



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Medard

**Respondent:** Rathfinny Wine Estate

**Heard at:** London South by video

**On:** 28<sup>th</sup> June 2022

**Before:** Employment Judge Reed

## **Representation**

Claimant: Andrew Ng, Counsel

Respondent: Mark Green, Counsel

# RESERVED JUDGMENT

The Claimant's claim for unfair dismissal is not well-founded and is therefore dismissed.

# REASONS

## **Introduction**

1. The Respondent, Rathfinny Wine Estate, is a winery based in Sussex, primarily producing English sparkling wine. Mr Medard worked for the Respondent as the Senior Winemaker.
2. This claim arises from the discovery in late 2020 / early 2021 that there was a problem with the Rathfinny's 2017 Classic Cuvee Vintage, which could not be sold as planned. Ultimately, Rathfinny concluded that Mr Medard was responsible for this problem and he was dismissed.
3. Mr Medard argues that this dismissal was unfair.

## **Claims and issues**

4. Mr Medard has brought a claim for unfair dismissal.
5. There was no dispute between the parties that Mr Medard was qualified to bring such a claim, being an employee with sufficient qualifying service. It was agreed that he had been summarily dismissed on 5<sup>th</sup> March 2021.
6. The parties agreed that the issues before the Tribunal were a) to determine the reason for dismissal pursuant to s98(1) of the Employment Rights Act 1996 and b) if the dismissal was for a potentially fair reason, to decide whether that dismissal was fair or unfair with regard to s98(4).
7. Although there was some discussion as to whether the allegations against Mr Medard should be characterised as matters of capability or conduct, both parties agreed that in a case of this nature the question of fairness should be addressed by reference to the Burchill test, specifically:
  - a. Did the Respondent have an honest belief in the allegations?
  - b. Did the Respondent have reasonable grounds to support that belief?
  - c. Did the Respondent carry out a reasonable investigation into the allegations?
  - d. Given all the circumstances, were the allegations sufficiently serious that dismissal fell within the range of reasonable responses open to a reasonable employer?

#### **Procedure, documents, and evidence**

8. This was a video hearing conducted using CVP. There were no significant difficulties with the technology during the hearing.
9. I heard evidence from Mr Medard. From Rathfinny I heard evidence from Mr Everett (Chief Operating Officer) and Ms Driver (Director / Co-owner). There was an agreed bundle of 375 pages and a small number of further documents were provided in the course of the hearing. Page references within these reasons are references to that agreed bundle.
10. Both parties were represented by counsel. I am particularly grateful to Mr Ng who acted for Mr Medard pro bono.

#### **Findings of fact**

11. I have considered the oral evidence and the documentary evidence in the bundle to which I have been referred. I have reached the following facts on the balance of probabilities, that is that they are more likely to have occurred than not.

#### *Background*

12. Rathfinny Wine Estate was established in 2010 by Mark and Sarah Driver. They purchased a farm in the South Downs to begin a vineyard and winery.
13. Mr Medard was hired in 2012 as the Senior Winemaker. He was an experienced winemaker, having worked extensively in both France and the United States (page 169-172). This was a senior post. In 2012 Mr Medard reported directly to Mark Driver, managing partner. His job description records him as having 'responsibility for all winemaking at Rathfinny ... to oversee all aspects of wine production from harvesting to bottling, storage and disgorging' (page 34). In 2021 Mr Medard was paid £87,000 gross per annum.
14. It is common ground that the Rathfinny and Mr Medard successfully established Rathfinny as a producer of English sparkling wine. Their first wine was released in 2018, to positive reviews.
15. In 2019 there was a restructure of Rathfinny. A Winery Manager, Tony Milanowski was recruited to deal with wider administrative and management duties as the business became larger. In effect, this introduced a new layer of management above Mr Menard, who as Senior Winemaker would then be expected to concentrate on the winemaking process.
16. Mr Medard did not agree with this change. Although it was not suggested that his salary or terms & conditions would be changed, he felt that it was in practical terms a demotion and that some of his responsibilities were being taken away. He accepted that some change was needed as the business grew, but his preferred approach was for him to remain as Senior Winemaker, possibly with additional staff to assist him. He raised a grievance in relation to the decision to restructure. Rathfinny, however, chose to go ahead. Mr Medard was offered the opportunity to apply for the post of Winery Manager, but decided not to do so.
17. Mr Medard gave evidence, which I accepted, that he did not have an easy relationship with Mr Milanowski. He had opposed his appointment and felt that the decision had been made before his objections had properly been considered.
18. Further, there was disagreement between Mr Medard and Mr Milanowski in relation to a number of operational aspects of the business. For example, In late 2019 Mr Milanowski decided to move to a new database system for tracking wine. Mr Medard disagreed with this move. In particular he felt that it was poor timing, since the harvest was already underway and that the move had been significantly under resourced.
19. In October 2020 there was also a difference of view between Mr Medard and some of his colleagues about the correct way of recording certain wine movements. This is recorded in a series of emails in the bundle (page 65-71).
20. In summary the conversation concerned the rules that apply when describing wines by reference to their grape composition and how they might be affected by the use of malolactic fermentations (MLF) that were based on different grape

varieties to the wine they would be added to. In the course of an email thread about tasting notes and other marketing material, Mark Driver suggested that, when a wine's description included a small percentage of a different grape variety it caused confusion. Mr Medard replied that, in his view, it was permissible to describe a wine by reference to the main grape variety (for example by referring to a Chardonnay, even if it contained other varieties) provided the main grape variety comprised more than 85% of the blend – although it would not be permissible to refer to 100% Chardonnay.

21. In his next email Mr Driver clarified his concerns to some extent, but also suggested that yeast and bacterial cultures be treated as 'additions' to the sparkling wine making process, rather than being recorded as part of the blend. He invited Mr Rabagliati, Rathfinny's production manager to comment. Mr Rabagliati replied suggesting that it would be possible to take the MLF addition 'off grid' by keeping records of its production separately, then recording its addition to the wine as a 'dry add' rather than in a way that impacted records of the grape variety.
22. In his evidence, Mr Medard said that he was vehemently opposed to such an approach, which he regarded as tantamount to producing a false record of the wine's production. A draft email was produced in the bundle (page 65), but Mr Medard accepts this was not sent. He said he did not raise his concerns because he felt worried about his job.

#### *Classic Cuvee 2017 Vintage problems*

23. In late 2020 and early 2021 the 2017 Classic Cuvee vintage was being prepared for sale. At this point it became apparent that there was a problem with the wine, in particular, at least some of the bottles were not at the correct pressure.
24. At around this time Mr Medard went on sick leave, suffering from stress and anxiety.
25. An investigation into the problems was conducted by Tony Milanowski, who produced a report in February 2021 (page 80-84).
26. This involved taking samples of the 2017 vintage and testing their pressure. Mr Milanowski concluded that the samples were either a) over pressure or b) excessively dry. He concluded that this most likely resulted from errors immediately before the bottling process.
27. To explain the problem it is necessary to explain a little about the wine making process. Before bottling partially fermented wine is mixed with rectified concentrated grape must (which contains higher levels of sugar). The correct proportion of sugar in the mixture is vital to the fermentation process. If it is too low, there will not be enough fermentation. If it is too high there will be too much fermentation. Inadequate fermentation leads to bottles below the correct pressure, while excessive fermentation leads to bottles being overpressure.

Unless the correct amount of fermentation has occurred the wine is not drinkable and therefore, in the context of the Respondent's business, not saleable.

28. All of this means that it is vital that the partially fermented wine and the rectified concentrated grape must is mixed correctly. In relation to the 2017 Classic Cuvee vintage this was done using a machine called a rouser.
29. Mr Milanowski's report concluded that the most likely scenario was that in the 2017 vintage there had been insufficient mixing prior to bottling. In particular, he concluded that the rectified concentrated grape had settled rather than being evenly distributed through wine prior to bottling. This meant that some bottles had too much sugar and most had too little. In bottles with too much sugar this meant excessive fermentation and an overpressure. Bottles with too little sugar had inadequate fermentation.
30. Mr Milanowski's report also concluded that these potential issues should have been apparent at the time of mixing / bottling. He concluded they arose from the use of multiple wine fermentation tanks of a conical tank style with a single agitator, in combination with the fact that the rectified concentrated grape must is a denser liquid than the partially fermented wine. The multiple tanks meant that mixing could not occur continually. The rectified concentrated grape must would tend to settle while it was not being mixed. It would then form a layer within the tank. Since this layer was some distance from the agitation point during the mixing process it would not distribute fully as might be expected when mixing began again. This, Mr Milanowski wrote was a well-known phenomenon with this type of process. He said that it should have been guarded against by using pump mixing (which would draw liquid from the bottom of the tank and through a racking valve to mix it) and the use of a second agitator so that both tanks could be kept homogenised during the bottling process.
31. Further, Mr Milanowski concluded, the wine should have been tested prior to being bottled. In particular, density testing would have shown inconsistencies that would identified the problem at the point it could have been rectified.
32. In addition, Mr Milanowski said, there had been inadequate formal testing of the wine in subsequent years after it was bottled. Similarly, this would have identified the problem at an earlier stage. Mr Milanowski also concluded that the labelling and record keeping in relation to the vintage was inadequate and flawed.
33. Overall, Mr Milanowski concluded that there had been gross negligence in the mixing / bottling / testing / labelling process for the Classic Cuvee 2017 Vintage.

#### *Grievance and Disciplinary process*

34. On 11<sup>th</sup> February 2021 Mr Everett emailed Mark Driver, giving a brief summary of Mr Milanowski's report (page 86-87). He indicated that he wished to 'get as

much context as I can around the issue' and asked Mr Driver to email him any relevant information, particular 'around wine making and system and procedures'. He referred to previous issues that had arisen in relation to Mr Medard's work.

35. Mr Driver replied the same day (page 85-86). He expressed his dismay at the situation and referring to it as a 'monumental cock-up of [Mr Menard's] making'. He referred to three previous incidents where he felt Mr Menard had made a wine making error:
  - a. In relation to the 2014 Blanc de Blancs and 2015 Rose, which had had tartaric acid crystals in the wine. Mr Driver suggested that Mr Menard had not checked cold stability correctly. This had required each bottle be disgorged by hand.
  - b. In 2016 an attempt to produce 800 small bottles as a marketing gimmick had failed for similar reasons.
  - c. In 2018 a small batch of Vermouth had needed to be withdrawn because crystals had appeared inside the bottles.
36. Mr Everett then commenced a disciplinary process against Mr Medard. He wrote to Mr Medard on 15<sup>th</sup> February 2021 inviting him to a disciplinary hearing on the 17<sup>th</sup> (page 88). This was postponed to the 23<sup>rd</sup> at Mr Medard's request.
37. Mr Medard also raised a grievance (page 90-93). This raised a number of complaints in relation to his work under the following headings:
  - a. Lack of and poor management
  - b. Relief from administrative duties yet to be seen
  - c. Relief from production duties yet to be seen
  - d. Huge reduction of team morale.
38. The matters raised in the grievance occurred after the bottling of the Classic Cuvee 2017 Vintage. They are primarily relevant to this case in so far as they might shed light on the reason for the dismissal or on the issue of whether Mr Milanowski was an appropriate person to prepare a report into the bottling. I have therefore dealt with them in that context, rather than seeking to resolve factual disputes between the parties that do not relate to the question of dismissal.
39. Mr Medard asked that his solicitor be allowed to accompany him to the disciplinary meeting, this request was refused by Mr Everett.
40. Notes were taken during the disciplinary meetings (page 100-106). Mr Menard had an opportunity to comment on these subsequently and did not contest their substantive accuracy (although he did raise some points of detail and clarification). I have accepted that they are a broadly accurate account of the meeting.

41. Mr Medard had prepared a statement in relation to the meeting which he sent to Mr Everett at the beginning of the meeting (page 107-108). In summary in his statement he:
- a. Objected to the meeting continuing when he was not well.
  - b. Objected to the exclusion of his solicitor.
  - c. Argued that the report prepared by Mr Milanowski was biased and motivated by Mr Milanowski having a vested interest in his dismissal.
  - d. Suggested that he was being made a scapegoat for lack of competence in production management.
  - e. Acknowledged that there had been a mistake in the tank mixing, but argued that it was a mistake, rather than wilful negligence or disregard of instructions.
  - f. Said that Mr Everett should also consider the matters raised in his grievance.
42. Following a break to allow Mr Everett to read Mr Medard's statement, the meeting continued.
43. Mr Everett began by addressing Mr Medard's health. He asked whether Mr Medard had evidence that he was not well enough to attend the meeting. Mr Medard referred to his sick note, indicating that he was not fit to work, but did not have any additional evidence. Mr Everett indicated that in that case the meeting would go ahead.
44. Mr Everett then went through Mr Milanowski's report and asking Mr Medard to comment. Mr Medard agreed that the wine was faulty as a result of a problem with the mixing. He disagreed with the explanation that Mr Milanowski had put forward as to why the mixing had gone awry, suggesting that it was 'gibberish' and drawn from Mr Milanowski's gut feeling. Mr Everett asked whether Mr Medard had an alternative explanation. Mr Medard said that the mixing had not been done properly, but was not sure why the method used had not been effective.
45. In relation to testing in subsequent years after the wine had been bottled, Mr Medard said that he had tasted the wine using a sample valve and had not detected an issue with the sugar. He confirmed that no density check had been performed and said that this was not necessarily standard practice.
46. Mr Everett and Mr Medard also discussed the issues with labelling and standard procedures that had been identified in the report, with Mr Medard suggesting that he was over worked and under supported at this time. He also argued that the issues identified by Mr Milanowski were not as serious as was being suggested and would not have made any real difference to the Classic Cuvee 2017.
47. Following the disciplinary meeting Mr Everett conducted a grievance meeting to deal with the issues raised by Mr Medard in his grievance letter.

48. On the 3<sup>rd</sup> March 2021 Mr Everett wrote to Mr Medard rejecting his grievance (page 116-118).
49. On the 5<sup>th</sup> March 2021 Mr Medard wrote to Mr Everett (page 119). He referred to a number of incidents that had occurred at Rathfinny while he had worked there that he suggested involved mistakes or misconduct more serious than his mistake. He argued that disciplinary action had not been taken in those cases. He also enclosed his comments on the notes from the disciplinary meeting.
50. On the 5<sup>th</sup> March 2021 Mr Everett wrote to Mr Medard in relation to the disciplinary meeting (page 122-128). He upheld the allegations against Mr Medard and dismissed him summarily.

### *Appeal*

51. Mr Medard appealed the dismissal (page 129-136). In his appeal he argued:
- a. That Mr Milanowski's report was inconclusive and misleading
  - b. That Mr Milanowski was not competent to produce such a report
  - c. That Mr Milanowski was biased against him because of their previous history.
  - d. That Mr Everett was biased in conducting the disciplinary procedure.
  - e. That there had been inconsistent instructions and expectations in relation to record keeping.
  - f. That he had been treated inconsistently when compared with other staff guilty of various misconduct.
  - g. That the procedure used to dismiss him was unfair.
52. An appeal hearing was conducted by Ms Driver on the 23<sup>rd</sup> March 2021. A summary note of the meeting was produced (page 144-149).
53. Following the appeal, Ms Driver made further enquiries to Alex Rabagliati, Rathfinny's production manager. Her notes of the conversation have been produced (p178-179). Broadly, she asked him to consider Mr Milanowski's report and to comment on its findings. Mr Rabagliati agreed with Mr Milanowski's conclusions. In particular, he agreed that there had been inadequate testing before bottling.
54. Ms Driver wrote to Mr Medard dismissing his appeal on the 31<sup>st</sup> March 2021 (page 162).
55. Ms Driver also dealt with an appeal from Mr Medard's grievance hearing.

### *Financial Consequences.*

56. At the hearing there was significant evidence as to the financial loss suffered by Rathfinny as a result of the difficulties with the 2017 Classic Cuvee. In the end, however, the position was largely agreed. Both parties agree that it was



not possible to sell the wine as had been intended. Mr Everett and Ms Driver estimate the loss of revenue at £500,000. Mr Medard accepted that, when that figure had been put to him in the course of the disciplinary process he did not dispute it.

57. Both parties also agreed that it would be possible to reprocess the wine by blending it with into later batches of wine in future years. There would be some costs associated with this, both in terms of new bottles and labour, but overall these costs would be relatively modest when compared with the value of wine. This, however, would occur over a number of years. Mr Everett estimated that it might take until 2032 for all the 2017 vintage to be used in this way.
58. At times, Mr Medard and Mr Ng appeared to suggest that this meant that there had been no real financial cost to the Respondent of the incident, because ultimately the income lost in 2021 would be recovered in future years.
59. In one sense, I accept Mr Medard and Mr Ng's position in that it appeared likely (and indeed the Respondent's witnesses largely accepted) that much of the value of the wine would be recovered over future years. In that sense it is accurate to speak of a 'cash flow loss'.
60. I do not, however, accept that a cash flow loss of this nature is in any sense trivial or unimportant. Quite the reverse: it was a matter of grave importance and significant concern for the Respondent. The loss of £500,000 revenue represented approximately one third of their annual turnover. A short term loss of this size and proportion to overall turnover would be an extremely serious matter for almost any commercial enterprise, regardless of whether it was expected that it might be recovered over the next decade.
61. I accepted Ms Driver's evidence was that she was seriously worried by the loss of cash flow, which caused issues with their bank financing (although by the time of the Tribunal this appeared to have been resolved). I also accepted her evidence that the loss of the 2017 Classic Cuvee represented a substantial lost opportunity in terms of sales, marketing as well as a serious risk to the Rathfinny's reputation.

## **The law**

62. The test for unfair dismissal is set out in section 98 of the Employment Rights Act 1996. This lays down a two stage test. First, under section 98(1) the employer is required to show that the reason (or principal reason) for the dismissal is a potentially fair one, i.e. in this case either misconduct or capability. The reasons for dismissal in this context is the factor or factors operating on the mind of the decision-maker which caused them to decide to dismiss.

63. If the dismissal was for a potentially fair reason I must consider whether, in all the circumstances, the employer acted reasonably in treated it as a sufficient reason for dismissing the employee (see section 98(4) ERA 1996).
64. As noted, above, the parties agreed that, in the circumstances of this case, it was appropriate to apply what is commonly referred to as the Burchell test (which arises from the case of *BHS Ltd v Burchell* [1980] ICR 303, although it has been further developed by subsequent case-law). This requires me to consider:
- a. Did the Respondent have an honest belief in the allegations?
  - b. Did the Respondent have reasonable grounds to support that belief?
  - c. Did the Respondent carry out a reasonable investigation into the allegations?
  - d. Given all the circumstances, were the allegations sufficiently serious that dismissal fell with the range of reasonable responses open to a reasonable employer?
65. In considering the Burchell test I have also born in mind the guidance given in *Iceland Frozen Food v Jones* [1983] ICR 17 by the Employment Appeal Tribunal, in particular that I must guard against substituting my own views in relation to an employee's actions or the appropriate response by an employer, and focus on considering whether, in the particular circumstances of each case, whether the decision to dismiss the employee fell within the band of reasonable response which a reasonable employee might have adopted.
66. I must also, however, remember that the range of reasonable responses is not infinitely wide and that a finding that dismissal fell outside the range should not inevitably suggest that a Tribunal has substituted its own view for that of the employer, see *Newbound v Thames Water Utilities Ltd* [2015] IRLR 734.

## **Submissions**

67. Both parties were ably represented and made full submissions, which I will only briefly summarise.
68. On behalf of Mr Medard Mr Ng argued that the dismissal was unfair for the following reasons:
- a. Mr Everett had been influenced by past mistakes and conflicts involving Mr Medard, rather than focusing on specific allegations relating to the Classic Cuvee 2017. In particular, he argued that Mr Everett had been influenced by the historical matters raised by Mr Driver in his email of 11<sup>th</sup> February.
  - b. That Mr Medard's error was not sufficiently serious for dismissal to be within the range of reasonable responses.
  - c. That it was unreasonable to hold recordkeeping issues against Mr Medard, when there had been a dispute in which he had been asked to keep poor records.

69. For the Respondent Mr Green argued that there was clear evidence that Mr Medard had been dismissed for gross negligence. He argued that there was no substantial evidence behind Mr Medard's suggestion that any other motivation influenced the decision. He argued that there was sufficient evidence to amount to reasonable grounds and that the investigation had been fair. In relation to the sanction of dismissal, he suggested that it was important to consider the impact of the mistakes that had been made and the lack of contrition or remorse on Mr Medard's part. He also pointed to Mr Medard's seniority within the Respondent's organisation.

## Conclusions

### *Reason for dismissal*

70. The reason for dismissal was capacity, specifically arising from Mr Medard's mistakes in relation to the Classic Cuvee 2017 and concerns about his competence in the future, given his apparent reluctance to take responsibility for his errors.

71. In particular, both Mr Everett and Ms Driver believed that Mr Medard had been seriously negligent both in failing to ensure that the Classic Cuvee 2017 was mixed correctly, failing to carry out necessary tests at the point of that bottling to ensure that the mixing had occurred properly and failing to carry out appropriate tests in following years that might have identified the problem.

72. Although it was not a matter relied upon in submissions, Mr Medard has, at various stages, appeared to suggest that the decision dismissal might have been motivated by other factors, such as a desire to replace him with Mr Milanowski. For the avoidance of doubt, I do not accept this. The problems with the Classic Cuvee 2017 were obviously matters of grave concern to the Respondent, including Mr Everett and Ms Driver. The scale and seriousness of the loss involved meant that some form of investigation was almost inevitable. The serious conclusions reached in Mr Milanowski's report provide a clear and cogent explanation for their subsequent decisions. None of the matters raised by Mr Medard provide a plausible alternative explanation for their actions.

73. I have given careful consideration to the email correspondence between Mr Everett's and Mr Driver prior to the disciplinary process formally commencing. I have considered whether the issues identified by Mr Driver formed any significant part of Mr Everett's decision to dismiss. I have concluded that they did not. The matters Mr Driver raised were both historical and, in comparison to the issues with the Classic Cuvee 2017, minor. In a different set of circumstances, it is possible that they might have weighed on Mr Everett's mind in a way that was significant to the decision to dismiss. Given, however, Mr Everett's view that Mr Medard had been guilty of a much more serious and impactful act of negligence, I accepted his evidence that they did not significantly contribute to his decision to dismiss.

74. Although, at various stages, both Mr Everett and Ms Driver have referred to conduct, misconduct or gross misconduct in relation to Mr Medard's actions I have concluded that, within the nomenclature of the Employment Rights Act 1996, capability is the correct characterisation of what was in their minds.

75. Both had concluded that Mr Medard had been guilty of an extremely serious error of judgment, in relation to the methods used in relation to the mixing of the Classic Cuvee 2017 and in relation to the failure to implement tests that would have identified the error. They were also both concerned that Mr Medard did not appear to recognise the severity of his error or to take responsibility for it. Neither Mr Everett or Ms Driver believed that Mr Medard had acted deliberately, failed to obey an instruction or any similar action of deliberate culpability that would more properly be regarded as misconduct.

*Reasonable grounds*

76. Both Mr Everett and Ms Driver had reasonable grounds to hold the above beliefs.

77. In relation to the errors relating to the Classic Cuvee 2017 both reasonably relied on the report prepared by Mr Milanowski and by Mr Medard's admissions during the disciplinary and appeal meetings.

78. In Ms Driver's case her view was also confirmed by her conversation with Mr Rabagliati who endorsed Mr Milanowski's report.

*Reasonable investigation*

79. The Respondent carried out a reasonable investigation in all the circumstances.

80. Both Mr Everett and Ms Driver carried out a reasonable investigation into the situation. Both relied heavily on Mr Milanowski's report. But this was reasonable given the circumstances. Investigating the issues with the Classic Cuvee 2017 was, inevitably, a matter requiring technical knowledge of the wine making process, which neither Mr Everett or Ms Driver possessed. It was reasonable to rely on an expert within the organisation, such as Mr Milanowski. Indeed, it might well have been unreasonable not to have the investigation conducted by such an expert.

81. I have considered whether the background events to this claim, in particular the restructuring in 2019 and the difficult relationship that Mr Medard said that he had with Mr Milanowski meant that it was either unfair to have him prepare the report or to rely on it to the extent that Mr Everett and Ms Driver did. I have concluded that it was not. I accept Mr Medard's evidence that he had been unhappy with Mr Milanowski's appointment and that he had found him a difficult colleague. In colloquial terms they did not 'get on' and had had professional disagreements. This is not, however, uncommon within the work place and falls

well short of the sort of evidence of bias or animosity that would make his involvement unfair.

82. I also note that, when Mr Medard disputed the value of Mr Milanowski's report, Ms Driver took steps to obtain a second opinion from Mr Rabagliati.

83. It is convenient to deal here with the argument presented by Mr Medard that any decision in relation to a disciplinary sanction should have been delayed until the financial loss arising from the error could be more precisely quantified. I do not accept this argument. In principle, I agree that there are occasions where a fair investigation would require such a delay. But was not required here for two related reasons. First, both Mr Everett and Ms Driver were closely engaged with the business and had a good idea of the likely financial consequences that would follow from the loss of the Classic Cuvee 2017. Mr Ng, in his submissions, accepted that the Respondent could not be expected to wait for the full financial consequences to crystallise, since that would not occur for many years as the wine was reworked and then sold. He realistically accepted that the sort of financial summary prepared for this hearing would have been adequate for a fair consideration (page 210). Mr Everett, in his evidence, said that was in his mind was a potential loss of around half a million pounds, in cash flow terms – based on the loss of about forty thousand bottles. The same figure is referred to in his letter of dismissal. Mr Medard would also have been well aware of the sort of figures involved for the Respondent. There is no real difference, in my view, in Mr Everett's broad assessment of the potential consequences and the slightly more detailed account prepared for this hearing. Second, the nature and extent of the issue mean that a fine gradation of the exact loss was less important than it might be in other circumstances. As detailed below, from the Respondent's point of view, the situation was a grave one and the concerns it raised about Mr Medard's capability similarly serious. Whether the financial loss was a little more or a little less than Mr Everett's rough assessment was unlikely to make any difference to the Respondent's decision. It was therefore reasonable to proceed on that basis of that early estimate.

*Range of reasonable responses*

84. I have concluded that dismissal in these circumstances was within the range of reasonable responses open to an employer.

85. In my view, three factors brought the decision to dismiss within the range of reasonable responses.

86. First, the seriousness and extent of the errors that the Respondent had identified. It is important to recognise that, contrary to what Mr Medard sometimes suggested, this is not a case involving a single error. Rather both Mr Everett and Ms Driver concluded that Mr Medard had made a grave error in failing to mix the wine correctly prior to bottling; that this had then been compounded by his failure to carry out appropriate tests at that stage to confirm that the mixing had been done correctly and then by his failure to carry out tests

in subsequent years as the wine developed. They viewed the situation not as a single mistake, but a series of serious shortcomings. They also, as noted above, accepted the conclusions in Mr Milanowski's report that this had represented a significant failure to observe standard best practice.

87. Further, as set out above, the series of mistakes had led to a considerable cash flow loss for the Respondent.
88. Second, Mr Medard's role and seniority within the Respondent's organisation. He was the Senior Winemaker at Rathfinny. He had overall responsibility for the production of the wine and had been engaged specifically for his particular knowledge and abilities. It was reasonable, therefore, for the Respondent to hold him to a high standard of expertise and to regard what appeared to them to be a sequence of fundamental failures as a serious matter.
89. Third, that both Mr Everett and Ms Driver reasonably concluded that Mr Medard was not taking responsibility for his mistakes, but seeking to blame others. He raised wide allegations of bias, which they had concluded were unfounded. He disputed the value of Mr Milanowski's report, without offering any alternative explanation.
90. I recognise that Mr Medard disputes much of the above, as he did in both the disciplinary hearing and appeal. He argues that, while he made a mistake in relation to the mixing, much of Mr Milanowski report is unfair to him; benefits from hindsight and presents as obvious common practice testing that is, in fact, not so standard. I must, however, focus on the relevant issue: specifically whether, Mr Everett and Ms Driver reached conclusions as to the seriousness of the failures that were open to a reasonable employer. I must not be drawn into reaching my own conclusions, which would be to fall into the error of substituting my view for the employer. I have concluded that Mr Everett and Ms Driver reasonably relied on Mr Milanowski's report as setting out appropriate practice in this specialised area. They reasonably concluded that Mr Medard's had fallen well short this and their decision to dismiss must be assessed on that basis.
91. Mr Ng, on Mr Medard's behalf, sought to persuade me that, on a correct analysis, the Respondent's financial loss had been extremely limited and that his meant that dismissal fell outside the range of reasonable responses. He sought to distinguish actual financial loss from cash flow loss. It was accepted that, in future years the Classic Cuvee 2017 wine could be properly reprocessed into other wines and sold. Therefore, he suggested, financial loss was limited to the loss of interest and the costs of the reprocessing.
92. Even allowing, for the sake of the argument, that Mr Ng is correct ultimately the financial loss would be limited, this does not in my view take dismissal outside the range of reasonable responses. First, it is wrong to suggest that a cash flow loss of this nature is somehow minor or unimportant. A loss of this nature, even if it was purely a matter of cash flow because the revenue would be made up in later years, was an extremely serious matter. Second, it is important to recognise that that impact of the loss of the Classic Cuvee 2017 was not merely

a financial one. It also had implications for the reputation of Rathfinny, the marketing of their products and for their ongoing loan arrangements.

93. In relation to the argument that dismissal fell outside the range of reasonable response, because Mr Menard had previously been instructed to keep poor records, this refers to the email chain about 'off grid' additions. I do not accept this argument. Regardless of the merits in the underlying discussion or the extent to which Mr Medard's concerns about the proposed record keeping approach might have been justified, it was not a matter that had any relevance to the decision to dismiss. It did not form any part of any part of Mr Everett or Ms Driver decision to dismiss. I also do not accept that Mr Menard had been instructed to keep poor records. Even if I take Mr Menard's case at its highest, this was a discussion of how records might be approached, not any form of instruction.

*Procedure used to dismiss*

94. Overall, I have concluded that the procedure that the Respondent adopted was a fair one. There were appropriate disciplinary and appeal meetings, in which Mr Medard had the opportunity to engage with the allegations against him and to present his side of the matter.

*Overall conclusion*

95. For all of these reasons, I conclude that Mr Medard was not unfairly dismissed.

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Employment Judge Reed

12<sup>th</sup> October 2022

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Date