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EMPLOYMENT TRIBUNALS

Claimant: Mr A Ali
Respondent: Sky Limited
Heard at: East London Hearing Centre
On: 28 and 29 April 2022
Before: Employment Judge Park

Representation

Claimant: Ms A Rumble (counsel)
Respondent: Mr S Gittens (counsel)

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimant's claim for unfair dismissal does not succeed and is dismissed.

REASONS

Claims and Issues

1. The Claimant's claim was for unfair dismissal.
2. In the ET1 the Claimant had indicated that he was claiming other payments. At the outset the Claimant confirmed he was not pursuing any claim for wages or other payments.

Procedure, documents and evidence heard

3. The parties were both represented by counsel.
4. A bundle of documents had been prepared and was provided.

5. The Claimant had prepared a witness statement and was cross examined. The respondent called two witnesses, Lawrence Nettle and Adrian Brookes. Both gave evidence in person and were cross examined.

Findings of fact

6. The Claimant was dismissed at the end of January 2021. The Respondent had initially suspended the Claimant and commenced an investigation in late January 2020. I was provided with documentary evidence spanning this entire period between January 2020 and January 2021, including the grievance the Claimant raised while suspended. The Claimant also referred in his claim and gave evidence in relation to matters that predated January 2020. I have considered all of the evidence provided by the parties but my findings of fact are limited to the events that are of relevance to the issues I need to determine in the Claimant's unfair dismissal claim.
7. The Claimant's employment with the Respondent commenced in April 2018. He worked as a sales advisor in one of its stores in the Westfield centre.
8. During 2019 the Claimant raised a number of informal complaints about his team leader, Partap Sarkar, with the regional manager, Neeta Patel. He did not raise a grievance during 2019 but sent a number of emails to Ms Patel.
9. On 22 January 2020 another employee, Javed Chowdhury, sent an email to Mr Sarkar complaining about the Claimant's conduct on 9 January 2020. Mr Chowdhury indicated in the email that he had previously discussed the incident with Mr Sarkar in a 1-2-1 meeting. He then described the Claimant being rude and unprofessional, gesturing to him violently and then swearing and telling him to leave. He also stated that the Claimant had made a comment about his racial background and complained this was a "*racial attack*".
10. The Respondent commenced an investigation into the allegations made by Mr Chowdhury. Another manager, Wallace Parker, was appointed to undertake an investigation.
11. On 27 January 2020 Mr Parker took a statement from Mr Chowdhury about the incident on 9 January 2020. He also spoke to another employee, Kazi Farham, who had also been present on 9 January 2020. During the hearing the veracity of these statements was called into question, as they did not follow the same format of the records of investigation meetings that were carried out later. No substantive evidence was provided to suggest these were not genuine records of conversations that Mr Parker had with Mr Chowdhury or Mr Farham and this suggestion appeared to purely be based on the format of the documents compared to records of later interviews. Mr Chowdhury had already provided an initial account of events in his email dated 22 January 2020 and the document recording the discussion on 27 January 2020 is consistent with that. I am satisfied these documents were genuine records taken during the investigation.

12. On 27 January 2022 the Claimant was at work when he was approached by Mr Parker who asked him to come to a meeting. Mr Parker informed the Claimant during this meeting that he was carrying out an investigation. I accept that the Claimant was surprised by this as he had not been informed in advance of this meeting. I accept that the Claimant was not provided with copies of the actual complaint made against him at this meeting. However I also find that during this meeting Mr Parker did make it clear that the Claimant was being asked about the events of 9 January 2020 and his interaction with Mr Chowdhury. It is also clear from the minutes of this meeting that Mr Parker asked specific questions that were based on the allegations. During this meeting the Claimant suggested that statements about him may have been made up. Following this meeting the Claimant was suspended.
13. On 27 January 2020 Mr Sarker made a complaint about the Claimant's conduct. He alleged the Claimant had approached him in the Samsung store at Westfield and stood very close. Mr Sarker alleged that the Claimant had been following him and then confronted him. Mr Sarker reported this incident to the police.
14. As part of the investigation Mr Parker spoke with Mr Sarker about both the events of 9 January 2020 and his complaint about the Claimant's conduct on 27 January 2020. Again I have seen records of conversations between Mr Sarker and Mr Parker which are in a different format to the other records other investigation meetings but I have not been provided with any evidence to suggest these are not genuine. I find that these are genuine accounts of the discussions that took place between Mr Sarker and Mr Parker.
15. On 28 January 2020 the Claimant raised a grievance against Mr Sarker. At this point he knew he had been suspended but he had not received confirmation in writing. The Claimant explained that after the meeting with Mr Parker he was unhappy so he called the Respondent's HR department, known as People +. They advised him that if he was not happy then he should raise a grievance.
16. The grievance the Claimant raised broadly reflected the informal complaints he had made the previous year. He complained he had been treated unfairly by Mr Sarker and he accused Mr Sarker of favouritism and having abused his power as manager. The Claimant did not expressly complain about the suspension or current investigation, though he did complain that Mr Sarker was *"seeking help from other advisor against me"*.
17. On 6 February 2020 the Claimant attended a second investigation meeting with Mr Parker. At this meeting Mr Parker asked the Claimant for his account of what happened after he had been suspended on 27 January 2020. Mr Parker asked the Claimant why he had followed Mr Sarker into the Samsung shop. The Claimant did provide a response to this question. Mr Parker asked further direct questions based on Mr Parker's account of

27 January. The Claimant responded to the majority of questions with “no comments”.

18. Before the meeting on 6 February Mr Parker had sent an email to the Claimant asking for his permission to access CCTV as part of the investigation. I was not provided with a copy of this email but the Claimant confirmed he had received an email to this effect some time between 27 January and 6 February 2020 and that he had responded to say he would not provide this permission. According to the Claimant this is because he did not know what he was being asked about. In the meeting on 6 February 2020 Mr Parker asked the Claimant again why he would not provide consent. At this point the Claimant responded that the allegations were false and he should not have to cooperate to provide evidence to prove that.
19. Mr Parker concluded his investigation and produced a report on 14 February 2020. In this report Mr Parker summarised the evidence he had gathered from the Claimant, Mr Sarker, Mr Chowdhury and Mr Farham. He made a recommendation that the Claimant was invited to a conduct meeting to consider allegations of inappropriate behaviour on 9 January 2020 and 27 January 2020. In his report Mr Parker does not expressly make any findings of fact. He summarises the different accounts given by the individuals he spoke to and that the Claimant’s account conflicts with the accounts given by Mr Parker, Mr Chowdhury and Mr Farham. He also noted that in relation to the incident on 27 January the Claimant refused to answer the questions put to him.
20. The Claimant remained on suspension and I accept that he was not informed of Mr Parker’s conclusions at the time the report was prepared. Neither was he kept fully informed about the status of the suspension in a timely manner.
21. The Respondent had decided to put the disciplinary process on hold while it considered the Claimant’s grievance. The Claimant attended a grievance meeting on 3 March 2020. During this meeting the Claimant raised some concerns about the ongoing suspension and investigation. The Respondent carried out a further investigation into the matters the Claimant had raised in his grievance. This included interviewing Mr Parker, Mr Sarker, Ms Patel and Mr Chowdhury along with others not involved directly with the incidents that lead to the Claimant’s suspension. Mr Parker was asked about the procedures followed when the investigation began and the Claimant was suspended, rather than about the substance of his investigation. Others were asked about how Mr Sarker treated the Claimant and employees more generally.
22. The Respondent wrote to the Claimant with the outcome of the grievance on 29 April 2020. The Respondent addressed the following key points that had been included in the Claimant’s grievance:

22.1. Misleading information on Sky Policies

- 22.2. Abuse of power of the Team Leader role
- 22.3. Favouritism/improper recruitment
- 22.4. Undue stress at work for no reason
- 22.5. Seeking help from other advisors against me
- 22.6. Setting a bad example for us to follow

These reflected the bullet points in the Claimant's grievance dated 28 January 2020.

23. The Claimant's grievances were not upheld. I am not going to make any detailed findings on the outcome of the grievance as the majority of the complaints made by the Claimant within the grievance are not of direct relevance to the Claimant's unfair dismissal claim. However I note that the Respondent did make the following findings:

- 23.1. The Claimant had not provided any evidence that Mr Sarker abused his power in relation to the Claimant
- 23.2. The Claimant did not provide any evidence that there was favouritism by Mr Sarker.
- 23.3. There was poor communication between the Claimant and Mr Sarker and the Claimant perceived he was treated unfairly. However Mr Sarker treated the Claimant in the same way as other employees and on occasion made allowances for the Claimant when he did not follow the proper procedures.

I am noting these findings of the Respondent solely as they are of relevance to some of the Claimant's arguments in respect of his claim he was unfairly dismissed. Beyond this I make no findings about the Claimant's grievances.

- 24. During the grievance meeting the Claimant had brought up some limited concerns about the suspension and investigation. At this point the Claimant's concerns related to the process, such as not being told of the exact allegations or the reason for the investigation. This was looked into as part of the grievance and this additional part of the grievance was also not upheld.
- 25. The Claimant appealed against the grievance outcome on 4 May 2020. The focus of this was primarily about how the Respondent had dealt with the grievance as a whole. The Claimant also complained in his appeal that his additional complaints about the suspension process had not been considered fully but he did not expand on this.

26. On 4 May 2020 the Respondent also wrote to the Claimant confirming that he had previously been told the disciplinary investigation would be put on hold until the grievance was concluded. The Respondent also provided copies of the notes from the investigation meetings.
27. The Claimant attended a grievance appeal meeting on 18 June 2020. The majority of the discussion in this meeting related to the points raised in the original grievance, which predated the incidents in January 2020. The grievance appeal outcome was sent to the Claimant on 21 August 2020. The original findings were upheld.
28. In evidence the Claimant indicated that he believed that the disciplinary process and grievance were all connected. He believed the complaints had been made against him because he had been complaining about his manager. He indicated that he believed that once he raised his grievance this should have been apparent to the Respondent and essentially someone should have joined the dots. I accept that the Claimant's formal grievance was triggered by the decision to suspend him. However I do not accept that it was obvious from the grievance itself, or anything the Claimant said during the grievance or appeal process, that he was arguing that the allegations against him that triggered the investigation were not genuine. The complaints the Claimant made during this process primarily related to the process followed when he was suspended and comments about why he had been suspended were made in passing.
29. After the conclusion of the grievance appeal the Respondent restarted the disciplinary process. The Respondent wrote to the Claimant on 23 September 2020 inviting him to a disciplinary hearing, which was originally arranged for 30 September 2020. The Respondent set out the allegations that would be considered which were:
 - 29.1. inappropriate behaviour towards colleagues on 9 January 2020 using foul and abusive language, being aggressive, disrespectful, unprofessional and making comments of a racial nature; and
 - 29.2. inappropriate behaviour on 27 January 2020 including using foul and abusive language and threatening him.
30. The Respondent provided the Claimant at this point with documents collated during the investigation earlier in 2020. This included the investigation summary, the minutes of the meetings the Claimant had attended in January and February 2020, and the statements made by Mr Sarkar, Mr Chowdhury, Mr Farham and Mr Chowdhury's email of 22 January 2022. The Respondent stated it would not be calling witnesses but the Claimant was advised he could call witnesses and, if so, he should provide the details. He was also advised that if there were other documents he wanted considered he needed to provide copies or provide details of those documents so they could be obtained by the Respondent.

31. The Respondent did not include any documents relating to the Claimant's grievance in the pack of documents to be considered at the disciplinary. The Claimant had all those documents but he did not ask for those to be considered during the disciplinary hearing or provide any other documents in advance of the hearing.
32. The Respondent had included in the documentation the crime reference number related to Mr Sarkar's complaint. I accept that the Claimant had not received any substantive information about this before or been contacted by the police. The Claimant contacted the police to enquire what had happened. He received an email advising the case had been closed as Mr Sarkar was not able to provide any other evidence to corroborate what happened and the matter was to be dealt with internally by the Respondent.
33. The Claimant attended the disciplinary hearing on 8 October 2020. It was held remotely and the Claimant was accompanied. The hearing was chaired by Laurence Nettle.
34. During the hearing Mr Nettle went through the incidents and asked the Claimant to provide his account of the various incidents in January 2020. The Claimant maintained that all the allegations were simply untrue. Mr Nettle asked the Claimant why he thought that untrue allegations would be made about him. The Claimant just responded that he did not know why Mr Chowdhury or Mr Farham would do this. In relation to Mr Sarker, the Claimant told Mr Nettle about the grievance and that it had now concluded.
35. Mr Nettle asked the Claimant if there was anything else he wanted to be taken into account. The Claimant raised concerns about the investigation as he thought there were parts missing from the minutes of his meeting with Wallace Parker. He also noted that there had been a security guard present and questioned why the guard wasn't questioned.
36. Mr Nettle adjourned the disciplinary hearing in order to investigate further the points the Claimant had raised. He also asked the Claimant's permission again to view the CCTV footage, if that was still available. The Claimant provided consent at this point.
37. Mr Nettle spoke with Mr Parker again and asked about the notes of the meetings he had with the Claimant. He also met with Mr Sarker and discussed with him the incident on 27 January 2022.
38. Mr Nettle did not meet with either Mr Chowdhury or Mr Farham. During cross examination Mr Nettle was asked why this was. He felt that it was not necessary as he had two similar statements about the events of 9 January 2020 along with the original email from Mr Chowdhury. He had provided the Claimant with an opportunity to explain why he thought that they may have made up allegations but the Claimant had not been able to suggest a reason. The Claimant had not asked that either Mr Chowdhury or Mr Farham attend the disciplinary hearing as witnesses and I also find that

- during the disciplinary process he did not suggest that they should be re-interviewed as part of Mr Nettle's additional investigation.
39. Mr Nettle wrote to the Claimant with the additional documents he had obtained and invited the Claimant to a reconvened meeting on 23 October 2020. This did not go ahead as the Claimant felt unwell. The Claimant was then signed off work. He was reviewed by Occupational Health who advised on 1 December 2022 that he was fit to attend a meeting to be held by Microsoft Teams but it may be better to delay until after he completed the therapy he was undergoing.
 40. On 21 January 2022 Mr Nettle wrote to the Claimant inviting him to a reconvened meeting on 27 January 2021. This was after the Claimant's therapy had been due to conclude. The reconvened hearing took place via Teams on 28 January 2022. The Claimant attended and was accompanied again.
 41. Mr Nettle advised at the beginning that he had tried to obtain the CCTV footage but it had been deleted. Mr Nettle asked the Claimant to provide his comments on the additional statements had obtained from Mr Parker and Mr Sarker.
 42. During both the first and second disciplinary hearings a number of different issues were discussed. I am not going to set out in further detail everything that was discussed beyond what I have already summarised. I am satisfied though that at both meetings the Claimant was able to raise everything that he felt was relevant and that Mr Nettle discussed these issues with the Claimant.
 43. After a short adjournment Mr Nettle informed the Claimant of his decision. Mr Nettle summarised the points that had been made by the Claimant. He upheld the allegations about the Claimant's conduct. In the minutes recording the decision Mr Nettle set out the reasons why he reached this conclusion. He had been provided with accounts from three people of unacceptable conduct by the Claimant on two occasions. He did not feel that the Claimant had given reasonable explanations why Mr Chowdhury, Mr Farham or Mr Sarker would make false allegations about his behaviour or why he would not allow the CCTV to be viewed at the time. I find that Mr Nettle looked at all the evidence that had been provided and considered fully the Claimant's accounts and the various points he had raised.
 44. Mr Nettle decided to dismiss the Claimant with immediate effect. The decision was confirmed by letter and the Claimant was advised of his right to appeal.
 45. The Claimant appealed the decision by email on 3 February 2021. In the email the Claimant stated he had new information. The Respondent appointed Adrian Brookes to hear the appeal.

46. On 11 February 2021 the Claimant emailed Mr Brookes with further details of his appeal. The Claimant stated that he had a number of different points of appeal. This included new information that he had, that he wanted to discuss how he was discriminated against on the grounds of his ethnicity and why complaints had been made against him.
47. The Claimant sent Mr Brookes an email on 1 March 2021 with a statement indicated to be from a Mr M Anees who was from a member of the public who was near by the stand in Westfield on 9 January 2020.
48. The appeal hearing was held on 1 March 2021. The Claimant attended and was accompanied again. Mr Brookes went through points raised by the Claimant in the email of 11 February 2021. During the hearing the Claimant expanded on his explanation of why he felt that Mr Sarker had been treating him less favourably than others. He suggested it may be due to his ethnic background and that Mr Sarker's relationship with Mr Chowdhury and Mr Farhan was more of a friendship. He also told Mr Brookes about the grievance he had raised and confirmed that it had been heard.
49. Mr Brookes also decided to adjourn to carry out further investigation. He spoke with Mr Nettle and Mr Sarker about the points the Claimant had raised in his appeal. Mr Brookes also spoke by telephone with Mr Annee who had had written the statement provided by the Claimant about 9 January 2020.
50. During the evidence Mr Brookes was asked whether he had seen the grievance and outcome. He said that he had asked HR about it but was told that it was not relevant to the disciplinary process so he had not seen it during the appeal. I also note that although the Claimant had brought up the subject of his grievance briefly during the appeal hearing he did not send a copy of it or the outcome or appeal to Mr Brookes or ask that anything within it was taken into account.
51. On 4 May 2020 Mr Brookes wrote to the Claimant with the outcome of the appeal. The decision to dismiss was upheld.

The Law

52. The right not to be unfairly dismissed is conferred by Section 94 of the Employment Rights Act 1996. Where, as here, there is no dispute that an employee was dismissed, the question of whether any such dismissal was unfair turns upon the application of the test in Section 98 of the Employment Rights Act 1996. The material parts of that section are as follows:

“98 General.

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and

- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it –

- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
- (b) relates to the conduct of the employee
- (c) is that the employee was redundant, or
- (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that Case Number: 3202301/2019 26 of his employer) of a duty or restriction imposed by or under an enactment.

(3) ...

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.

53. For the purposes of Section 98(2) ERA 1996 'conduct' means actions 'of such a nature whether done in the course of employment or outwith it that reflect in some way upon the employer/employee relationship': **Thomson v Alloa Motor Co Ltd [1983] IRLR 403, EAT**. It is not necessary that the conduct is culpable **JP Morgan Securities plc v Ktorza UKEAT/0311/16**.

54. Where the reason, or principal reason, for the dismissal is established as conduct then it will usually, but not invariably, be necessary to have regard for the guidance set out in **British Home Stores Ltd v Burchell [1978] IRLR 379**, which lays down a three-stage test: (i) the employer must establish that he genuinely did believe that the employee was guilty of the misconduct; (ii) that belief must have been formed on reasonable grounds; and (iii) the employer must have investigated the matter reasonably. Following amendments to the statutory scheme the burden of proof is on the employer on point (i) (which goes to the reason for the dismissal) but it

is neutral on the other two points **Boys and Girls Welfare Society v McDonald [1996] IRLR 129.**

55. The correct test is whether the employer acted reasonably, not whether the tribunal would have come to the same decision itself. In many cases there will be a 'range of reasonable responses', so that, provided that the employer acted as a reasonable employer could have acted, the dismissal will be fair: **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439.** That test recognises that two employers faced with the same circumstances may arrive at different decisions but both of those decisions might be reasonable.
56. The range of reasonable responses test applies as much to any investigation and the procedure followed as it does to the substantive decision to impose dismissal as a penalty **Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23.**
57. In terms of the reasonableness of the investigation and the procedure that was followed, the "relevant circumstances" referred to in Section 98(4) include the gravity of the charge and their potential effect upon the employee **A v B Case Number: 3202301/2019 27 [2003] IRLR 405.** A v B also provides authority for the proposition that a fair investigation requires that the investigator examines not only the evidence that leads to a conclusion that the employee is guilty of misconduct but also that which tends to show that they are not. However, where during any disciplinary process an employee makes admissions a reasonable employer might normally be expected to proceed on the basis of those admissions **CRO Ports London Ltd v Mr P Wiltshire UKEAT/0344/14/DM.**
58. When considering a complaint of unfair dismissal under s.98(4) of the 1996 Act, where the employee has exercised a right of appeal in disciplinary proceedings the tribunal must consider the overall process **Taylor v OCS Group Ltd 2006 ICR 1602, CA.**
59. Section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that:

"any Code of Practice issued under this Chapter by ACAS shall be admissible in evidence, and any provision of the Code which appears to the tribunal or Committee to be relevant to any question arising in the proceedings shall be taken into account in determining that question."

The relevant code for present purposes is the ACAS Code of Practice on Disciplinary and Grievance Procedures 2009.

Conclusions

60. I am satisfied that the Respondent has established that the reason for dismissal was the Claimant's conduct which is a potentially fair reason. The Claimant has suggested, both during the disciplinary process and during this hearing, that the allegations against him were not genuine and were fabricated. I was provided with no substantive evidence to support this

assertion or to suggest that the Respondent's real reason for dismissal was different or there was an ulterior motive for starting the disciplinary process. I am also satisfied that when Mr Nettle and Mr Brookes made their respective decisions the only matters they had in mind were the allegations of misconduct that had been made against the Claimant which were subsequently investigated.

61. At the end of the disciplinary process Mr Nettle upheld the allegations of misconduct. The questions for me to determine are whether Mr Nettle genuinely believed that the Claimant was guilty of the alleged misconduct and whether that belief was on reasonable grounds having carried out a reasonable investigation. I remind myself that I must not substitute my own views on these points for those of the Respondent, the test is whether the Respondent acted reasonably.
62. I am satisfied that Mr Nettle did genuinely believe that the allegations against the Claimant were true. Mr Nettle spent time considering all the evidence about the incidents in January 2020 and then adjourned rather than make a decision immediately. He then undertook further investigation on some of the points raised by the Claimant in the disciplinary hearing. Having done this Mr Nettle was clear about his reasoning and why he had made the decision he had. This is all consistent with him having reached a genuine conclusion following a full consideration of the decision he needed to make and I was not presented with any evidence to the contrary.
63. I am also satisfied that Mr Nettle had reasonable grounds to reach the conclusion he did. It was suggested during submissions on behalf of the Claimant that the conclusions were reached by a simplistic reliance on there being 2 statements against the Claimant in respect of the 9 January 2020 allegation versus only the Claimant's account and similarly only Mr Sarker's account of the incident at the end of January 2020. My findings are that Mr Nettle did not take this approach and there was other evidence that had been gathered during the investigation and disciplinary that he relied on in reaching his conclusions. The Claimant did not just provide a conflicting account of events. He asserted that the allegations against him were fabricated, but when asked why Mr Chowdhury and Farham would do that he was unable to provide any real explanation. In addition, during the investigation he had been evasive at points, refusing to answer Mr Parker's questions in the second interview, and he had refused to give permission for the CCTV footage to be viewed. In light of this I find it was reasonable for Mr Nettle to conclude that the allegations against the Claimant were true.
64. The next question to consider is whether that decision was made following a reasonable investigation. During submissions on behalf of the Claimant much was made of the potential shortcomings in the investigation. An employer is not required to investigate every single possible line of enquiry, the test is if the investigation is 'in the range of reasonable responses'. On behalf of the Claimant it was submitted that there were a number of flaws with the investigation. The two key omissions, asserted on the Claimant's behalf, were the failure of Mr Nettle to re-interview Mr Chowdhury and Mr Farham and the fact that the grievance was not considered as evidence

during the disciplinary process.

65. In respect of the possibility of reinterviewing Mr Chowdhury and Mr Farham I find that while this is something that could have been done it was not necessary for a reasonable investigation. During evidence Mr Nettle was also open to the possibility, stating that in hindsight he could see it was something that he could have done. However, I am satisfied that the decision not to do so was within the band of reasonable responses. Both men had both already been interviewed. The Claimant had not put forward in his own evidence or during the disciplinary hearing anything that indicated there was a new line of questioning that needed to be explored. He had solely stated that the allegations were fabricated but not provided any explanation for why he thought that was. I accept that in these circumstances it was reasonable to exclude them from the investigation at that stage.
66. With regards to the grievance not being kept separate from the investigation and disciplinary process, I also find that this was also within the reasonable band of responses. I have accepted that the Claimant saw the grievance as being inextricably linked to the disciplinary investigation. However I have also found that this was not obvious from the grievance itself. The points the Claimant raised during the grievance about the investigation related to the way the initial suspension and investigation was handled, rather than the substance of the disciplinary investigation. Again, it was open to the Respondent to connect the two matters and bring the grievance into the disciplinary investigation. However I also find that it was within the reasonable band of responses to keep them separate and not include within the investigation the matters and evidence considered during the grievance.
67. Overall I am satisfied that the investigation was reasonable, and that Mr Nettle had reasonable grounds to reach his conclusions.
68. I must then consider whether dismissal was reasonable in the circumstances. Again I must not substitute my own conclusions on this point but only decide if dismissal fell within the 'range of reasonable responses' in the circumstances. I am satisfied that dismissal was reasonable in the circumstances. The Respondent had upheld allegations that the Claimant had acted towards colleagues in an inappropriate way, being aggressive and using foul language on two separate occasions within a short period of time.
69. Finally I have considered the overall procedure that was followed. It was suggested on behalf of the Claimant that the process was inherently flawed so that no dismissal could be fair. I do not find this was the case. The allegations were investigated fairly and, despite his assertions to the contrary, the Claimant knew what he was being asked about from the outset. While there was some delay in providing the Claimant with the outcome of the investigation he still had it well before the disciplinary hearing along with the evidence that had been gathered. Overall the process was prolonged, but this was primarily due to the Claimant's grievance being investigated and then due to the Claimant's ill health. The Claimant had ample

opportunity to put forward his own case and additional investigation was undertaken where appropriate.

70. For these reasons I am satisfied that there was a potentially fair reason for dismissal and it was reasonable for the Respondent to dismiss for that reason in the circumstances. The claim of unfair dismissal fails and is dismissed.

Employment Judge Park

11 October 2022