



EMPLOYMENT TRIBUNALS

Claimant: Mrs Susanna Grant
Respondent: Timpson Limited
Heard at: Watford ET **On:** 13 May 2022
Before: Employment Judge M Rawlinson (sitting alone)

Representation

Claimant In person, unrepresented
Respondent Mr Hamilton-Fisher, Director of HR

RESERVED JUDGMENT

1. The claimant's claim for unfair dismissal is not well founded and is dismissed.

REASONS

Introduction

1. The claimant, Mrs Susanna Grant, was employed by the respondent Timpson Limited from March 2010. The respondent is a well-know retail service provider offering a variety of services via around 2800 branches nationwide, including key cutting, dry cleaning and locksmith services. They employ around 5,800 people.
2. The dismissal of the claimant related to an incident that occurred at the Timpson branch area Christmas party, which took place on the 19 January 2019. The events that took place on the evening of 19 January 2019 were and are hotly disputed between the parties. In due course I will deal with the extent to which, if at all, I have to seek to resolve those disputes.
3. By way of claim form filed on 12 April 2019 the claimant claims that her dismissal was unfair within section 98 of the Employment Rights Act 1996.
4. Whilst various complaints and assertions were made in the claimant's original claim form, the principal complaints and those pursued relate to the fairness of the claimant's dismissal in terms of the reasons for it and the process adopted by the respondent. Essentially, the claimant relies upon what she says is the inherent unlikelihood of the allegations levelled against her being true (particularly given her personal circumstances) allied to what she asserts are significant and material inconsistencies in the evidence against her. Those matters, she says, should have meant that there was no disciplinary case to go forward or to answer in the first place, much less enough evidence to find the case proved.
5. The claimant also alleges there were other reasons and motives which in fact represented the true reason for her dismissal rather than her alleged misconduct, which whilst it is manifestly untrue in some key aspects (e.g. the use of racist term) has also at the very least been exaggerated in others. She asserts that the real reason for her dismissal was that the then ADM, Mick Lawless, wanted her removed from the company for a variety of reasons, amongst them him having previously asked her to take redundancy which she had refused.
6. The respondent contests the claim. It says that the claimant was fairly dismissed for misconduct, in fact gross misconduct. The respondent's assert that they had a genuine and indeed a well-founded belief that the claimant was guilty of gross misconduct and that the claimant's conduct and behaviour on the evening of 19 January 2019 entitled them to summarily dismiss the

claimant. They allege that the process used to arrive at their ultimate conclusion was both thorough and scrupulously fair throughout.

7. The claimant was unrepresented and appeared in person. She gave live evidence on her own behalf, and also relied upon a written witness statement from her husband. The respondent was represented by Mr Hamilton-Fisher, the Respondent's Director of HR, who called live evidence from Mick Lawless (present on the evening in question), Mark Crawley (who dealt with the disciplinary investigation into the incident) Paul Myatt (who dealt with the disciplinary hearing) and Ian Boden (who dealt with the subsequent appeal).
8. As well as the relevant witness statements furnished on behalf on the above witnesses, I also considered various documents from an agreed and indexed bundle which ran to some 200 numbered pages (241 pages in electronic PDF format). Each side confirmed there were no other preliminary issues they wished to raise.

Issues for the Tribunal to Decide

9. I made clear to the parties at the very outset of the case, that in misconduct dismissals, there is well-established guidance for Tribunals which they are bound to follow.
10. In essence, the Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer. None of that is controversial.
11. It follows that it was made abundantly clear to the parties at the outset that it was not my function for the purposes of this hearing, and indeed it is still not my function at this stage (for the purposes of deciding at least the unfair dismissal complaint, and leaving aside any issues that may arise of contributory fault etc.) to decide if the disputed events in fact happened or not. I must take care not to substitute my own view and instead apply the 'range of reasonable responses' test.

12. The issues in the case were therefore identified as:
 - 1.1 What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
 - 1.2 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
 - 1.2.1 there were reasonable grounds for that belief;
 - 1.2.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
 - 1.2.3 the respondent otherwise acted in a procedurally fair manner;
 - 1.2.4 dismissal was within the range of reasonable responses.

Facts

14. I make my findings of fact on the basis of the material before me taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. I have resolved such conflicts of evidence as arose on the balance of probabilities. I have taken into account my assessment of the credibility of witnesses and the consistency of their evidence with the surrounding facts. References to page numbers are to the agreed Bundle of Documents.
15. At the time of her dismissal in February 2019 the claimant was employed as an Area Development Manager (ADM), having more recently been employed as what was known as a *'Mobile Colleague'* to cover sickness and holiday absences in various branches across a certain geographical area. When employed, the claimant was a hard-working, well-regarded and competent member of staff. She had a disciplinary record which only contained a wholly unrelated matter of a letter of concern issued to her for an apparent failure to report an absence. She had a period of around 12 years' of service.
16. On Saturday 19 January 2019 the claimant attended her area's annual Area Party in company with her husband. Prior to attending at the event (which was ostensibly the work's 'Christmas Party') the claimant had eaten out and consumed a couple of drinks with dinner, before meeting up with another colleague and her partner and then travelling to the party.
17. Given the nature of the event, there is no dispute between the parties that the company rules, including the company disciplinary code of conduct and related policies, applied to individual employees who were attending the event, including the claimant.

18. Whilst the early part of function seemingly passed off without incident, at some point around 11pm there was an incident between the claimant and ADM Mick Lawless.
19. Mr Lawless stated that he had been unwell that day and had not been drinking alcohol at the function, a claim which, whilst the claimant queried reference to '*a spilt pint*' in his witness statement, was not meaningfully disputed.
20. The claimant, to her credit, candidly conceded that she was drunk on the evening in question, as she did at various stages in the disciplinary procedure and indeed again in her evidence before me. Indeed, this fact is further borne out by a text message which she sent to Mr Lawless the day after the incident (as to which, see further below).
21. Mr Lawless alleged in his evidence (adopted as per his witness statement) that on the evening in question, and following a brief exchange whilst sat down at his table, the claimant made a threatening comment to him (with reference to another ADM) along the lines of "*get Lee here now or I'll fucking have you*". Mr Lawless stated that the claimant then snatched his private mobile telephone from him. His further account was that the claimant then stood up and, after a brief exchange or conversation with another female employee, the claimant said of her: "*I don't think that African likes me*" before stating words to the effect of:

"I am going to have that Nigger, and I can say that because I am married to one".
22. It is worthy of note at this stage that the claimant's husband is in fact of Jamaican, rather than African, ethnicity. The claimant relies heavily upon that fact as testament to the fact that this comment was not or indeed would not have been said by her.
23. Mr Lawless then alleged that the claimant made to go towards the female in question whereupon he managed to physically block the doorway to prevent the claimant from leaving. He believed the claimant was trying to attack the female. Mr Lawless alleged that the claimant then became abusive to him and threw a drink over him.
24. On Sunday 20 January 2019, the day after the party, the claimant sent Mr Lawless a text message (see page 99 of the bundle) in the following terms:

*Mick I have just been filled in about last night
I just wanted to apologise straight away I am quite embarrassed as I don't
remember so I wanted again to say sorry
Obviously I will speak to you tomorrow*

25. Mr Lawless complained briefly on the evening in question about the incident to his area manager, Mark Crawley, but was told to discuss it with him the following morning. Following that discussion, on Sunday 20 January 2019, the day after, Mr Lawless was advised that if he wished to formally complain, then he should contact Colleague support the following Monday when back at work. He duly did.
26. On Monday 21 January Mr Crawley received a first written account of the incident from Mr Lawless (see page 100 of the bundle). This included a reference to the claimant saying to him she would *"fucking have you"* (referring to him) and also alleged comments that the claimant had made with reference to the female colleague, namely, *"I don't think that African likes me"*.
27. In this version, Mr Lawless stated that it was in reference to this comment, rather than the later one, that the claimant said words to the effect of *'I can say this as I am married to one'*. Again, the claimant relied heavily (and in the still relies) upon this fact as a material inconsistency in his account. The claimant's case is that this fact and others demonstrates a lack of strength in the case against her.
28. The original statement of Mr Lawless of 21 January 2019 also contained what could be called the central allegation against the claimant, namely, that the claimant had then said about the female *"I'm gonna go have that nigger"*. That allegation also ultimately featured in his evidence before me. Mr Lawless has maintained it throughout.
29. Mr Lawless also alleged in this original statement (again, as per his evidence before me and maintained throughout) that he had physically stopped the claimant leaving the building, whereupon she had become abusive towards him and threw a drink at him. He asserts that had he not done so claimant would have physically attacked the female in question.
30. Following receipt of Mr Lawless' account the respondent via Mark Crawley began a formal disciplinary investigation. After making enquiries of those who attended the event, Mr Crawley ultimately obtained witness statements from two employee attendees, Stephanie Wilson (see page 101) and Dave Thomas (page 102). Although the female who was allegedly the subject of the racist comments was spoken to by Mr Crawley, she had no knowledge of the same and could not assist the investigation.
31. The statement of Stephanie Wilson (who did not give evidence before me) was handwritten and dated the 21 January 2019. In it, she described the claimant as coming over to Mr Lawless' table and shouting *'where is Lee?'* before taking Mr Lawless' phone. She then had the claimant going outside before coming back inside and then *'starting on'* the female colleague in question. The statement then stated:

'Went outside Susanne was still shouting and I went outside then saw Susanna trying to get passed Mick at the door to get to (the female colleague) and she was shouting she wanted to do her in and called her a nigger..'

32. The statement of Dave Thomas was also dated 21 January 2019. He described '*an altercation*' between Mick Lawless and the claimant before he saw the claimant grab his (Mick's) telephone. The last he saw was Mick Lawless going outside and the claimant following. He did not give any account that involved racial abuse or racial comments made by the claimant towards anyone. Again, the claimant relies upon that fact.
33. After the statements had been obtained, Mark Crawley began a formal process of inviting the claimant to an '*Investigatory Meeting*'. This was done via a letter dated 24 January 2019 (see pages 103 – 105 of the bundle). The claimant was informed of her right to be accompanied at that stage.
34. Within that correspondence the claimant was also provided with the relevant evidence that had been gathered in terms of the three witness statements referred to above. The letter also made clear that, in the event the charges were found to amount to gross misconduct, the claimant faced the potential risk of dismissal if they were found proven.
35. On 29 January 2019 the claimant attended for the Investigatory Meeting, pursuant to the respondent's disciplinary policy (as to which, see further below). At that stage, the claimant also provided two witness statements herself for consideration at the hearing, one from her husband (see page 106) and one from herself (see page 107).
36. The claimant's husband's witness statement stated that Mick Lawless had told him that the claimant had spilled (rather than thrown) a drink on him. He stated that the claimant had never talked or spoken to the female in question that evening and, with reference to the racist slur alleged, said that '*I know that Susanna would never say anything like that out of her mouth*'.
37. In her own witness statement, the claimant was adamant that '*she would not use that word*' (presumably again with reference to the word '*nigger*') and went on to say '*in fact I can't even say it*'. Amongst other things about the evening in question, the claimant stated within that written statement that:
 - a) She was '*very drunk*', '*more than most*';
 - b) Her husband had told her the incident was not as described by Mick or Stephanie Wilson;
 - c) In terms of reference to '*African*', she did not even know where the female was from;
 - d) Moreover, she was not '*married to one*' i.e. an African, but to a Jamaican;
 - e) She was embarrassed and ashamed she got drunk so quickly;

- f) She thought she had broken Mick's phone and that's what all this was about (presumably with reference to the complaint and the disciplinary process);
 - g) Her husband seemed unperturbed at the time as the incident did not happen;
 - h) The statements against her were inconsistent;
 - i) In terms of Mick's motives for making the allegation '*maybe he was embarrassed about the drink and phone*';
 - j) Mick had failed to mention the racist terms to another colleague when he was recounting the incident on the night;
 - k) The reason she sent the text next day was that she was sorry about the drink and phone.
38. The claimant again unequivocally and vigorously denied using the term '*nigger*' in terms, saying that it was not in her character to use the term and also stating:
- 'I certainly would never say those words I'm accused of. I have never used them in my life sober or intoxicated.'*
39. The minutes of the Investigatory Meeting appear in the bundle (see pages 109 – 117 inclusive).
40. Under questioning at the meeting, although she admitted snatching the telephone from Mick Lawless, the claimant denied using the words to the effect of '*I'll fucking have you*'. She repeatedly made reference to the fact that she was drunk, allied to references to what she '*would have done*' and '*would not have done*' – the inference being that she could not fully remember some events. The claimant did not know if she had thrown the drink deliberately or knocked it over as she snatched his phone (see page 112) but stated that if she did throw it over him she would '*accept I did*' (page 114). She later conceded that some parts of the evening were '*hazy*' (page 115).
41. At one stage (page 115) the claimant specifically conceded that on the evening itself she was in fact drunk and upset at the specific female in question. She said this was for the fact that the female had been talking to her husband, albeit she said she was upset '*not to this degree*', presumably meaning to either behave aggressively or to make the racist comments as alleged. The claimant also conceded that Mick Lawless' reference to a comment he thought was directed towards him (about being '*ashamed*' and '*a married man*') could in fact have been a comment by her, the claimant, concerning her husband and the fact the female in question had spoken to him.
42. The claimant also stated during the meeting that at one point in the evening early on, and prior to the alleged incident and comments towards her, the female in question had seemingly ignored her:

'I think it was more I was annoyed with X for ignoring me and not talking to Sean'

43. Towards the end of the meeting (page 116) the claimant also stated that at the start of the night, she had twice asked a colleague *'who is that black girl?'* The claimant concluded her account towards the end of the meeting by stating:

'..she just looked at me as if I had offended her and didn't say hi back or go to shake my hand, so I then saw her talking to (her husband) and I thought if you didn't want to talk to me then why are you talking to my husband?'

44. Following the investigation meeting, the investigator Mark Crawley obtained a further statement from a colleague that the claimant had mentioned in interview. This was with respect to the claimant's assertion that Mick Lawless had allegedly failed to mention any racial abuse to that individual when recounting matters on the evening itself. That witness statement appear in the bundle (see page 118).
45. Whilst no mention is made in that document of any complaint by Mr Lawless to that individual to that effect, the statement does describe the claimant as being in a rage and stating about somebody that *'she's going to kill that bitch'* and *'who does she think she is?'* Mark Crawley later clarified with the individual who gave the statement that they understood this to be a reference by the claimant to the female colleague who was allegedly the subject of the racial abuse.
46. After the hearing, Mark Crawley reviewed the various pieces of evidence and, after some consideration, decided that there was sufficient evidence for the case to be put forward for a formal disciplinary hearing. This was in accordance with process outlined in paragraph 3.6 onwards of the Respondent's Disciplinary Policy (see page 172 and in particular pages 176 and 177 of the bundle, which deal with the need for Investigatory Interviews and the process to be followed).
47. Paragraph 3.6.1 of the policy states:
- 'Before formal disciplinary action against any colleague can be taken, the facts of the case must first have been established, including the collation of witness statements and other such evidence where necessary and appropriate, sufficient enough to warrant proceeding to a Disciplinary Hearing'*
48. Paragraph 3.6.6 of the Respondent's Policy (page 178) also contains a checklist of factors to be considered by the Manager when deciding whether to proceed to a Disciplinary Hearing. These include the nature and severity of the alleged offence, whether company policy has been breached, the colleague's previous conduct, how others have been treated in a similar

situation and the colleague's attitude to the offences, as well as any relevant mitigation.

49. The claimant was informed via letter dated 31 January 2019 (see page 119) that Mark Crawley had found sufficient evidence to forward her case to a formal disciplinary hearing.
50. The charges against the claimant alleged that the claimant had assaulted Mick Lawless by throwing a drink on him, displayed aggressive behaviour to a female colleague by threatening to harm her, and that she had also used offence (sic.) language by aiming 'the 'N' word' at the same colleague. The various relevant parts of the Disciplinary Policy and Procedure that the claimant was alleged to be in breach of was also specified. The relevant evidence was again also disclosed to the claimant with the correspondence. This was also accompanied with formal notification that the offences had been classified as potentially being gross misconduct and thus carried with them a risk of dismissal. The claimant was informed that a Disciplinary Hearing, at which she could be accompanied, would take place on 7 February 2019 before Paul Myatt.
51. Prior to the meeting Mr Myatt was provided with a copy of the investigatory notes from the investigatory meeting. He was also provided with a copy of the witness statements. Notes were taken of that meeting and they appear in the bundle (see pages 122 – 129 inclusive).
52. During the meeting the claimant was asked how drunk she was, to which she replied "*quite drunk*". When asked if she was drunk enough not to remember what happened, she replied "*some bits yes*". The claimant also confirmed that when the incident happened she was indeed agitated about something. She stated "*I was being a nightmare, I wasn't agitated about anything just wanted to ring Lee*". When asked in terms if Mr Lawless was lying, the claimant stated that he was. When asked why this might be the case, the claimant stated that the incident had effectively been used and exaggerated as an opportunity to get rid of her:

"I think he was embarrassed that I have taken his phone. I was embarrassed that I had done it".. "I don't think Mick has wanted me here for a little while. When I was made redundant. Since being mobile colleague I've been sent by Mick to shops I'm unable to get to. I don't think I've been wanted."
53. The claimant admitted taking Mr Lawless' telephone and spilling/throwing a drink in a physical tussle which amounted to assault. She denied aggressive behaviour towards the female or any physical threats of violence towards her. She similarly denied using any racial term of abuse.
54. At the conclusion of the hearing the claimant confirmed that she felt the hearing had been held fairly and that she had had sufficient opportunity to say

all that she wished to. No further investigations were carried out following the hearing as, whilst they were considered, they were not considered necessary.

55. Following the conclusion of the hearing Mr Myatt took some time to consider the matter. Having decided that the initial investigation was sufficient, he went on to consider a variety of factors in terms of making a decision. These included the seriousness of the charges against the claimant as well as a global consideration of the evidence that had been gathered. In summary, his conclusions were:
- a. The general story as between all of the statements was consistent. Two of the witness statements stated that the claimant had used 'the N word'.
 - b. The claimant was in a heightened state of intoxication
 - c. This was fuelled by the claimant's view that the female had refused to shake her hand was later seen talking to her husband
 - d. By the time of the interaction with Mr Lawless the claimant was drunk and angry and had taken his telephone without permission
 - e. The claimant had probably thrown a drink over Mr Lawless
 - f. The claimant did also threaten Mr Lawless in the terms he had stated
 - g. The claimant had threatened the female and made the racist comments against the female as alleged in a drunk and agitated state
56. In terms of the claimant's assertions as to why the allegations against her had been fabricated, Mr Myatt also considered those. He also considered the claimant's own domestic situation and the ethnicity of both her husband and children.
57. Mr Myatt concluded that he could not accept that Mr Lawless would bring such a serious complaint against the claimant just because it would be a convenient means by which to get rid of her. He also considered that claimant was confused about her recollections of the evening, which on her own version, had been affected by the amount that she had drunk.
58. Mr Myatt ultimately found that all 3 charges against the claimant were all proved. He communicated that decision and his sanction recommendation to his colleague Louise Plevin via correspondence dated 10 February 2019 (see page 130 of the bundle).
59. In terms of sanction Mr Myatt also considered all the surrounding circumstances, including the claimant's disciplinary record and any mitigation, as well as the range of sanctions available to him. He also consulted the respondent's disciplinary policy (see in particular pages 196-199 of the

bundle). He decided that the claimant's conduct amounted to gross misconduct and that it should be met with a sanction of dismissal.

60. Section 9 of the respondents Disciplinary Policy contains a checklist of factors to be considered when deciding whether to apply a disciplinary sanction (see page 183 of the bundle). This includes, *inter alia*, the nature severity and risks involved of the alleged offence, previous conduct, the colleague's attitude towards the offence and the extent of any mitigating circumstances.
61. Paragraph 10.4.3 of the same policy makes clear that a sanction of dismissal can attach to cases of gross misconduct or serious breaches of duty or to any of the conduct which is so unacceptable as to justify dismissal without prior disciplinary warnings.
62. Paragraph 10.10.2 of the policy deals with what constitutes gross misconduct and provides a non-exhaustive list of examples of offences that may fall into that category. This includes any breach of the criminal law, such as (as was alleged here here) instances of assault or threatening words or behaviour (or presumably any racially aggravated version of those offences). The policy makes clear that it applies both at company organised events as well as in the workplace itself. Further examples also include:
 - a. Wilfully or negligently causing harm or physical or emotional injury to another colleague, client, customer or visitor, physical violence, assault, fighting, malicious or slanderous comments, bullying or grossly offensive or aggressive behaviour or language.
 - b. Discriminating against, harassing, bullying or victimising another colleague, client, customer or visitor because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (including colour, nationality and ethnic or national origins), religion or belief, sex and/or sexual orientation or following a disclosure under the disclosure (whistleblowing) policy and procedure.
 - c. Bringing the company into serious disrepute and lowering the company's reputation.
63. The claimant was written to and told of the decision and sanction outcome in a letter dated 12 February 2019 (see page 132 of the bundle). The letter also summarised Mr Myatt's reasons. The claimant was also informed that she had a right to appeal against the decision under the respondent's appeals procedure, a right which the claimant duly exercised via an email on 18 February 2019 (see page 136 of the bundle).
64. In her appeal correspondence, the claimant appealed the findings and the decision of Mr Myatt on the ground that the findings on each charge did not have enough evidence to result in either a finding of guilt or the punishment

that she had received. The claimant stated that the main evidence had been exaggerated and came from “2 people who have an agenda, no one else has confirmed any of the accusations they make.” The claimant also stated the reason that she did not remember elements of the evening was not because of drink but instead because “it didn’t happen”. The claimant reiterated what she said was the true reason behind the allegations.

65. The claimant also stated that she was submitting the appeal grounds as “the punishment issued was outside an option that was reasonable to that outcome”. To substantiate that claim she stated that there had been no history over the last 9 years of employment despite her attendance at numerous company events and when in drink. She also pointed out again what she described as the inherent unlikelihood of the events occurring, especially when considering her domestic circumstances (in that that she was married to a Jamaican with whom she had mixed race children). The claimant also provided several glowing character references (see pages 142 – 146).
66. By letter dated 20 February 2019 (see page 147), and following her expressed intention to appeal, the claimant was informed that that they would be an appeal hearing on 27 February 2019 before Area Manager Ian Bowden.
67. That appeal hearing was held in accordance with the respondent’s Disciplinary Appeals Policy and Procedure (see page 189 – 200 of the bundle). The notes of that hearing also appear in the bundle (see pages 149 – 158). Mr Boden’s remit permitted him to review the whole of the case and the evidence, as well as the decision in terms of sanction to decide if it was too severe or incorrect. He was not limited to act merely as a review body.
68. During the appeal hearing, the claimant essentially gave the same account that she had given before and throughout i.e. a denial of all of the allegations, save for a concession that she may have spilt a drink on Mick Lawless.
69. In terms of the statement obtained from a colleague which described her as “raging”, the claimant stated that she thought that Mick Lawless had probably influenced the witness to say that. The claimant gave a further account (it would seem, for the first time) that she had had an argument with her sister on the telephone, and it was her that she was seen to be ‘raging at’ on the evening in question, and not the female who had earlier ignored her and spoken to her husband.
70. Some of the claimant’s assertions and points raised at the appeal hearing led to Mr Boden undertaking further investigations and enquiries, including the taking of statements from further witnesses. In the event these did not seemingly take matters much further regarding proving or disproving the central allegations.

71. Ultimately, Mr Boden did not agree with the claimant that the penalty of dismissal was too severe and upheld the original disciplinary findings, including the penalty of dismissal. He concluded that he would have reached the same decision himself at first instance on the evidence before him and indeed reached the same conclusion himself at that hearing having considered all relevant matters. He also considered but did not accept the claimant's assertions that the whole thing was "*some sort of conspiracy by Mick (Lawless) because he didn't want her because she wasn't able to cover certain branches.*"
72. The claimant was informed of Mr Boden's decision on the appeal by letter dated 20 March 2019 (see page 169). In that letter Mr Boden dealt explicitly with all the points that the claimant had raised as part of her appeal. He made clear that:
- a. He believed that there was sufficient evidence to result in the finding of guilt and punishment received
 - b. The fact that certain of the statements and indeed the female herself do not mention racist abuse was not necessarily determinative of the issues
 - c. It was significant that the issue regarding the apparent argument with her sister had never been mentioned by the claimant previously at any prior meeting
 - d. There was nothing to support the claimant's contention that Mr Lawless and Miss Wilson had engaged in some sort of conspiracy against the claimant in fabricating or exaggerating allegation
 - e. The text message sent by the claimant the following day to Mr Lawless was suggestive of her carrying out the alleged incidents as charged
73. Following this the claimant's dismissal therefore stood, and she duly presented her claim for unfair dismissal to the Tribunal on 12 April 2019.

Relevant law – unfair dismissal

74. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that they were dismissed by the respondent under section 95, but in this case the respondent admits that it dismissed the claimant (within section 95(1)(a) of the 1996 Act) on 31 July 2020.
75. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either

party, whether the respondent acted fairly or unfairly in dismissing for that reason.

76. In this case it is principally in dispute whether the respondent dismissed the claimant because it genuinely believed on reasonable grounds that she was guilty of misconduct. Misconduct is a potentially fair reason for dismissal under section 98(2).
77. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend 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 shall be determined in accordance with equity and the substantial merits of the case.
78. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in **Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**.
79. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439**, **Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23**, and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**).
80. Both the claimant and Mr Hamilton-Fisher, on behalf of the respondent, provided me with oral submissions on issues of the genuineness and reasonableness of the respondent belief in misconduct, the basis and grounds of that belief and with respect to fairness generally, within section 98(4), all of which I have considered and refer to where necessary in reaching my conclusions.

Conclusions and Findings of Fact

What was the reason or principal reason for dismissal?

81. There is no dispute that respondent dismissed the claimant. Further, there is no dispute that misconduct is potentially a fair reason for dismissal.
82. The bulk of the claimant's evidence and complaints are to the effect that the reason for the initial, formal complaint emerging in the first place (and, she says, thereafter being exaggerated and sustained) was some type of oblique or ulterior motive by her colleagues Mick Lawless and/or Stephanie Wilson to get rid of her. That assertion is quite separate from, and indeed in contrast to, any allegation that this was the real motive or reason on behalf of those who in fact carried out the investigation i.e. Mark Crawley, or on behalf those who thereafter made and then upheld the decision to dismiss her i.e. Paul Myatt and Ian Boden.
83. The claimant has never in fact alleged at any stage that those individuals either disingenuously found a case to answer, or ultimately dismissed her for some other reason than her alleged misconduct. Instead, the claimant asserts that there was insufficient evidence (effectively) for those people to have had a genuine belief in her guilt, and/or that the state of the evidence was such that any such belief held by them could not have been based on reasonable grounds.
84. The dismissal letter of 12 February 2019 itself makes clear the reason for the claimant's dismissal on its face, namely gross misconduct. I accept that this document, and indeed Mr Myatt's reasoning and conclusions therein, represented the respondent's principal reason for dismissing the claimant.
85. Given those facts, I conclude therefore on the evidence that the respondent has established, on the balance of probabilities, a potentially fair reason for dismissal in the form of the claimant's conduct. It was the principal reason, indeed I find the only reason, for the claimant's dismissal pursuant to section 98 (2) (b) ERA. It follows that the real issues in the case are whether, in light of the state of the evidence, the respondent genuinely believed, or indeed had grounds to genuinely believe, that the claimant was in fact guilty of gross misconduct.
86. With reference to the remaining list of issues agreed at the outset, my conclusions are therefore as follows:

Did the respondent genuinely believe the claimant had committed misconduct?

87. The respondents asserts that they did. The claimant asserts that given the quality of evidence, the respondent could not have had a genuine or honest belief that the claimant had committed misconduct or indeed gross misconduct. It is for the respondent to prove on the balance of probabilities, the sole or principal reason for dismissal. In considering fairness the burden is neutral.
88. I find that on the balance of probabilities the respondent, more particularly those who dealt with the claimant's various investigations and subsequent disciplinary and appeal hearings, held a genuine belief that the claimant was guilty of gross misconduct.
89. The evidence of Mr Crawley, Mr Myatt and Mr Boden was clear, considered, detailed, corroborated by the documents and consistent throughout as to why they had reached the conclusions they did. It was equally clear as to the evidence that they had considered at various stages in doing so. I accept their evidence in that respect.
90. Their evidence before me when questioned by the claimant was equally clear, namely that all three of those individuals considered all relevant matters thoroughly and carefully before arriving at a genuine belief that the claimant was guilty of gross misconduct. It is worthy of note that there is in fact no positive evidence to suggest that any such belief on their part was anything other than genuine.
91. Rather than alleging that those individuals did not genuinely hold that belief, the claimant's criticisms in fact ultimately came down to largely forensic criticisms of the evidence they had considered in terms of matters such as its alleged inconsistency, weight and reliability, and not in fact whether the people involved (save for Mr Lawless, who was not an investigator or a decision maker) genuinely believed it.
92. By way of example, Mr Myatt was questioned by the claimant in the following terms

Q: Why did you decide you had grounds for dismissal on two statements which were contradictory when I denied it?

A: Despite the fact they are not word for word, I didn't believe they contradicted each other. Stephanie says it happened inside – they weren't word for word, but they didn't significantly contradict each other [quotes from Stephanie's statement]. Susanna was inside and Mr Lawson states she was inside also.

93. I conclude that the claimant has not proven on the balance of probability that any of her challenges to genuine belief had an influence on, or were somehow the '*true cause*' cause of the respondent's decision to dismiss her.
94. I therefore find as a fact that the respondent's belief at various relevant stages (investigation, disciplinary hearing, appeal) was genuine.

Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? In particular:

Were there reasonable grounds for that belief?

95. This considers the information available at the time of the investigation, dismissal and appeal decisions and, at this stage, I am evaluating whether the employer's view that there was misconduct is a view within the band of reasonable responses. The way in which the respondent assessed the competing versions of events, along with their assessment of the claimant's explanations regarding the incident and alleged behaviour, is all relevant to whether they had reasonable grounds for their belief that the claimant was guilty of misconduct.
96. The question is whether the employer had reasonable grounds for their belief in the claimant's guilt, based upon the material assembled as a result of their investigation up to the point of dismissal. I consider what material then, did the employer have in this case to entitle them to take the view the claimant was guilty of gross misconduct?
97. At the conclusion of the investigation, and by the end of the various processes, the respondent was in possession of a wealth of evidence that was at the very least potentially suggestive of a number of things:
- a. That the claimant was heavily in drink, and in fact even on her own version, was drunk on the evening in question;
 - b. That, in contrast to the claimant, the principal complaint maker (Mr Lawless) was not in drink;
 - c. That the claimant could not positively remember certain events, and indeed had proffered an apology the next day via text to this effect;
 - d. That, even on her own version, the claimant was upset with the female in question for ignoring her and/or not shaking her hand;
 - e. That, also even on her own version, the claimant was also upset with the female for talking to her husband;
 - f. That, on the evidence of a third witness, the claimant was in a rage and stating about somebody that '*she's going to kill that bitch*' and '*who does she think she is?*'
 - g. That, on the claimant's own version, she had snatched Mr Lawless' phone and possibly thrown or at least spilt a drink on him;

h. That, as per the evidence of two separate witnesses, the claimant had used a racist term against the female and threatened her.

98. Balanced against all of that was effectively the evidence and the account from the claimant herself. This stated that, notwithstanding her upset with the female in question, her level of intoxication and the fact that she could not remember all the events, her personality and especially her domestic and family circumstances meant that such conduct by her was inherently unlikely. In essence, she maintained that would not have said or done something as had been alleged. This was allied to a similar statement from her husband and other testimonials about her general character and behaviour. It is worthy of note that other than the claimant herself and her husband, there was not a single third party witness who positively said the alleged comments *were not* said by her. Whilst some statements did not mention the alleged racial abuse or threats, they were not determinative, nor did they purport to have seen the full incident.
99. Further, in terms of why the complaints were made at all if the allegations against her were not true, the claimant alleged (effectively) a conspiracy to get rid of her as between Mick Lawless and Stephanie Wilson. It was this, she said, which had led to a gross exaggeration as to what had occurred which was then deployed as a vehicle to get rid of her from the company. Mr Myatt was clear in his evidence that he specifically and expressly all considered and then reached a view on this matter. I accept his evidence on the issue which was as follows:
- “I found it hard to accept that an ADM (Mick Lawless) would bring such a serious complaint against the claimant just because it would be a convenient means by which to get rid of her.”*
100. I therefore conclude that there were reasonable grounds for the respondents belief that the claimant had committed gross misconduct as alleged. An analysis of the above matters demonstrates that the respondent was more than entitled to come to that view. In doing so, I conclude the respondent was acting well within the range of reasonable responses.
101. I find that the respondents were entitled to prefer the evidence of Mr Lawless and Ms Wilson, especially when read in the context of a further witness who described the claimant as being in a rage.
102. Further, they were equally entitled to reject the claimant’s denials. This entitlement was especially so in the context of the claimant’s distinct lack of recollection. Moreover, the claimant accepted herself, firstly, aggressive behaviour towards Mr Lawless (taking his telephone, and spilling/throwing a drink on him) and secondly, having a clear motive for being unhappy and upset with the female in question.

103. I equally accept the evidence of both Mr Myatt and Mr Boden that whilst they fully and carefully considered all the various inconsistencies highlighted and each of the forensic points made by the claimant, on the evidence they had, they arrived at the view that the allegations were proved against her. The claimant has not demonstrated at any stage (for instance) that the complaints were so outlandish, the allegations so weak, or so riven with inconsistency as to be singularly unbelievable, or indeed that they were so clearly fabricated or exaggerated as to be incapable of belief by the respondent. The respondent carefully considered and ultimately rejected the claimant's suggestion that the complaints had been engineered by those with a motive to get rid of her.
104. To the extent that the claimant sought to effectively disprove the allegations in evidence before me (via the questioning of Mr Lawless, and by highlighting various alleged forensic inconsistencies) this has not served to disprove what the respondent asserts in the letter of dismissal, or somehow shifted the nature of the conclusions that were reasonably open to the respondent. In summary, the state of the evidence against the claimant is not such that the respondents were not entitled to prefer it over her account.
105. Whilst the evidence and events were plainly disputed, I therefore find that the conclusion reached upon them by the respondent was open to them and well within the range of reasonable responses.

At the time the belief was formed had the respondent had carried out a reasonable investigation?

Did the respondent otherwise acted in a procedurally fair manner?

106. These two matters can be dealt together in the circumstances of this case.
107. I find that the lines between witnesses, investigators and those acting subsequently in a disciplinary and appeal role were clearly defined and appropriately separate and demarcated. I find each of those individuals from whom I heard evidence (Mr Crawley, Mr Myatt, Mr Boden) carried out those roles with an open mind, with impartiality and with care and diligence.
108. In terms of the fairness of the procedure, I note the ACAS Code on Disciplinary and Grievance Procedures. In particular, paragraph 6 of the ACAS Code provides that, in misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing. Clearly, that happened in this case in the circumstances I have outlined already. Further, Paragraph 27 states that the appeal should be dealt with impartially and, wherever possible, by a manager who has not previously been involved in the case. Again, that also happened in this case.
109. In terms of the investigation, written accounts were quickly taken from all involved parties and the claimant was given numerous opportunities to give

her account and to challenge the evidence, as well as being told of her right to have proceedings recorded and be accompanied. She was also invited and indeed did direct the investigation towards further evidence and witnesses.

110. Mr Crawley gave evidence that he effectively applied a *'threshold test'* at that stage (as per the policy) to see if there was sufficient evidence to take the case forward to a formal disciplinary. When challenged by the claimant in questioning (to the effect that he had ignored her version of events) he stated:

"I did, I looked at everything. There were some inconsistencies in terms of alcohol involved and the temperament of the evening. But I felt that two people heard you say n word, plus you were in a rage. That was enough to take it forward. I didn't see what they had to gain by making it up, and also plus your admission that you may have thrown the drink"

111. I accept Mr Crawley's evidence on that issue. The formal disciplinary charges laid against the claimant thereafter were precisely framed and the evidence presented was limited to those charges.
112. Whilst the respondents were entitled to regard the claimant's actions as potentially serious, a reasonable employer would have objectively considered and genuinely, thoroughly and independently investigated with an open mind and assessed the competing versions of events. They would have done the same with respect to the claimant's explanation regarding her conduct generally when deciding thereafter what view to take of her culpability and what sanction to impose.
113. I conclude without hesitation in this case that the respondent did all of those things, in strict adherence to a clear, staged investigatory and disciplinary process which in turn was born out of adherence to a comprehensive and well-drafted disciplinary policy.
114. I find as fact that the investigation was both impartial and thorough and that the claimant was given every procedural and substantive safeguard and every opportunity to both engage in matters, to defend herself and to give her account. The investigation and the disciplinary process proceeded entirely as one would expect of a sensitive investigation with such potentially serious consequences. Where there were potentially gaps or ambiguities in the evidence, or indeed a need for additional enquiries or clarification, I conclude that they were addressed and that this was done. The obtaining of further witness statements after the claimant's various interviews, and in some cases directly in response to issues that the claimant had raised, is a case in point.
115. I also find that a genuine, independent, second opinion was available at the appeal stage in the form of Mr Boden. In that regard I find that, on the balance of probabilities, all of the points raised in the claimant's letter of appeal were all thoroughly and properly considered. A cursory examination of the appeal outcome letter itself demonstrates that to be so.

116. Having heard the evidence in this case I therefore find that that respondent did carry out a more than reasonable investigation and, moreover in terms of procedure, that it did act in a scrupulously fair manner.

Was dismissal within the range of reasonable responses?

117. The claimant's conduct fell fairly and squarely within respondents definition of gross misconduct, and indeed was explicitly caught by various of the non-exhaustive list of examples given within it.
118. In those circumstances I conclude that the respondent was more than entitled to treat the conduct as gross misconduct. Such a response was within the range of reasonable responses.
119. Further, I also conclude that the respondent was entitled to take the view that no sanction short of dismissal was appropriate for such conduct and to conclude equally that any alternative, lesser sanctions (which I find below were also properly considered) should be ruled out. Such an approach was within the range of reasonable responses. I reject the claimant's assertion that a sanction of dismissal was not open to the respondent or within the range of reasonable responses on these facts, or was excessive, either in and of itself or in accordance with their stated policy.
120. The allegation was self-evidently one of the utmost seriousness (assault and abuse towards a senior colleague, the use of racial abuse and terminology and threats towards another colleagues, all at a dedicated company event) and I accept the evidence given on behalf of the respondent as to how and why they regarded it so seriously. Notwithstanding the claimant's impressive recent record and standing in the company, , the respondent was entitled to take the view that there was little if any mitigation for such behaviour once it was found proven. That was especially so in the face of the claimant's self-induced intoxication and her continued denials.
121. In term of the respondent considering all relevant factors, there is ample evidence that the claimant's length of service and disciplinary record were properly and adequately considered. The various checklists within the respondent's policies were addressed by each of the respondent's investigating and decision-making witnesses in their evidence and I accept that they properly and carefully considered those matters.
122. In a similar vein, there is also evidence from the respondent that any other alternative sanction other than dismissal was properly considered and then ruled out. Mr Myatt and Mr Boden expressly dealt with that issue and I accept their evidence on it. As Mr Myatt said in his evidence:

“I did consider whether a final written warning could be imposed – but threatening behaviour and language used were beyond any excuse, and I also felt that I could not guarantee that this would not happen again should a similar situation arise. I felt I had a duty of care towards the other employees in the company.”

123. I find for all of these reasons that the respondent’s decision to dismiss the claimant in these circumstances was within the range of reasonable responses to her conduct.

Conclusion on Unfair Dismissal

124. I find, therefore, that the claimant was not unfairly dismissed by the respondent within section 98 of the Employment Rights Act 1996. In those circumstances no question of remedy, or a need for any further evidence or hearings, arises.

Employment Judge Rawlinson

26 June 2022

Judgment and Reasons sent to parties on:

27 June 2022

For the Tribunal office