Appeal Tribunal's decision was that having found that using an external body was a genuine and proper procedure for a small business, it was inconsistent for the employment tribunal to ascribe the reasons for dismissal to the general manager because he had the last word. The EAT concluded that where a disciplinary function has been properly delegated in a genuine procedure, then the reason for dismissal is that of the individual to whom the function is delegated.
109. On behalf of the respondent, it was submitted that this case was authority for the proposition that on the facts before me I should consider that Mr Bishop's reasons are the reason for dismissal and that he in fact took the decision because authority was properly delegated to him.
110. On fairness, it was submitted that there was a genuine belief that the claimant had carried out the matters of which he was accused and that this followed a reasonable investigation. It was accepted that one could always continue to interview witnesses, but it was submitted that this investigation went sufficiently far to be reasonable in all the circumstances. There was no obligation on Mr Bishop to interview the claimant's former wife and it was open to him to assume that she would not be objective.
111. Mr Bishop's fairness is demonstrated by his not upholding the allegation of misappropriation. The breakdowns were such that no training could remedy the matter, and this was considered by Mr Bishop. The claimant chose not to appeal, and this default denied the respondent of a valuable opportunity, if needed, to remedy any issues and so if compensation were awarded, it should be reduced by 25%. Remedy

112. I was referred to Polkey v AE Dayton Services Ltd [1987] IRLR 503 (HL) which established the following principles: Where a dismissal is procedurally unfair, the employer cannot invoke a "no difference rule" to establish that the dismissal is fair, in effect arguing that the dismissal should be regarded as fair because it would have made no difference to the outcome. This means that procedurally unfair dismissals will be unfair. Having found that the dismissal was unfair because of the procedural failing, the tribunal should reduce the amount of compensation to reflect the chance that there would have been a fair dismissal if the dismissal had not been procedurally unfair.
113. The basic award may be reduced where the claimant's conduct before the dismissal is such that it would be just and equitable to reduce the award. There is no need for the conduct to have contributed to dismissal or for the employer even to have known about it at the time of dismissal
114. Where the tribunal finds that the dismissal "was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding" (section 123(6), ERA. Three factors must be present for a reduction of the compensatory award for contributory fault: The claimant's conduct must be culpable or blameworthy. It must have caused or contributed to the dismissal. The reduction must be just and equitable (Nelson v BBC (No.2) [1979] IRLR 346 (CA).
115. The respondent submitted that the claimant's conduct had contributed to his dismissal, and if I were to find the dismissal unfair, then any compensation should be reduced because of this culpable conduct. If the procedure were found to be procedurally unfair, then this could have been remedied at the outside in 3 months and this should be reflected in any award.

Failure to provide written particulars of employment

116. The legal requirement to provide workers with a written statement of their employment particulars is contained in Ss.1-6 of the Employment Rights Act 1996 (ERA). The obligation to provide a S.1 statement applies to employees who commenced their employment on or after 30 November 1993.
117. The remedy for a breach of the statutory rules regarding written statements is by means of a reference to an employment tribunal under S.11 ERA. However, this provision does not give tribunals power to make a monetary award for breach of the requirements to provide a written statement. Tribunals do, however, have the power to award compensation under S.38 of the Employment Act 2002 (EA 2002) where, upon a successful claim being made under any of the tribunal jurisdictions listed in Schedule 5 to that Act, it becomes evident that the employer was in breach of its duty to provide full and accurate written particulars under S.1 ERA. Schedule 5 is fairly extensive and includes unfair dismissal, and breach of the Working Time Regulations 1998 SI 1998/1833.
118. Where the tribunal finds that the employer breached its duty to provide full and accurate employment particulars, it must award the 'minimum amount' of two weeks' pay (subject to exceptional circumstances which would make an

award or increase unjust or inequitable), and may, if it considers it just and equitable in the circumstances, award the 'higher amount' of four weeks' pay

119. It was submitted that in these circumstances, where I to make a finding of fact that the claimant had been the author of his own misfortunes in not obtaining a statement of terms, it would not be just and equitable that the claimant to be awarded for his own default.

Conclusion

120. Applying the relevant law to the findings of fact I have made I conclude as follows.

Unfair dismissal

121. It was agreed that the reason for dismissal was misconduct. I must consider whether the respondent genuinely believed the Claimant to be guilty of misconduct, did they have reasonable grounds for that belief and did they conduct such investigation into the matter as was reasonable in the circumstances of the case? I must then consider whether in the round the dismissal was procedurally fair and if all aspects of the investigation, the decision-making process and the penalty fell within a range of reasonable responses open to the respondent.

Reasonableness of the investigation.

122. There were two investigations. The first was carried out by the first independent HR consultant. She interviewed appropriate witnesses and reached a reasoned conclusion based on the evidence that she had gathered. I have found that there was no bias or pre-judgement in her investigation, nor was it one sided. I conclude that her investigation was a fair and reasonable one within the legal framework I have set out above.

123. The second investigation was carried out by Mr Bishop in the form of reviewing the first investigation and meeting the first investigator. His investigation is criticised on a number of grounds.

124. It is submitted that he should have re done the interviews carried out by the first investigator and it is not a reasonable investigation to rely on work already done. I have found that in that the first investigator's investigation was reasonable and appropriate and that Mr Bishop took steps to assure himself of that before determining not to carry out any investigation himself. The claimant's complaint is based on his assertion that the interviews were one sided. I have found they were not, and that Mr Bishop had satisfied himself on this point before deciding not to re interview staff. I conclude that it was reasonable for him to use that investigation pack as the basis of his own process.

125. The investigation pack had a transcript of an interview with the claimant and Mr Bishop's decision not to re interview the claimant before the disciplinary meeting is also within the reasonable range of responses open to him. It was

fair and reasonable to continue with the evidence he had, and I conclude that his investigation was also fair and reasonable.

126. Mr Bishop was also criticised for not interviewing other witnesses before the disciplinary meeting. I conclude that it was open to Mr Bishop to reach this decision and to continue to a disciplinary meeting based on the reasonable investigation carried out to that point. A reasonable investigation does not require every possible witness to be interviewed.
127. It was submitted that it was unreasonable to exclude the former spouse as a witness before the disciplinary meeting because she had said she could evidence Mr Taylor's bullying. I conclude it was open to Mr Bishop to decide as to her likely lack of objectivity. This does not make the process substantively or procedurally unfair.
128. The former spouse was one of 13 witnesses the claimant suggested. Before making his decision, Mr Bishop chose to interview two of these people who had worked most directly with the claimant. While he could have extended the investigation and interviewed other individuals prior to the meeting, it is within the reasonable range of responses open to an employer to limit its investigation before moving to a disciplinary meeting provided the process is fair. Conscious that I must not substitute my own view, I conclude that Mr Bishop's decision not to widen the scope of the investigation by interviewing other witnesses prior to the disciplinary meeting was a decision it was open to him to make. The investigation as it stood reasonably suggested a disciplinary case to answer.
129. Mr Bishop did carry out further investigations after the disciplinary process started and before making his decision. This included a site visit to witness for himself the condition of paperwork and to re-interview 2 staff and interview 2 new witnesses.
130. It was submitted he had failed to investigate the location of staff paperwork when the claimant had said it existed and he could have found it. The meeting with the claimant did consider paperwork but in his meeting the claimant did not deny the paperwork was missing, he said it was down to others.
131. He is criticised again for interviewing only 2 people and not the former spouse. I conclude that his actions in limiting the additional witnesses interviewed to those who were most directly line managed by the claimant was a reasonable step that falls within the range of reasonable responses. Having found the 2 most senior of the witnesses suggested did not support the claimant, it was reasonable not to talk to more staff or to the former spouse. In all the circumstances of the case I find the respondent carried out such investigation into the matter prior to the decision being made as was reasonable in the circumstances of the case.

Reasonable and genuine belief

132. I also conclude, as set out very clearly in Mr Bishop's report, that he had a genuine belief that the claimant was guilty of gross misconduct and that he reached this conclusion following a reasonable investigation.

133. While Mr Taylor had predetermined the outcome before the matter was handed to Mr Bishop, I conclude that Mr Bishop's investigation was entirely independent, and Mr Taylor simply adopted the recommendations which was in effect the decision made by Mr Bishop. I accept the submission made by the respondent's counsel that on these facts, because the decision was delegated appropriately, the decision-maker was Mr Bishop, and it is his reasons that are relevant. Any question of predetermination was therefore removed by relying in this way on an independent third party. Had I come to an opposite conclusion that Mr Taylor remained the decision-maker, I would nonetheless find that he wholly adopted Mr Bishop's report and the decision was based on that and not on any judgement that he made at an earlier point in the process.

Consistency of treatment.

134. There is no difference in treatment between the claimant and Mr Taylor in relation to the grievances of bullying. The first investigator satisfied herself there was sufficient evidence of bullying against the claimant to move to a disciplinary meeting and equally satisfied herself this was not the case with the allegations raised by the claimant against Mr Taylor. The treatment of the 2 was not therefore inconsistent, but driven by the reasonable conclusions based on the investigations.

135. The claimant was given a fair opportunity to raise all his grievances and he was satisfied they had been properly addressed.

Penalty

136. The decision maker had concluded on the evidence available to him, as I have found to be the case, that the claimant was an experienced manager who was in sole charge and was responsible for running the business.

137. I conclude that the dismissal fell within the reasonable range of responses. Length of service and the claimant's clean disciplinary record were considered. Alternatives to dismissal were properly considered but rejected because of the nature of the misconduct found. Where there has been a breach of trust and confidence because of gross negligence on the part of the individual who was responsible for running an operation, dismissal is a reasonable penalty. For these reasons the claim of unfair dismissal does not succeed.

S1 Written particulars

138. As there is no successful claim for dismissal and the holiday pay claim has been withdrawn, no claim can be brought in relation to the failure to provide written particulars of employment. Had that not been the case I would have found that this is an exceptional case when it would not be just and equitable to make any award because the reason there were no written particulars is because the claimant had failed to put any in place when it was part of his role to have done so.

**Employment Judge McLaren
Date: 23 May 2022**