



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH  
Heard by CVP

**BEFORE:** EMPLOYMENT JUDGE MARTIN sitting alone

**BETWEEN:** Mr Ward Claimant  
AND  
Muntham House Ltd Respondent

**ON:** 28 – 30 November 2022 and 1 December 2022 in chambers

**APPEARANCES:**

For the Claimant: In person

For the Respondent: Mr Pacey - Counsel

## **RESERVED JUDGMENT**

The judgment of the Tribunal is that the claim for unfair dismissal succeeds

## **RESERVED REASONS**

1. By a Claim Form lodged at the Tribunal on 10 November 2021 the Claimant contends that he was unfairly and wrongfully dismissed. The evidence was heard over three days. I had hoped to give oral judgment on the last day; however, I wanted to consider the evidence very carefully and my deliberations took longer than I had anticipated. I therefore reserved this judgment.
2. I had written witness statements and heard from the following witnesses on behalf of the Respondent.
  - Mr Harry Anderson - Principal

- Mr Daniel Jones - Bursar
- Mr J Copeland - Governor
- Mr J Knightley - Governor

3. On behalf of the Claimant, I had the following witness statements

- Mr Simon Ward – the Claimant
- Mr Mark Beard - Colleague
- Richard Bell – Colleague

Mr Ward was unwell and unable to attend to give evidence. Mr Bell could not be contacted by the Claimant and did not attend to give evidence. Therefore, whilst I had read their statements the weight I could attach to them is minimal given that the Respondent did not have a chance to challenge this evidence which it wanted to do.

4. I had before me a bundle of documents comprising 486 pages, witness statements for each witness giving evidence, CCTV footage and an audio recording of a conversation the Claimant had with Mr Vernon Jennings a former Governor of the school. Mr Jennings sadly died by the time of this hearing.
5. It is for the Respondent to show that there was a potentially fair reason for dismissal. In this case the Respondent asserts that it was for a conduct reason. Once that reason is established I must consider section 98(4) of the Employment Rights Act 1996 to consider whether in all the circumstances of the case the Respondent acted reasonably or unreasonably in treating conduct as a sufficient reason for dismissing the employee whilst considering the equity and the substantial merits of the case.
6. I remind myself that it is not for me to substitute my own view for that of the Respondent but only to consider whether the processes and the decision to dismiss fell within a band of reasonable responses. In conduct cases I am to be guided by the case of ***British Home Stores v Burchell [1980] ICR 303***. I need to consider whether the Respondent held a genuine belief in the Claimant's misconduct on reasonable grounds following a reasonable investigation. I must also be mindful of the process adopted by the Respondent.
7. The following findings of fact are made on the balance of probabilities and are limited to those facts that are relevant and necessary to explain the decision reached. The Claimant was employed by the Respondent between 8 June 2008 until his dismissal for misconduct on 7 June 2021.
8. The Respondent is a private school providing boarding and day provision for boys aged 5-18 years with special educational needs. As of the date of the Claimant's dismissal the Respondent employed approximately 105

individuals and had 96 pupils.

9. The Claimant was originally employed as a member of the Estates Department. He was promoted to Head of Estates on 23 March 2020, which was the day before the first national covid lockdown started. He was required as a condition of his employment to live on site. He reports directly to the Principal, Mr Anderson.
10. The site is large comprising approximately 23 acres. There were other staff, including the Principal, who lived on site with their families. The Claimant described the site as having various paths crossing it and that members of the public enter the site for walks or to visit those living on site. The vehicle entrance to the site has barriers. The barriers are discussed in more detail later in this judgment.
11. The events leading directly to the Claimant's dismissal were the sale of a disused oil tank to a member of the public, the collection of the tank and the money received for the tank. The tank was sold on 5 May 2021.
12. The Claimant's case is that during a walk around the site with Mr Anderson, he was told by Mr Anderson to clear the area near the estates team offices where there is a piece of ground where items that are being moved, or grounds-keeping equipment is occasionally stored. This is also called post 16. His evidence is that he took it to mean that he should clear and dispose of the rubbish. He told me that one item was the oil tank. There is a dispute about whether the tank was there at the time of the walk around, on balance I find that it was. He said he made enquiries as to how he could dispose of it. Because the school trailer was too large to enter the local tip, it would have costed about £180 - £200 for it to be removed by the council.
13. The Claimant decided to see if anyone would want to buy the tank. He advertised it on social media and after a few weeks received an offer of £230. He made arranged for the purchaser to come to the school site to collect it on 5 May 2021. There was no time suggested or agreed. The purchaser was asked to use the front entrance which has barriers. The Claimant's case is that on that day at about 4.15 he received a message on his radio (which is the usual way that staff contact members of the estate team) to say that a van and trailer was on its way to him. He then radioed other members of his team to assist. I have no reason to disbelieve him.
14. The area where the tank was is outside a building called The Barn. There is CCTV there and I viewed the CCTV of the van driving up to The Barn. The view is towards the door of The Barn. The CCTV shows the tank being loaded onto the van and secured. It shows money being given to the Claimant by the purchaser. This part is not clear to see as the purchaser and the Claimant have their backs to the camera but it is clear that money changed hands which is not disputed. What he does with it immediately after is however less clear. He says he went and put the money in the safe which was in The Barn. The Respondent witnesses say

it is clear he puts the money in his pocket.

15. I watched the CCTV footage at least five times. I do not find that to be entirely clear from the CCTV what happened after the tank was loaded onto the trailer. The Claimant's explanation was that he put his hand in his pocket to get the key to the safe. The money remained in the safe until after the appeal process had concluded. No one from the Respondent went to the safe until this time, despite being told by the Claimant that the money was there, and being given the Claimant's keys when he was suspended. It seems extraordinary to me that Mr Anderson or Mr Jones did not look to see if the money was there.
16. It is not clear when the sale of the tank came to the attention of Mr Anderson. However, he said in his evidence that he waited a couple of weeks to see if the Claimant told him or the Bursar about the sale and handed over the cash. Given that the Claimant was suspended on 24 May 2021, it follows that Mr Anderson would have been aware of what happened very soon after the tank was sold and taken from the site.
17. Mr Anderson said he waited to see if the Claimant would disclose the sale and hand over the money before suspending him. During that time Mr Anderson met with the Claimant as did Mr Jones. Mr Anderson suggested there were about 10 occasions when the Claimant could have disclosed the sale and accounted for the money. The Claimant said that the period in question equated to only 9 working days considering holidays and weekends and that he was exceptionally busy at this time and once the money was secured in the safe he had other priorities.
18. There was a disciplinary hearing chaired by Mr Anderson on 7 June 2021. The Claimant sent a letter requesting an appeal on 14 June 2021. The appeal hearing was split into two parts, on 29 June 2021 and 8 July 2021. The appeal was heard by Mr Copeland and Mr Knightly who were school governors. Mr Copeland is the chair of governors.
19. Having set out a brief background to the claim, I will proceed by considering the areas of complaint that the Claimant has made about the process leading to his dismissal. They fall within the following headings:
  - Animosity of Mr Anderson towards the Claimant - bias
  - Suspension and the investigation
  - The disciplinary hearing
  - The appeal process
  - Mr Anderson's credibility
  - Whether a fair process was undertaken
20. The Claimant's case is that Mr Anderson was biased against him following his appointment as Estates Manager. The basis for this were issues about

salary, rent and the Bothy being his allocated housing. The Bothy had been used by the previous Estates Manager, rent free. The previous Estates Manager had a salary of £40,000. The Claimant understood that he would have the same terms and conditions on his appointment. However, Mr Anderson reduced his salary to £34,000. The Claimant approached Mr Jennings a school governor about this with the result that his salary was reinstated at £40,000.

21. He then was told by Mr Anderson that he could not move to The Bothy as it was to be used for food technology. Again, he made representations to Mr Jennings who took it to the Board of Governors. This resulted in him being able to occupy The Bothy and a general review of staff accommodation. The Claimant says that Mr Anderson and his family were not living in their accommodation on site that time and that when the governors realised this they insisted he live on site. Then the Claimant realised that his salary had a deduction for rent which should not have been made. This was then rectified.
22. The Claimant's case is that Mr Anderson was involved in every aspects relating to the termination of his employment from making an allegation, suspending him, leading the investigation, chairing the disciplinary hearing, making the decision to dismiss, being involved in the appeal process, sending emails denigrating the Claimant to Mr Knightly and Mr Copeland.
23. The Claimant's case is that Mr Anderson was angry about being overruled by the governors three times and having to live on site. He said this meant that Mr Anderson was biased against him. Mr Anderson said he did not have any animosity towards the Claimant, but that he felt it was inappropriate for the Claimant to approach Mr Jennings so quickly especially as Mr Jennings was elderly and not in good health.
24. Mr Anderson took 20 minutes to decide to dismiss the Claimant. He gave the decision orally and confirmed it in writing the next day. When speaking to Mr Knightly about this, he told Mr Knightly that he had not given the decision until the following day thereby giving the impression that he had taken more time thinking about it than he actually had.
25. On 28 June 2021 Ms McMaster, the Principal's PA, sent an email to Mr Knightly and Mr Copeland. This was before they heard the appeal on 29 June 2021. In this email she says:

*"Dear John and Jonathan*

*Please find attached information you have requested.*

*When staff start at Muntham they always have induction with their line managers. Lind managers show all new members of staff where to access policies and staff handbook on the intranet/sharepoint. Simon would have been fully aware of where policies and the handbook can be found. He updates various policies in his current role and previous role, these include*

*health and safety and all estates policies. He even confirmed in the estates meeting on 12th May that all policies were up to date, therefore is fully aware where policies are on the intranet and the need for checking policies for yourself.*

*Harry has made his decision and the appeal is just for Simon to put forward his case. Can we minimise the number of questions to ask him. Also on page 4 of the meeting script from Linda, can we make number 6 just say "can you confirm that there have been no warnings issued to you" miss off the in the last six months as we know on top of the warning on 5th May he was previously suspended and given a warning in 2017. On page 4 again, can we say we will notify him in 5 working days please. We have to submit payroll on Monday 5th July so would like the decision before then so as to pay him appropriately.*

*Harry does not feel you need to mention the matters that have come to light regarding the use of the credit card etc. you just need to be fully aware that Simon is a dishonest person who manipulates people to his advantage. He clearly stated in one of his letters that he had had to go to governors to get an increased salary, rent free accommodation etc, and get governors to overturn Harrys decisions on these matters."*

26. Although this is written by Ms McMaster it is clearly written at the behest of Mr Anderson. I note the reference to the accommodation issues, rent and salary in this email. This email demonstrates that the issues that the Claimant described still preyed on Mr Anderson's mind otherwise he would not have mentioned it. I therefore find that Mr Anderson was annoyed about being overturned in his decisions on these matters. I will be returning to this email in another context later in this judgment.

### **Suspension and investigation**

27. The Claimant was called to a meeting with Mr Anderson on 24 May 2021 over two weeks after the tank was sold. He was not told the purpose of the meeting. At that meeting Mr Anderson showed him the CCTV footage. The Claimant's evidence is that Mr Anderson told him that he was suspending him from work, pending an investigation into allegations of gross misconduct concerning the sale of the tank. The Claimant was sent a letter confirming the suspension the next day. The allegations as set out in this letter were:

- i. disposed of school property without consent*
- ii. taken cash from that disposal of school property without consent*
- iii. failed to follow asset disposal procedure ensuring adequate health and safety procedures*
- iv. Failure to declare financial income intended for the school*
- v. Failure to follow financial procedures*

28. For some reason the suspension letter is not in the bundle of documents, however it was common ground that during his suspension the Claimant was not to speak to any member of staff or the Governors, or go to any part of the school premises save for his flat.
29. As part of the suspension, the Claimant handed his keys to Mr Anderson. They included the key to the safe. I am satisfied that he told Mr Anderson that the money had been put in the safe. For whatever reason Mr Anderson did not go to the safe to see if the Claimant was telling the truth about money being there. This did not happen until after the appeal had concluded.
30. On 24 May 2021 Mr Anderson sent a letter to the Claimant advising him that the investigation was complete and inviting him to a disciplinary hearing on 28 May 2021. The letter states:
- The purpose of the hearing will be to discuss your alleged gross misconduct. It has been alleged that the oil heating tank which belongs to the school was sold by yourself without the consent of the school and the money received for this has not been given to the school which would constitute theft of school property.*
31. The allegations set out in the suspension letter were repeated. The Claimant was given the right to be accompanied by a trade union representative or a work colleague. The letter further stated:
- “Depending on the facts established at the hearing, the outcome could be summary dismissal, but a decision on this will not be made until you have had a full opportunity to put forward everything that you wish to raise and the hearing has been concluded.”*
32. Mr Anderson described himself as taking the lead on the investigation but not being the investigator per se. Two other members of staff interviewed the witnesses. There were short statements from Mr David Payne, Mr Nick Bell and Mr Mark Beard who assisted the Claimant and the purchase in putting the tank on the trailer.
33. The Claimant’s case is that Mr Anderson was the person making the allegation and the person investigating and that was not fair. He also complains that no statements were taken from him or from Mr Anderson. Mr Anderson maintained he was not a witness, but I disagree. Mr Anderson was a witness in so far as he said he did not give consent for the Claimant to sell the tank, whereas the Claimant maintained he did give consent by telling the Claimant to clear the area.
34. Mr Anderson says that he met with the Claimant when they viewed the CCTV together. He said that the Claimant looked embarrassed and shocked and was speechless. He said the Claimant did not give any detailed explanation. He took this to be a showing the Claimant’s guilt and him being embarrassed at being caught out.
35. The Claimant agrees he was shocked at being accused of theft and was

speechless as a result. He denies it was an indication of him being embarrassed at being caught red handed as suggested by Mr Anderson.

36. I am troubled that Mr Anderson took the Claimant's reaction to be an indication of guilt. It is inevitable that the Claimant would have been shocked to be accused of theft whether he had committed the act or not. I do not find it surprising that at that stage the Claimant did not offer a detailed explanation. He clearly expected to be interviewed about what occurred but did not happen.
37. There was no investigation report. Mr Anderson concluded that the matter should proceed to the disciplinary hearing and sent the invitation to attend to the Claimant.
38. I am also troubled that Mr Anderson considered that Mr Beard had asked to change his statement when this was not the case. He regarded this as highly suspicious and thought the Claimant may have spoken to Mr Beard to get him to change what he said. This was clearly influential in his decision-making process. I am satisfied that the Claimant did not speak to Mr Beard. Mr Beard was on annual leave celebrating his 25<sup>th</sup> wedding anniversary with his wife when his daughter called him saying the school had left several messages on the home phone. He also had several missed messages on his mobile phone. He was concerned that there was an emergency at the school so telephoned.
39. The Respondent uses an outsourced HR consultancy and much of the documentation used in disciplinary and appeal hearing was clearly scripted by the consultancy. The script for the interviews was:

***“Staff Statements Incident 5/5/2021***

*We are investigating an incident which happened after school on Wednesday 5th May. It has been alleged that School property has been sold without the school's consent.*

*Please can you tell us everything you know about this incident. You were present and seen within the area on the school CCTV system, whilst some of this incident was taking place.”*

40. The record of the first conversation with Mr Beard was recorded:

*Personal Statement*

*24th May 2021 - 2.15pm*

*Statement taken by Mrs Wright and Mr Pritchard.*

*1. Mark Beard contacted Mrs Wright and Mr Pritchard as we had left a message previously, Mark is on annual leave.*

*2. Mark was asked if he knew anything about school property being sold on the 5th May, he and others were seen on the CCTV system.*



3. Mark took a minute to think, and said that he has a shocking memory. Mark then remembered that Alan Casson's old fuel system got sold.

4. Mark remembers pushing it onto a trailer, he thought it was only him and Nick Bell, the other members of estates we present." (sic)

41. The following day Ms Wright contacted Mr Beard again, and asked if he knew anything about money received for the tank. His response was recorded by Ms Wright:

*"Mark stated that he did not see any money change hands but he knows it did because it is in the safe in the estates office."*

This was added to the previous statement as further point number 5. The other aspects of the previous statement remained unchanged.

42. First I would have expected Mr Anderson who was leading the investigation to know that it was Ms Wright who contacted Mr Beard and asked a further question about the money. Second, I find it strange that Mr Anderson should consider that what Mr Beard said changed his previous statement. That previous statement remained intact. Clearly this was very influential in the way that Mr Anderson conducted the investigation and disciplinary processes.

#### **Mr Anderson conducting the disciplinary hearing**

43. The Claimant takes issue with Mr Anderson conducting the disciplinary hearing on several grounds. First, he considers that Mr Anderson was a witness who should give evidence to the disciplinary panel. One of the issues was whether Mr Anderson had given explicit or implied consent for the tank to be disposed of. In his evidence to me, Mr Anderson was adamant that he was not a witness and that it was entirely appropriate for him to have conducted the hearing and made the decision to dismiss. He referred to him being responsible for all disciplinary matters, and that governors would not be involved except in an appeal. He did eventually concede that the issue of his consent was relevant.

44. I have reviewed the Respondent's disciplinary policy. There is nothing in the policy that says the Principal must do all disciplinary hearings. The most it says about who conducts hearings is that appeals would normally be heard by members of the Board of Governors.

45. I see no good reason why Mr Anderson conducted the disciplinary hearing. He was clearly involved in the factual matrix leading to the sale of the tank in that he was the only person who gave consent and he said he had not given it. Interestingly when it came to the appeal outcome it was said that it was not unreasonable for the Claimant to have implied that consent had been given.

46. I conclude that this alone would render the dismissal unfair. However, an appeal can remedy a defect at the disciplinary hearing, so I went on to consider the appeal and whether this defect had been remedied.

## The appeal process

47. The Claimant sent a letter requesting an appeal on 14 June 2021 with a follow up letter on 16 June 2021. The grounds of appeal were that he had consent to sell the tank, he had not seen the finance policy, had no training on financial matters, there is no asset disposal procedure, the Finance Policy does not say that he had to inform the Bursar of money in the safe, the disciplinary hearing was unfair, and the sanction of dismissal was disproportionate.
48. The second letter regarding the appeal set out the detail of the Claimant's appeal regarding procedural failings in the investigation process, and the disciplinary process.
49. Mr Knightly and Mr Copeland were appointed to hear the appeal. The Claimant has complained about communications between them and Mr Anderson in the run up to the appeal hearings and in the second appeal meeting.
50. Unsurprisingly there was communication between Mr Anderson, Mr Knightly, and Mr Copeland. The appeal panel needed to be given details of the appeal including documents from the disciplinary hearing. Arrangements needed to be made to set up the appeal hearing. If those were the only types of communications I would not be concerned. However, there are communication which do cause me substantial concern about the involvement of Mr Anderson in the appeal process and what I view as his attempts to sway the appeal panel's decision to uphold the dismissal.
51. For example, on 28 June 2021 the day before the appeal, Ms McMaster sent an email (no doubt on Mr Anderson's instructions):

*"Emma and Daniel*

*Can you please both send me a statement today. It needs to confirm that Simon Ward was given the finance policy and that the use of the credit card and finance procedures had been explained to him.*

*The appeal is tomorrow so I need this a.s.a.p. today as need to get it to the governors."*

This is stating what these individuals needed to put into the statement, rather than asking open questions. Daniel is Mr Jones, the Bursar. Emma is also in the finance department. The Claimant says he was not given a copy of the finance policy.

52. On 28 June 2021 Ms McMaster sent an email to Mr Knightly and Mr Copeland, again no doubt on the instructions of Mr Anderson:

*From: Sarah McMaster*

*Sent: 28 June 2021 11:33*

To: Jonathan Copeland; John Knightley

Cc: Harry Anderson

Subject: S Ward

*"Dear John and Jonathan*

*Please find attached information you have requested.*

*When staff start at Muntham they always have induction with their line managers. Lind managers show all new members of staff where to access policies and staff handbook on the intranet/sharepoint. Simon would have been fully aware of where policies and the handbook can be found. He updates various policies in his current role and previous role, these include health and safety and all estates policies. He even confirmed in the estates meeting on 12th May that all policies were up to date, therefore is fully aware where policies are on the intranet and the need for checking policies for yourself.*

*Harry has made his decision and the appeal is just for Simon to put forward his case. Can we minimise the number of questions to ask him. Also on page 4 of the meeting script from Linda, can we make number 6 just say "can you confirm that there have been no warnings issued to you" miss off the in the last six months as we know on top of the warning on 5th May he was previously suspended and given a warning in 2017. On page 4 again, can we say we will notify him in 5 working days please. We have to submit payroll on Monday 5th July so would like the decision before then so as to pay him appropriately.*

*Harry does not feel you need to mention the matters that have come to light regarding the use of the credit card etc. you just need to be fully aware that Simon is a dishonest person who manipulates people to his advantage. He clearly stated in one of his letters that he had had to go to governors to get an increased salary, rent free accommodation etc, and get governors to overturn Harrys decisions on these matters.*

*Kind regards"*

53. If this is not interference with the appeal process, I do not know what is. Not only is Mr Anderson seeking to take control of what questions were asked by Mr Knightly and Mr Copeland, but his comments about the Claimant's honesty and that he is manipulative are highly prejudicial. I have already commented on the reference to the issues relating to accommodation, rent and salary.
54. It is also of note that this email was not put in the bundle by the Respondent and the Claimant had to prepare a separate bundle. The Claimant had received documents from a subject access request. Given it was not in the Respondent's bundle I assume it was not disclosed during the discovery process. It is a relevant document and should have been disclosed.
55. On 24 June 2021 the HR consultants sent an email to Mr Anderson in which they said:

*“In an appeal situation, it is really important that they hold the appeal hearing and their deliberations independently and are not unnecessarily influenced by those involved in the original process. We therefore need to allow the appeal panel to proceed through the appeal process as they see fit and I know Linda will keep them in line and to the point. She will also ensure any risk to Muntham House is minimised as much as she can.”*

Despite this, the email referred to above was sent.

56. Mr Knightly and Mr Copland said that they ignored the email went on 28 June as it was plainly inappropriate. However, even if they ignored it, they would no doubt have been subconsciously influenced by its contents.
57. During the appeal, Mr Anderson brought a document which he said showed that the Claimant had been given a warning on 5 May 2021. This was in relation to the purchase of bifold doors for accommodation. This is clearly a file note of some description. Mr Anderson’s evidence is that he gave a verbal warning during a meeting with the Claimant. The warning says it was because the Claimant had not got three quotations for the door in accordance with the Finance Policy. In fact, the policy has this requirement for purchases over £5,000 and the invoice was for a sum less than this. However, more importantly as far as I am concerned is that Mr Anderson he sent the Claimant confirmation of the warning the following day. The Claimant denies having received a formal warning or receiving a letter about one. The Respondent did not provide a copy of this warning. On balance I find that there was no such warning.
58. Mr Anderson brought this up to show that the Claimant did not have a clean disciplinary record. He admitted that the Claimant had not previously been subject to any formal disciplinary process. I can only conclude that any previous matters were not serious and dealt with informally.
59. The only other disciplinary matter suggested by Mr Anderson was in 2016 and involved an incident with pupils. From what I can gather from the evidence the Claimant was suspended as was normal practice in such matters, the school was exonerated by LADO and there were no disciplinary proceedings against the Claimant. Given that this was regarding safeguarding issues, I would have expected formal disciplinary proceedings to have been commenced if the Claimant had been at fault. In any event, these allegations were historic having occurred some five years previously.
60. Mr Anderson was allowed to ask the Claimant questions during the appeal. I have reviewed the notes of the appeal and can see what questions were asked. I find this inappropriate; it was for Mr Knightly and Mr Copeland to decide what questions they needed to ask.
61. During the second appeal meeting it became clear that Mr Anderson had read the minutes of the first meeting. This was inappropriate. The HR representative said she had sent it to Mr Anderson by email by mistake (including him in the email which was sent to Mr Copeland and Mr Knightly). Mr Anderson was vague about how he saw the minutes,

whether it was electronically, printed off version or the personnel file. By whatever means it was communicated he saw it.

62. There was criticism of the Claimant allowing members of the public access to the site when they came to collect the tank. Mr Anderson was adamant in his evidence that the barriers to the site would have been closed, implying that the Claimant must have let them enter the site. The office was closed so they would not be able to sign in as was the normal procedure. Mr Anderson was adamant that the full barrier system including ANPR was installed with a buzzer system. Mr Jones who was observing the proceedings checked his records and found an invoice showing it was not installed until 2022. In any event, it was confirmed that the barriers are opened at the start and end of the school day to allow taxis and parents to collect children. The gate was open when the tank was collected.
63. The Claimant says he was radioed by another member of staff that the purchasers of the tank had arrived and assumed that the signing in had been done and the purchasers directed where to go. It was only when he let them out of the back gate and asked for the passes that he knew that they had not signed in.
64. Mr Anderson said this was a serious breach of the safeguarding policy. However, he did not investigate it. There was no investigation as to whether the barriers were up or down, no attempt to ask the Claimant in more detail or anything like this. Mr Anderson said it was part of the disciplinary investigation but there was no evidence to support this.
65. Mr Anderson also said that there were investigations behind the scenes and the Governors had been notified. He said the police had been notified. There was no evidence to support this. If there had been an investigation the Claimant would no doubt have been interviewed about it. He says he was not interviewed.
66. Further I take on board what the Claimant says about the safeguarding issue. If it was as serious as Mr Anderson now says, why is it that Mr Anderson does not deal with it immediately. Nothing was said about the sale of the tank or any associated matters for over two weeks. Safeguarding is so important that I am sure this would have happened if there was a genuine concern. After all, the Respondent would not want it to be repeated.
67. Mr Anderson said that the Claimant had received training on the Finance Policy. The Claimant said he had received no training. I was taken to various training records. These list the training that the Claimant had received. He had training on safeguarding, health and safety, and so on. But there is no mention of the Finance Policy. Mr Anderson said finance was part of the safeguarding training. There was no evidence to substantiate this. In similar cases I have been taken to the content of the training, the agenda, the power point slides, the hand outs and so on to show what the training entailed. There was no such documentation in the

bundle. I also note that the Claimant was promoted to Estates Manager the day before the national lock down which no doubt interfered with the normal induction process. I find on balance that there was no specific training given to the Claimant on the finance policy.

68. Mr Anderson said he went to the safe and retrieved the money before the disciplinary hearing. Then he said it was before the appeal, then said he could not remember. The Claimant submitted that it was very strange that Mr Anderson had not gone to the safe immediately he was suspended. The evidence was that after the appeal Mr Copland and Mr Knightly retrieved the money from the safe. I am satisfied that the money in the safe is most likely to have been the money from the sale of the tank.
69. Mr Knightly, who chaired the appeal, was not totally impartial and independent. He had been called to the school by Mr Anderson and shown the CCTV before the Claimant was suspended. I found it strange that Mr Knightly said that the CCTV was unequivocal in showing that the Claimant had stolen the money. Having viewed the CCTV several times, I do not know how just seeing the footage would give that certainty. The only way there could be such certainty is if there was narrative to accompany it. That narrative would have been given by Mr Anderson.
70. I the appeal process did not remedy the defects at the disciplinary hearing.
71. In coming to my conclusions, I considered the submissions made by both parties. They are summarised below.

#### **Respondent's submissions**

72. The Respondent submitted that it is Important to look at this in context, that financial probity is of paramount importance and there are reputational risks as the school is a charity and uses public funds.
73. The evidence shows a cavalier attitude to financial procedures which should be well known and safeguarding issues as well. The Claimant's view that he had done nothing wrong is a dangerous attitude which would justify dismissal.
74. The acts the Claimant was dismissed for were of gross misconduct. Mr Anderson was trying to be helpful by giving notice pay and saying misconduct, was it sufficiently serious, to make it part of reason range of response
75. The Claimant had many opportunities to make a straightforward report, he was in contact with relevant people, not credible, explanation does not make sense, easy to report it. Whether he had other priorities was neither her nor there, this was an unusual newsworthy matter.
76. Look at whole context, more concerning both in terms of cloak and dagger and confidence in C that he follows no procedure to get person on site and take the oil tank, not raised before hand, did not discuss price, could have fixed time, knew needed to go to the office, did not mention this to the

purchaser. Office was closed. Did not sign in accordance with the policy, his suggestion this about fire safety defies credibility. Look at whole behaviour in context.

77. The Respondent's evidence should be preferred i.e. Mr Anderson's on how he did the investigation, and crucially that he was not aware of the tank and gave no authorisation for the sale of it.
78. The Claimant could have taken Mr Anderson to the safe. He did not. He was surprised and flustered when confronted with the CCTV, reasonable to assume that if he was not challenged about the money it would not be mentioned. The safe was operated by him and not owned by Respondent. Mr Anderson did not know about it. He had the opportunity to bank it, to provide a receipt, etc. this was not done and there is no good reason for it not to have been done and no good reason was ever given.
79. Mr Anderson is the appropriate person to handle the investigation and disciplinary. He is principal responsible for discipline, and is responding to serious and urgent situation.
80. There was no secret discussion, Mr Copeland and Mr Knightly disregarded information that was not fair or relevant. The Claimant was able to make his argument and refer to whatever evidence he wanted to.
81. Burchill test is wide test and not a council of perfection.
82. There was no trust and confidence going forward given the serious breaches of policy. The decision to dismiss was within the range of reasonable responses.

#### **Claimant's submissions**

83. The Claimant referred to his 13 years of service with the Respondent.
84. He submitted that when confronted with accusations, he was shocked and saddened someone could think of this of him.
85. He submitted he loaded on trailer in full view of CCTV, saw the buyer out of the gates and put the proceeds in the safe. He told Mr Beard he had deposited the money in the safe. He had no knowledge of the written finance policy what it says about selling, and now having seen it is of the view he is not in breach.
86. He did not believe he had breached health and safety procedures.
87. The Claimant criticised the fairness of the dismissal and appeal procedures
88. Mr Anderson was a witness relying on own observations of CCTV footage and a presumption the Claimant had pocket the proceeds of sale. Appointed investigators,

89. Mr Anderson had his keys on suspension and could have checked if the money was there. The investigation was a sham as neither he or MR Anderson were interviewed. The investigation notes were governed by Mr Anderson. Mr Anderson was the dismissal decision maker and took only 20 mins to decide to dismiss me. Mr Anderson colluded with Mr Knightly who thought by the time of the appeal the Claimant was guilty.
90. The Claimant submitted that the appeal process was unfair. Despite them deciding it was not unreasonable to imply that consent given, they still decided to uphold my dismissal.
91. Mr Anderson told untruths. The Claimant gave an example of Mr Anderson's witness statement saying he retrieved the money during the suspension and before the disciplinary hearing which was not true. He said the Claimant had a written warning which was false as there had been no disciplinary hearing at any time. Mr Anderson stated that barriers were secure and down on multiple times and was adamant security ANPR and a buzzer in place which proved to be false as invoices proved. Mr Anderson said tank installed 2017 implying new, turned out to be false, lack of investigation meant he mistook it to be a different tank.
92. In addition, the Claimant pointed to the following acts by Mr Anderson:
  - a. Said noticed van entered by closed barrier, and CCTV. There was no evidence or CCTV. The barriers were open.
  - b. Said there was a safeguarding investigation and I was issued with written warning which was false, and no evidence was produced.
  - c. Stated seen minutes appeal hearing as received HR email in error. Mr Knightly said it was in a personnel file.
  - d. He said that Mr Beard had requested to give second statement, and this is false, Mrs Wright contacted the next day and asked about the money.
  - e. Said to Mr Knightly that decision to dismiss was on day following the disciplinary hearing but it was made after 20 minutes and given orally.
  - f. Influencing by Ms McMaster's email stating the governors hearing the appeal needed to be fully aware the Claimant was dishonest and manipulative.
93. Mr Copeland made decision to uphold on assumptions. He could not substantiate the grounds for his decision and disregarded my 13-year career, family home and future. Mr Copeland admitted that if Mr Anderson gone to safe immediately this whole process would have been avoided.
94. The Investigation seriously flawed.
95. Mr Anderson has been shown to be responsible for the unfair and unjust



disciplinary process. From outset he was the main witness, the leader of the investigation, then chair of disciplinary hearing and ended up as final decision maker. How can that be fair.

### **My Conclusions**

96. I find that the Claimant was dismissed for a reason related to conduct. The Burchill test is therefore to be considered. I do not find that there was a genuine belief in the Claimant's dismissal following a reasonable investigation. I do not find the investigation was reasonable. Even if it had been, I do not find that there was a genuine belief that the Claimant had stolen the money. The matters relied on are the Claimant's reaction and what the Respondent says is clear from the CCTV that he put the money in his pocket. I do not consider this to be clear as already discussed. However even if he did put it in his pocket that does not in itself indicate that he was stealing the money. The money was in the safe. No one from the Respondent attempted to check it was there despite the Claimant telling them that it was and handing over his keys including the key to the safe on suspension.
97. Mr Anderson and Mr Knightly considered the CCTV footage to be determinative. I do not find that to be reasonable for reasons already given.
98. The Claimant was not dismissed for gross misconduct. He was dismissed for misconduct. That was a conscious decision by the Respondent. Mr Anderson said he wanted to be kind to the Claimant and give him notice. However, this does not detract from the Claimant's argument that under the Respondent's policy, misconduct can not be used to dismiss save for where there were previous warnings. There were no previous warnings.
99. It is not for me to substitute my view. However, the procedural failings are such that it means that there was no genuine belief in the Claimant's guilt based on a reasonable investigation. The Claimant was unfairly dismissed.
100. I have been critical of the Respondent. I must also be critical of the Claimant. I accept the Respondent's view that even if he did not know of the Finance Policy it was common sense that he should declare the money he received for the tank, and account for the cash. He did not get a receipt for the cash and there was no documentation. I have no doubt that he acted with the best intention when selling the tank, however his actions in not telling the Bursar or the Principal about the transaction and handing over the money inevitably contributed to his dismissal. I take note the Claimant's history as a policeman and in the military.
101. I did not hear submissions on contribution, so I am unable to give a percentage figure for that contribution. This will be dealt with at a remedy hearing which will be listed as soon as 08 December 2022 the judicial diary allows.

102. The determination of the breach of contract claim will also be heard at the remedy hearing. There was no evidence about the Claimant's contractual terms. Considering this I will be listing a two-day hearing. The parties will be notified of the date in due course.

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Employment Judge Martin  
Date: 08 December 2022