



EMPLOYMENT TRIBUNALS

Claimant: Miss E.J. Quick

Respondent: West Hertfordshire Teaching Hospitals NHS Trust

Heard at: Watford

On: 14, 15 and 16 June 2022

Before: Employment Judge McNeill QC

Appearances

For the Claimant: Miss Quick, in person

For the Respondent: Mr S. Sudra, Counsel

Judgment having been sent to the parties on 24 June 2022 and written reasons having been requested pursuant to rule 62(3) of the Employment Tribunals Rules of Procedure, the following reasons are provided.

REASONS

Introduction

1. The Claimant brought a claim for unfair dismissal against the Respondent (the Trust). At a preliminary hearing on 22 June 2021 other claims brought by the Claimant were dismissed, either because they were withdrawn (sex discrimination) or because they were out of time (disability and religion/belief discrimination).
2. The Claimant was summarily dismissed for gross misconduct on 22 or 31 May 2020 (the precise date was in dispute). The allegations of misconduct that were upheld against her related to her personal use of M&S gift cards entrusted to her for use in connection with a long service awards (LSA) event on 16 May 2019 and a duplicate expenses claim worth £96.93.
3. The Claimant defended the allegations made against her on the basis that she had not acted dishonestly. She had spent some of her own money on expenses that were properly payable by the Trust and the use of the M&S gift cards for her own use was to “balance the books”. The duplicate expenses claims was a mistake and, in August 2019, when the matter was brought to her attention, she offered to pay back what was due. The Claimant attributed the matters alleged against her to personal disorganisation, a lack of training in financial matters, overwork and the fact that she had health issues and was

menopausal (something raised for the first time in her appeal against her dismissal) which was affecting her functioning. She alleged that the disciplinary process was unfair in numerous respects and that the sanction of dismissal was too harsh.

Evidence

4. I heard oral evidence from the Claimant and, on behalf of the Trust, from Mrs Elaine Sidhu (at the relevant time Divisional Manager at the Trust) and Ms Helen Brown (Deputy Chief Executive of the Trust). I was taken to a large number of documents in a bundle containing more than 600 pages.

Facts

5. At the time of her dismissal, the Claimant had been employed by the Trust since April 1998. She had an unblemished disciplinary record and had never been accused of any dishonesty. Her annual appraisals were positive. She worked as a Health and Wellbeing Manager, working 18 hours a week in a job share. Before moving to the position of Health and Wellbeing Manager, she had worked in the Employee Relations Team. There had been a Management of Change process, following which she was no longer able to work 18 hours a week in the Employee Relations Team.
6. The Claimant was employed at Grade 7, which was a senior management grade. At the times relevant to her claim, her responsibilities included organisation-wide Staff Wellbeing and Benefits Services and the organisation of events, including the Trust's annual event for LSAs. Although her job description included some responsibility for managing a budget and stated that she was an authorised signatory up to £5,000, in fact she was not treated as an authorised signatory: that responsibility fell to her job-share partner, Barbara Leon-Hunt.
7. The Claimant did not receive any formal training when she changed roles and did not receive training in financial management.
8. In May 2019, in the course of organising the annual event for LSAs, which was due to take place on 16 May 2019, the Claimant wished to obtain some M&S gift cards. At the LSAs, employees with long service were given gift cards, sometimes with a present, depending on their length of service. The presents were cufflinks for male employees and flowers for female employees.
9. There was an established process for obtaining gift cards. The Claimant would tell Ms Leon-Hunt how many cards she required and at what value. Ms Leon-Hunt would then ask procurement for the cards and the request would then be passed to finance.
10. On occasions, the Claimant would incur expenses herself which she would reclaim from the Trust. Modest expenses could be claimed from petty cash with her manager's approval. For more substantial expenses (over about £100 the Claimant said) there was a process of filling in a form which would then be

approved by the Claimant's line manager and submitted for payment. The Claimant was familiar with these practices and complied with them on numerous occasions.

11. On 6 May 2019, procurement ordered gift cards to a value of £1,537.98 for the 2019 LSA event and these were delivered on 7 May 2019.
12. On 13 May 2019, the Claimant asked her line manager, Caroline Mabbs, to sign for and collect £300 worth of gift cards from Sandhya Patel, Financial Accountant, so that the Claimant could make purchases for the awards event.
13. Ms Patel asked the Claimant to confirm the number of cards and denominations required. She said that they would be signed out to the Claimant's department and that, for audit purposes, finance would require copies of receipts for the goods purchased plus the return of any unused cards. The Claimant responded that denominations were not an issue as she would be using the cards to purchase gentlemen's cufflinks. Unused cards would be returned and she would keep all receipts.
14. In practice (and this was not disputed by the Claimant), the Claimant used some of the gift cards for her own private purchases. She bought cans of gin and tonic, beer, wine, food and other items for personal use totalling £105. She also used the cards to purchase three waistcoats to be worn by her sons and another person who would be volunteering at the LSA event. These latter were paid for in part by the use of the gift cards and in part from the Claimant's own money. There was some confusion over these latter purchases as it appears that the Claimant was personally credited with their value when she was not at home to take delivery of the waistcoats. They were returned to the store and then purchased again.
15. The Claimant's line manager, Ms Mabbs, and others knew that the Claimant's sons were attending the event and helping out. No one objected to this at the time. Indeed Ms Mabbs commented that the Claimant's sons would be "eye candy".
16. On 2 and 31 May 2019, the Claimant submitted duplicate expense claims for items purchased at Boots, each in the sum of £96.93. As soon as this was brought to the Claimant's attention, she offered to pay back the duplicate payment paid to her. In practice, this never happened. The Claimant was off sick from 25 July 2019, around the time when this came to light, and it was overlooked.
17. At a meeting on 7 August 2019 between the Claimant and Caroline Mabbs, there was some discussion about a "further finance investigation" into the LSAs. No witness explained this or, indeed, what was known or suspected at that time but there clearly was a concern.
18. The Claimant was off sick with work-related stress and anxiety from 25 July 2019.

19. On 29 August 2019, after some investigation led by Ms Patel, there was a referral to Counter Fraud arising from concerns about financial governance relating to the Claimant and the LSA event. Neither party asked me to read the document in which the referral was made to Counter Fraud and I did not do so.
20. On 16 December 2019, Counter Fraud submitted their findings to the Trust in summary form. No formal report was ever provided. Counter Fraud concluded that the allegations in relation to financial matters had been substantiated but that *“the loss to the Trust was limited to the extent that it may be resolved with the application of proportionate management sanction”*.
21. A decision was taken to conduct an investigation under the Trust’s disciplinary policy. Given that it was so close to Christmas, the reasonable decision was taken not to tell the Claimant about the Counter Fraud investigation outcome and the decision to investigate under the disciplinary procedure until after Christmas so as not to spoil the Claimant’s Christmas holiday.
22. A letter dated 7 January 2020 was prepared and was given to the Claimant when, together with her representative, she attended a meeting with Ms Tania Marcus, Deputy Director of Human Resources, on 8 January 2020. That meeting was intended to be a Stage 3 sickness review meeting but the Claimant had, by the time of the meeting, indicated that she was working towards returning to work pending an occupational health assessment. At the meeting, Ms Marcus told the Claimant of the pending disciplinary investigation.
23. The letter of 7 January 2020 was in an envelope addressed to the Claimant, which Ms Marcus opened in front of the Claimant at the meeting, when the Claimant had requested that she should be able to take it away to open. This was insensitive and heavy-handed. Ms Marcus told the Claimant that the situation was “very serious”. The letter and terms of reference had been signed off by Don Richards, Chief Financial Officer at the Trust.
24. The letter set out the allegations that were to be investigated.
25. The first allegation was that the Claimant had between May and October 2019 defrauded the Trust by using M&S gift cards entrusted to her for the LSA event to purchase items for her personal use. Details were given of the relevant card values, the date and time of use, where the card was used and what was purchased. The relevant dates were in May and June 2019.
26. The second allegation was that the Claimant attempted to deceive the Trust by purchasing personal items bought with Trust M&S gift cards intended to be used for the 2019 Long service awards on 15th [sic] May 2019 and then returned the items on 24th May to purchase further gift cards which were not given back to the Trust. Details, which in this instance related to the waistcoats, were provided.
27. The third allegation was that the Claimant submitted a duplicate expenses claim worth £96.93 spent at Boots at 12.23 on 2/5/2019 on both 2nd May and 31st May 2019 and therefore claimed monies she was not entitled to receive.

28. The fourth allegation was that on a date unknown the Claimant submitted a £90 expenses claim to cover the cost of M&S gift cards she purchased to replace those spent on personal items and in doing so was not entitled to the monies claimed.
29. The letter stated that “in the interests of confidentiality”, the Claimant should not discuss the contents of the letter or the case with anyone other than her chosen representative/HR support.
30. The Claimant made it clear that she disputed the allegations against her on 16 January and Mr David Thorpe, Deputy Chief Nurse, was appointed as case investigator to look into the matter. The Claimant was notified of this in a letter dated 31 January 2020. The allegations set out in the letter of 7 January 2020 were repeated and the Claimant was told that these were the allegations that would be investigated. The Claimant was informed of her right to be accompanied at any meetings. Some documentation had already been shared with her (and this was referred to) and she was told that if any further documentation came to light this would be shared with her. The investigation process was set out and the Claimant was invited to a first investigatory meeting on 14 February 2020.
31. On 30 January 2020, the Claimant had been advised by Ms Marcus that she should take her annual leave before returning to work and she agreed to do so. Her doctor and an Occupational Health adviser had said she would be fit to return to work on 31 January 2020.
32. On 24 January 2020, Mr Thorpe interviewed Ms Sandhya Patel, Financial Accountant. She told Mr Thorpe about how the gift cards had been procured and the processes for storage. She raised concerns about the process and the audit trail in relation to the vouchers requested by the Claimant.
33. On 5 February 2020, Mr Thorpe interviewed Ms Anne Holmes, OH Administration Team Leader. She explained to Mr Thorpe the process for ordering vouchers and the team structure that included the Claimant. She explained how she had used her personal money to buy items in the past and how she would then bring back the receipts to be reimbursed. She said that she would use a gift card (referred to as a voucher) only for the purpose for which the gift card was provided. She was unable to point to any guidance or policy on the use of gift cards and acknowledged that a leftover card might be used for buying gifts. In relation to the Claimant, she described her as being kind-hearted and clear about her vision but working “in a chaotic way”. She could not imagine the Claimant doing anything dishonest or spending the Trust’s money on herself.
34. On 13 February 2020, Mr Thorpe interviewed Ms Barbara Leon-Hunt, the Claimant’s job share partner. She explained the system with the gift cards and how they were procured. She was the budget holder and she would sign things off. She described the Claimant as a “bit chaotic” and “scatty” but, like Ms Holmes, did not think the Claimant would do anything wrong intentionally.

35. Mr Thorpe had evidence before him that Ms Mabbs, who had attended M&S on 11 August 2019 to verify purchases relevant to the allegations against the Claimant, also stated that she did not think that the Claimant had any intention to be dishonest.
36. There was correspondence in February 2020 between the Trust and the Claimant and her trade union representative about the provision of documents, including receipts.
37. On 5 February 2020, Ms Gina Broderick, Senior Employee Relations Adviser, informed the Claimant that two days of her annual leave could be carried over into the next year. This would enable the investigation to proceed without further delay. By that stage, the Claimant had made plans for her holidays. She said that she would be returning to work in the week commencing 16 March 2020 and the investigatory meeting should be fixed for a date in that week.
38. A meeting was arranged for 8 April 2020 and the Claimant prepared a statement for that meeting dated 7 April 2020. She set out her defence to the allegations in that statement, referring among other matters to the lack of training she had had in financial matters, the time pressures that she was under and the Trust's refusal to allow her to work an additional two hours.
39. At the meeting on 8 April 2020, the Claimant was represented by a trade union representative. Mr Thorpe had gone off sick that week and Mr McMenemy, Deputy Director of HR, had taken over the investigation. Mr McMenemy had only been in post for a couple of days. He was the Claimant's line manager but had had no contact with her at the time he replaced Mr Thorpe as the Claimant was on annual leave. He only became her line manager in any active sense once the Claimant returned to work. Mr McMenemy asked the Claimant about the allegations against her and she had a full opportunity to raise any matters that she wished to raise.
40. Following the investigation and having taken into account the evidence obtained also by Mr Thorpe, Mr McMenemy produced a report dated 10 April 2020. He concluded that "based on the facts it [was] reasonable to conclude that all allegations presented are found". This was beyond his remit under the terms of the disciplinary procedure which was to investigate the facts and provide an outline of those facts for the Commissioning Manager (in this case, Mr Richards).
41. Mr Richards decided that the matter should proceed to a disciplinary hearing and the Claimant was notified of this by a letter dated 17 April 2020. The Claimant was advised that the outcome of the investigation might include a sanction up to and including dismissal. The Claimant understood that the disciplinary allegations against her were as set out in that letter. The allegations mirrored the allegations that were investigated by Mr Thorpe and Mr McMenemy.

42. The Claimant was notified by a letter dated 21 April 2020 that the hearing would take place on 30 April 2020. At that point, the Trust intended that the hearing would take place in person. The Claimant's trade union representative, Mr O'Connor and then the area organiser, Ms Myles, had drawn the Trust's attention to the National Social Partnership Forum (SPF) statement on industrial relations during the pandemic, which provided that disciplinary procedures should be paused while the crisis lasted, except in circumstances which included "very serious" matters. The Trust took the view that the allegations against the Claimant were a "very serious" matter, as they involved potential gross misconduct. The Trust therefore decided to proceed with the disciplinary hearing. That was a decision it was entitled to take.
43. The Claimant was provided with the investigation report before the meeting but not with Appendix 12 to that report. In relation to Appendix 12, which included a number of receipts, it was stated that these could be "accessed if required". Neither the Claimant or her representative asked for these. Mrs Sidhu, who conducted the disciplinary hearing with Mr Pindai, did request these documents and they were provided to her.
44. The disciplinary hearing in due course took place by videolink on 19 May 2020 at the request of the Claimant or her representative. The Claimant's representative had been off sick and the Claimant was represented by Ms Myles at the hearing. Mrs Sidhu and Mr Rodney Pindai, Director of Contracts and Efficiency were appointed to deal with the hearing. Ms Caroline Lankshear, Head of Employee Relations, supported them.
45. The Claimant initially had difficulty joining the meeting. The Trust had not liaised with her beforehand to ensure that she had the appropriate technology. The hearing was to proceed by Microsoft Teams and the Claimant could not access the platform. Fortunately, she had a laptop with her and was able to join by zoom. Although she and her trade union representative were at different physical locations, they were able to speak before the hearing started and on at least one occasion when a break was taken during the disciplinary hearing. Although the arrangements were far from ideal, neither the Claimant nor her representative made any objection at the hearing to proceeding in this way.
46. Technology aside, the Claimant makes no criticism of the manner in which the hearing was conducted. Her criticisms are of the fact that two receipts were taken into account that had not been provided to her and which did not form part of the allegations; that Mrs Sidhu had carried out her own investigations by visiting M&S to clarify their refund and exchange policy in relation to gift cards; and about conclusions that were drawn as to her being dishonest rather than mistaken and/or disorganised. She was also critical about evidence that Mrs Sidhu obtained after the hearing which related to, and contradicted, what the Claimant had said about her job role. The Claimant said that she should have been given an opportunity to respond to that evidence.
47. In determining whether the Claimant had acted dishonestly, Mrs Sidhu took into account, among the many other matters she considered, two duplicate Wilko

receipts that had not formed part of the allegations and had not been provided to the Claimant.

48. The panel made a finding that fraud had been committed. The first, second and third allegations were upheld. The fourth allegation was not. The finding that the Claimant had acted dishonestly was reached on the basis that the Claimant had used vouchers intended for the LSA event for her personal use. The Claimant had not returned unused vouchers or receipts to Ms Patel when requested. The Claimant had also said at the hearing that she had been placed in a position of trust after she returned to work and further enquiries made did not support this. The Claimant complains that she was not told about these further enquiries and what Mrs Sidhu was told. The disciplinary panel was concerned that the Claimant was showing no insight into the seriousness of what she had done.
49. Although Mr McMenemy had expressed his findings in the report as findings in relation to the allegations, the disciplinary panel carried out its exercise of determining whether to uphold the allegations with an open mind. It did not treat his findings as binding on the disciplinary panel. The fact that the disciplinary panel rejected allegation 4 is just one indication of their independent approach. The panel determined that the Claimant's acts constituted gross misconduct. They considered the Claimant's mitigation and alternative sanctions but formed the view that summary dismissal was appropriate.
50. The Claimant was notified of the disciplinary hearing outcome in a letter dated 22 May 2020. The reasons for the panel's findings were set out in the letter. The Claimant was told that her dismissal would take effect on 22 May 2020 but that her termination date would be 31 May 2020 because of a payment for outstanding annual leave (this did not make great sense but, as stated above, the precise effective date of termination is not material).
51. The Claimant appealed against that decision. The grounds for her appeal were that the sanction was unduly harsh, the disciplinary policy was not followed properly and that she had found some new evidence to confirm that she had had spent £100 from her own account on the day before the LSA event for waistcoats and clothing.
52. The appeal was heard by Ms Brown, who chaired the panel, and Ms Jane Shentall, Director of Performance, on 11 September 2020. They were supported by Claire Shaw from Capsticks Advisory service. The Claimant was again supported by Ms Myles, her Unison representative.
53. The remit of the panel was to review the decision of the disciplinary panel and to consider whether the panel had reached a view it could not reasonably reach. The appeal panel, having considered any new evidence, would consider whether the decision of the disciplinary panel should be upheld.
54. Mrs Sidhu had prepared a management case and the Claimant had set out her position in writing. The Claimant and her representative were able to set out their position in full at the hearing.

55. The issue of new evidence developed at the appeal hearing was not in respect of the £100 spent from her account (for which no receipts were ever provided) but in relation to her health. She said that she had been taking anti-depressant medication and medication for high blood pressure. She was also suffering from the effects of the menopause. Because of these matters, she was disorganised and forgetful.
56. The appeal panel were not persuaded that these medical matters would have made any difference to the outcome of the disciplinary hearing. Although the matters referred to might explain some disorganisation, they did not explain a lack of judgment in the Claimant deciding to “repay herself” by the use of the vouchers or explain why she used Trust property for her own gain. Although the Claimant worked in the Health and Wellbeing department, she had only raised these health matters very late in the day. The appeal panel did not consider it needed to obtain medical advice on these matters and the Claimant did not produce any medical evidence that would explain her actions by reference to any medical condition or the menopause.
57. It was acknowledged that individuals may incur personal expenditure on behalf of the Trust but, if they do, they should evidence that expenditure and reclaim in accordance with normal protocols or practice. Ms Brown’s view was that whether the Claimant acted intentionally or not and whether or not she was dishonest, this was a misuse of public funds. Receipts that could explain what the Claimant suggested was a “balancing of the books” (namely using vouchers to recoup what was owed to her) had never been provided.
58. The appeal panel upheld the decision of the disciplinary panel. It explained its reasons cogently and at length in a letter sent to the Claimant dated 18 September 2020. The appeal panel (just as the disciplinary hearing) did not consider that the Claimant had shown any remorse for her actions or insight into the seriousness of what she had done.

Law

59. The applicable law is set out in section 98 of the Employment Rights Act 1996 (ERA). I was also guided by the approach set out in the case of **British Home Stores Ltd v Burchell** [1978] ICR 303.
60. The first issue was whether the Respondent genuinely believed that the Claimant was guilty of misconduct, a reason relating to conduct being a potentially fair reason within section 98(2) of the ERA.
61. The next issues were whether the Respondent reached the decision that the Claimant was guilty of misconduct following a reasonable investigation and, if so, whether dismissal fell within the band of reasonable sanctions.
62. In looking at all matters of substance and procedure, I applied a “range of reasonableness” approach and reminded myself that I must not substitute my view for that of the Respondent.

63. I took into account that not every procedural defect will render a decision unfair. I have to look at any procedural flaws in context and consider their implications for the overall reasonableness of the decision to dismiss. The question is whether the decision to dismiss was fair or unfair, having regard to the reason for dismissal and in all the circumstances.

Conclusions

64. I concluded that the reason for dismissal was a reason relating to the Claimant's conduct within the meaning of section 98(2) of the ERA. The Respondent genuinely believed that the Claimant had used vouchers for the LSA awards for her own personal benefit. The disciplinary panel, that decided on the decision to dismiss, believed that her conduct involved dishonesty and that was a genuine belief.

65. I considered whether the Respondent reached that belief reasonably, having carried out a reasonable investigation. The Claimant forcefully advanced a number of reasons why she said the investigation was not reasonable and that the finding of gross misconduct was unfair.

66. The Claimant contended that the manner in which the allegations were framed was unfair or unreasonable because the allegations were "closed". She explained that because specific reference to fraud and deception was made in the allegations, this could adversely influence the outcome of the disciplinary case against her. I did not accept that contention. Where dishonesty or fraud is alleged against an individual, it is important in the interest of fairness that that should be made clear to the individual facing the allegation.

67. The Claimant complained that her sickness absence was not adequately taken into account by Mr Richards when he notified the Claimant of the disciplinary proceedings. I noted that neither the Claimant nor her trade union representative made any complaint about this at the time. There was no medical evidence suggesting that the disciplinary proceedings should have been suspended or postponed because of the Claimant's health.

68. It is alleged that Mr McMenemy should not have conducted the investigation because he was the Claimant's line manager and would not be impartial. Mr McMenemy did not, however, know the Claimant. Within the disciplinary process, it was reasonable for the Trust to take the view that, as he had only been employed for two days and had not had any line management interaction with the Claimant, he was sufficiently impartial. I did not conclude that his appointment involved any bias as the Claimant alleged.

69. There was some suggestion that Caroline Lanksheare should not be involved in the process because she had been involved in drafting the disciplinary procedure and was too close to the case but I did not accept this either. Ms Lansheare was a member of HR, there to assist the disciplinary panel. She

was not a a decision-maker and there was no evidence that she had input into the decisions made on the allegations.

70. The Claimant referred to the lack of training of those involved in the investigation, including Ms Brown. There was scant evidence in relation to the training of those involved. other than Mrs Sidhu. and of course training can assist individuals in carrying out disciplinary processes in a way that is fair. My focus, however, was on this particular disciplinary process: how the various stages of the process were in fact conducted; and whether a lack of fairness was demonstrated in that process.
71. The Claimant complained of the delay in completing the process on the basis that the matters alleged mainly concerned events in May 2019 and the decision to dismiss was not taken until May 2020. The Acas Code of Practice stipulates that employers should deal with matters promptly and that there should not be unreasonable delay.
72. Dealing with matters promptly is integral to fairness. The Trust did not comply with its own policy by updating the Claimant at least every two weeks on the progress of the case and any reasons for delay, although it was in quite regular contact with the Claimant.
73. Factors relevant to delay included the nature of the allegations. Cases involving financial irregularities can take some time to investigate. In the current case, matters were first looked into by the finance department and the matter was then referred to Counter Fraud. The Claimant herself knew about some financial investigation relating to the LSAs in August 2019. She did not take any active part in producing any documentation that might assist her at any stage (she mentioned at the hearing a book in which she kept records but which she could no longer find when she was first alerted to the disciplinary investigation).
74. Further reasons for delay concerned the Claimant's sickness absence and the involvement of Counter Fraud. Once Counter Fraud became involved, there was a delay of three months when the Trust could not further investigate because they had to await the outcome of the Counter Fraud investigation in accordance with their processes. Once Counter Fraud's conclusions were notified on 16 December 2019, it was fair and reasonable for the Trust to take the view to wait until after Christmas before beginning disciplinary action.
75. After January 2020, some delay was occasioned by the Claimant's unavailability during her period of annual leave. This is no criticism of the Claimant, as she had been told to take her annual leave before returning to work. After she was interviewed in April 2020, matters proceeded relatively promptly and I did not understand her to complain of further delays.
76. I considered whether it was reasonable to proceed with the disciplinary matter in against the Claimant in the light of the SPF guidance. The SPF guidance did not preclude a disciplinary hearing proceeding in a very serious matter. Allegations of financial impropriety by a relatively senior employee (or any

employee) could reasonably be categorised as very serious and I do not consider that this was unfair.

77. In relation to the technology, it would have been reasonable to make some checks with the Claimant before the start of the disciplinary hearing to see that she could access the platform that the Trust was planning to use (MS teams) in accordance with Acas guidance. Difficulties with accessing technology almost inevitably create stress in what is already a stressful situation.
78. Once the Claimant was able to access the hearing via zoom, I consider it was reasonable to proceed and there was no unfairness. The Claimant was able to speak to her representative if she needed to, even if they were not present in the same room as her, and no objection to proceeding by zoom was raised by her or her representative. There was a suggestion of a lack of confidentiality involved in the zoom platform but this was not developed in argument and there was no evidence to show any lack of confidentiality.
79. The Claimant also considered it unfair for the Respondent to have someone from Capsticks supporting them at the appeal when the Claimant was only allowed to have a trade union representative or a family member. It is understandable that the Claimant felt that there was an inequality of arms but there was no evidence that the representative from Capsticks took any inappropriate part in the disciplinary process.
80. In terms of matters of substance, I considered whether the panel gave proper consideration to the possibility that the Claimant's actions were caused by overwork, chaotic administration and/or disorganisation rather than any dishonesty. In other words, could the panel reasonably find that the Claimant had acted dishonestly?
81. I concluded that the Claimant's state of mind was considered by the disciplinary panel. They reached the conclusion that there was dishonesty. There was evidence that could support a finding of dishonesty based on the undisputed facts. The Claimant had used the vouchers for her own use and had not produced evidence of the payments she said she had made personally, which were her reason for using the vouchers (her contention that she was merely "balancing the books"). The panel also took into account some inconsistencies in her evidence. The panel had credible evidence from others suggesting that the Claimant was not a dishonest person but the panel was entitled to weigh up that evidence with the other evidence before it.
82. The Claimant suggests some unfairness arising from the disciplinary panel's rejection of allegation 4. I concluded that, if anything, this actually evidenced fairness by the panel, which considered allegation 4 and concluded that the allegation lacked clarity and did not uphold it.
83. It was submitted by the Claimant that it was unfair for the Trust to take into account that the Claimant had made no repayment to the Trust when it could have chased up repayment from her in relation at the very least to the sums she admitted were due. However, as the Respondent contended, the Claimant

equally could have offered repayment of what she acknowledged was due after August 2019 when the duplicate invoices were first discussed. Although the Claimant was told to keep the disciplinary investigation confidential, that did not prevent her exploring how she could repay sums that she admitted were due. The Claimant told the disciplinary hearing that any repayment would be subject to what she was owed by the Trust (but for which she produced no receipts). It was not unreasonable for the Trust to take into account her lack of any attempts to repay after August 2019 when she first made an offer to repay, limited to the duplicate receipts that were the subject of allegation 2. While payroll may be responsible for recovering overpayments, it was not unreasonable to expect the Claimant to take some steps towards triggering this process of ensuring that payments were made.

84. There are aspects of the Respondent's process that were flawed. Mr McMenemy should not have "found" the allegations. It was not fair for Mrs Sidhu to take into account, in drawing her conclusions of dishonesty, that there was a further set of duplicate receipts for expenses which the Claimant had claimed which formed no part of the allegations and which the Claimant had not seen. Mrs Sidhu should not have investigated the refunds matter with M&S independently of the investigation and, having done that, should at the very least have given the Claimant advance notice of what she uncovered. Appendix 12 normally should have been attached to the investigation report, although the Claimant could have asked for this. I do not criticise Mrs Sidhu for not going back to the Claimant after she had made further enquiries of the Claimant's job tasks following what the Claimant had told her. There has to be some finality in these types of investigation.
85. In relation to the appeal, I do not consider that it was unreasonable for the panel not to make further enquiry about the medical matters raised for the first time on appeal. The Claimant did not suggest that those matters would affect her judgment on the personal use of the gift cards: only that they could explain her disorganisation. That is what she also told me at the hearing.
86. At the end of the day, whatever the other issues, the Claimant admitted using gift cards provided for the LSA event for her personal use. In an organisation such as the Trust, this involves a use of public money. Probity and the need for an audit trail are of great importance. The Respondent could reasonably conclude that as a grade 7 employee, the Claimant must have been aware of this, even without specific training on financial management. The Claimant at no stage produced receipts to the Respondent which would show that the items she purchased using the vouchers could be fully explained by some "balancing of the books".
87. There were some procedural flaws in the disciplinary process but none of those rendered this dismissal unfair, looking at the process as a whole and by reference to a range of reasonable responses. The facts admitted by the Claimant and the absence of any receipts that would support her defence were sufficient on their own that the Trust could reasonably reach the decision that there was gross misconduct as defined under their policy. These sorts of

matters are matters which can cause reputational damage given that they involve public money.

88. Where there is gross misconduct, it is exceptional for dismissal not to be a reasonable sanction and I find that it was a sanction open to the Respondent in this case. The Claimant's length of service and her unblemished career up until the date of the matters alleged make the outcome particularly sad but I cannot say that dismissal was outside the range of reasonable responses in all the circumstances.

89. The Claimant's claim for unfair dismissal is therefore dismissed.

Employment Judge McNeill QC

Dated: 18 July 2022

Sent to the parties on:

31 July 2022

For the Tribunal:

T Cadman

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.