



EMPLOYMENT TRIBUNALS

Claimant: Mr Ramiz Badami

Respondent: Leicester City Council

Heard at: Leicester (in person attended) **On:** 3 January 2023

Before: Employment Judge N Wilson sitting alone

Representation

Claimant: Mr Badami

Respondent: Ms Akers (counsel)

JUDGMENT

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

REASONS

Introduction

1. The claimant, Mr Ramiz Adami was employed by the respondent Leicester City Council as a Neighborhood Services Assistant from 9 April 2018 until his dismissal without notice on 30 March 2022.
2. The claimant's ET1 was issued on 17 August 2022 within time and the respondent filed its ET3 and grounds of resistance in time.

3. The claimant claims that his dismissal was unfair within section 98 of the Employment Rights Act 1996. He claims the investigation was unfair. Whilst the ET1 ticks the box at section 9 for discrimination there is no claim for discrimination being pursued. Mr. Badami would like his job back and compensation for lost earnings and an increase in compensation for the respondent's alleged breaches of the ACAS code of practice.
4. The respondent contests the claim. It says the claimant was fairly dismissed for gross misconduct for committing serious offences namely.
 - a. The claimant had copied Council owned data without permission, in the form of CCTV footage recorded at St Barnabas Library which constitutes a data breach;
 - b. and the claimant had not been honest when questioned about this on a number of occasions.
5. The background to the claimant being in possession of CCTV was regarding an earlier grievance brought by the claimant on 9 July 2021 in relation to two incidents between him and a colleague. The incidents involved the following:
 - a. On 24 November 2020 a colleague threw a biscuit at the claimant (the 'biscuit incident').
 - b. On 16 June 2021 the same colleague threw a ball of paper at the claimant (the 'paper incident').
6. The claimant's grievance was subject to a grievance meeting and a grievance appeal meeting in accordance with the respondent's grievance procedure. The claimant's grievance, and appeal, was not upheld on the basis that whilst the actions of the claimant's colleague were inappropriate and beyond the bounds of professional conduct, they took place in an atmosphere of joking. The respondent states the claimant's colleague had offered an apology which the claimant refused, and the colleague was given a firm instruction regarding his future conduct.
7. The disciplinary hearing in relation to the allegations set out at 5 a) and 5 b) above was held on 30 March 2022 and the claimant attended with his aunt. This was permitted although it was not usual process as the claimant did not have trade union representation and in light of the seriousness of the allegations. Mr. Mike Evans, Head of Corporate Parenting, chaired the hearing as a neutral person who had had no prior

involvement in the matter. Mr Evans agreed that the Claimant's aunt could attend the hearing to provide support to the Claimant.

8. The respondent contends that the dismissal was fair in all the circumstances in that:-
 - (a) There was a fair reason for dismissal, namely conduct, pursuant to section 98(1)(b) of the Employment Rights Act 1996;
 - (b) The dismissal of the claimant was within the band of reasonable responses open to the respondent in the circumstances;
 - and (c) In effecting the dismissal, the respondent followed a fair procedure.
9. The respondent states having conducted a reasonable investigation it had a reasonable belief that the Claimant had committed gross misconduct and acted reasonably in all the circumstances in treating gross misconduct as a sufficient reason for dismissing the Claimant.
10. The respondent submits that it followed a process which was fair and reasonable in all the circumstances. It is denied that the respondent failed to follow a correct or fair process. In particular the respondent relies on the following:
 - a. the respondent completed a full investigation into the allegations against the claimant;
 - b. the claimant was invited to a disciplinary hearing to discuss the respondent's concerns;
 - c. the claimant was informed what the purpose of the meeting was prior to the meeting;
 - d. the claimant was informed that one possible outcome of the meeting could be the termination of his employment;
 - e. the claimant was given the right to be accompanied at the meeting;
 - f. the claimant was given an opportunity to raise any matters he wished at the meeting; and
 - g. the dismissal was confirmed in writing and the claimant was offered the right of appeal; and an appeal hearing had been arranged for 4 October 2022.
11. It is denied that the respondent failed to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures as alleged.
12. The claimant was unrepresented today but supported by his friend Mr. Godinho.

Issues for the Tribunal to decide

13. What was the principal reason for the claimant's dismissal and was it a potentially fair reason under sections 98(1) and (2) of the Employment Rights Act 1996? The respondent asserts that it was a reason relating to the claimant's conduct.
14. If so, was the dismissal fair or unfair within section 98(4), and, in particular, did the respondent in all respects act within the band of reasonable responses? The claimant states that the dismissal was unfair because the respondent did not conduct a fair and objective investigation. He states that Mr. Vaughan failed to properly follow up on enquiry leads in breach of the council's disciplinary procedure. Mr. Badami also believes there was a pre-determined outcome. Mr. Badami states Mr. Vaughan failed to talk to others on the staff rota who could have accessed the CCTV footage as part of the investigation, and this should have been done given the seriousness of the matter. Mr. Badami also alleges Mr. Vaughan was conflicted in carrying out a fair investigation as he had handled Mr. Badami's earlier grievance in relation to the biscuit and paper incidents.
15. The Tribunal will decide whether:
 - (a) there were reasonable grounds for the respondent's belief;
 - (b) at the time the belief was formed the respondent had carried out a reasonable investigation;
 - (c) the respondent otherwise acted in a procedurally fair manner; (d) dismissal was within the range of reasonable responses.
16. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed, in accordance with the principles in **Polkey v AE Dayton Services Ltd [1987] UKHL 8**; **Software 2000 Ltd v Andrews [2007] ICR 825**; **W Devis & Sons Ltd v Atkins [1977] 3 All ER 40**; and **Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRL604**.
17. Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, as set out in section 122(2) of the 1996 Act, and if so to what extent?
18. Did the claimant, by his blameworthy or culpable conduct, cause or contribute to his dismissal to any extent, and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award under section 123(6)

Findings of fact

19. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. I carefully considered all the evidence submitted to the Tribunal and the oral evidence given even if I do not mention it. I only record such of the evidence as is necessary to explain this decision.
20. The claimant was employed with the respondent Leicester City Council as a Neighborhood Services Assistant from 9 April 2018 until his dismissal without notice on 30 March 2022.
21. I find that the principal reason for dismissal was the claimant's alleged dishonesty when questioned about him being in possession of CCTV footage as part of the enquiries into him having CCTV footage in breach of company policy on his personal phone. This is because Mr. Vaughan, the investigating officer, in evidence accepted that had his investigations concluded that the claimant had the CCTV footage but had not disclosed or shared it with anyone, the outcome of that disciplinary investigation may have been less than dismissal, but it was the dishonesty of the claimant which was the principal reason for the dismissal.
22. Mr. Vaughan is employed with the respondent as an Area Development Manager and he was the investigating officer. The claimant's line manager was Teresa Delaney whose role was Service Delivery Manager. Ms. Delaney reported to Mr. Vaughan. On 23 August 2021 Kirsty Creighton (an LFT site manager) told Ms. Delaney during a conversation that she had seen the claimant viewing CCTV footage on his personal mobile and the footage showed an incident at St Barnabos Library. Ms. Delaney reported this to Lee Warner, Head of Neighborhood Services. It was Mr. Warner who had asked Mr. Vaughan to previously deal with the claimant's grievances which he had raised in relation to the 'biscuit incident' and the 'paper incident'.
23. Mr. Warner then raised the CCTV incident with the respondent's information governance and HR teams and Ms. Delaney completed a security incident reporting form for the council's information governance team. Ms. Delaney was asked by the Governance team to contact the claimant and ask if he had the footage, whether he had shared it and to ask him and anyone he had shared it with to delete it. Ms. Delaney also asked Ms. Creighton to make a statement setting out what she had seen on the claimant's phone.
24. The respondent states Mr. Badami told Ms. Delaney when she contacted him he may have taken a screenshot of the 'biscuit incident' as a record of the date and time it had occurred and he said it had been on an old phone and he no longer had the screenshot. He also stated he did not have any footage of the 'paper incident' and that he had never seen it or shown it to anyone.

25. In evidence Mr. Badami accepted when initially questioned by Ms. Delaney on 26 August 2021 she asked him if he had taken any footage and he only admitted to taking a screenshot and in response to the question did he have any CCTV footage he said no. Mr. Badami also stated initially he could not recall if Ms. Delaney asked him if he had deleted any footage he had. Whilst Mr. Badami states he believed this was the start of the disciplinary process I find when Ms. Delaney spoke to the claimant regarding the CCTV footage it was not the start of any disciplinary investigation but rather an enquiry being made at the request of the Governance team. The Governance team sent Mr. Badami a letter outlining the position at pages 103-105 of the bundle. Essentially this letter sets out that the respondent was data controller and Mr. Badami should not have acquired this information and it should be deleted and not shared. In response to this letter Mr. Badami sent an email stating 'I do not possess any CCTV footage from St Barnabas Library'. The governance team decided as a result of his response there was no data risk.
26. However there remained the issue of the CCTV footage being seen on Mr. Badami's phone by Ms. Creighton. Whilst Ms. Creighton was not present today to give evidence her account at page 89 is unchallenged. Mr. Badami himself when questioned about Ms. Creighton seeing the footage on his phone confirmed he did not think Ms. Creighton would lie and he accepted it was possible she saw the CCTV footage on his phone. Whilst Mr. Badami states Ms. Creighton is an honest person, he maintains she must have been mistaken about seeing what she described. Ms. Creighton described paper being thrown and hitting the claimant (i.e. the 'paper incident').
27. Mr. Vaughan's evidence is that Ms. Delaney emailed him on 26 August 2021 in relation to the data breach issue /CCTV footage being on Mr. Badami's phone and informed him that Mr. Badami's response had been that he thought he had taken a screenshot of the first incident (biscuit) but he had not seen any CCTV of the second incident and nor had he got any footage or shown any footage. This is supported by the email at page 88 of the bundle from Ms. Delaney to Mr. Vaughan. I find this denial which was contradictory to the information received from Ms. Creighton led to the respondent's decision to investigate the allegation of copying council owned data (the CCTV footage) without permission. At this stage Mr. Badami had denied having the CCTV footage.
28. Mr. Badami had also at around the same time appealed the grievance outcome in relation to the biscuit and paper incidents. This appeal was made on 16 August 2021.
29. Mr. Badami then commenced a period of sickness absence from September 2021.

30. Following a referral and consultation with Occupational Health (OH) to assess Mr. Badami's fitness to attend an investigation meeting their advice was whilst the claimant was not fit to work, he was fit to attend an investigation meeting. Indeed Mr. Badami contacted Mr. Vaughan himself on 26 October to confirm he would attend a meeting. The disciplinary investigation meeting took place on 9 December 2021. I find Mr. Badami was fit to attend and fully participate in this meeting and had agreed that he was at the time. Further it was reasonable for the respondent to believe he was able to fully participate having sought the advice of OH and based on Mr. Badami's own agreement.
31. The letter inviting Mr. Badami to the meeting set out the purpose of the meeting was to investigate 'the copying of council owned data without permission in the form of CCTV footage recorded at St Barnabos Library.'
32. Mr. Badami accepts he knew of his right to be accompanied to the meeting and was sent a letter containing information of the sanction in advance and the disciplinary procedure.
33. Whilst Mr. Badami in his witness statement points to the fact the investigating officer never spoke to him personally nor took a statement from him but rather jumped to the conclusion the claimant had copied the data due to Ms. Creighton's account he a) accepts Ms. Creighton would not lie and she likely saw the footage on his phone if that is what she stated (at page 89 and in his evidence today) and b) he also accepted in evidence that he was given the opportunity in the meeting with Mr. Vaughan to give his version of events.
34. Mr. Badami also accepted the investigation meeting was the first time he stated CCTV footage had been sent to his phone anonymously. Mr. Badami further accepted that he omitted to tell Ms. Delany when she had previously questioned him about having CCTV footage, that he had in fact had it on his phone. He states in evidence he did not consider this at the time to be a lie or dishonest because by that time he had deleted it. I find that given the footage related to an incident he had raised a grievance about (and that he was appealing the decision made in that grievance) Mr. Badami knew which footage was being referred to and ought to have known even if it had since been deleted that the respondent was asking whether he had ever had this CCTV footage. There were several prompts for this including Ms. Delaney questioning him and the subsequent letter from the Governance team. Instead by Mr. Badami's own admission in evidence he omitted to give an accurate reply to Ms. Delaney or at any point thereafter until the meeting with Mr. Vaughan that he had in fact had CCTV footage on his phone.
35. To Mr. Badami's credit he accepted in evidence that he could have been more forthcoming with the respondent. He admitted he deleted the footage and did not admit to having it when questioned by Ms. Delaney. He also admitted to not having told the Governance team about having had the

CCTV footage. I find based on these omissions and in light of the evidence the respondent had from Ms. Creighton whom Mr. Badami himself informs

the Tribunal would not lie, the respondent held a reasonable belief that Mr. Badami had lied to them and was continuing to lie them.

36. When asked why Mr. Badami had not been honest with Ms. Delaney, initially he stated he had been; she asked if he had CCTV footage and he said he didn't because at that time he had deleted it. He later stated in evidence his relationship with Ms. Delaney was strained because when he had raised issues about the employee involved in the biscuit and paper incidents, she had laughed it off and Mr. Badami felt she did not take it seriously. I accept Mr. Badami therefore may not have been comfortable with Ms. Delaney but he also accepted he knew what she was asking and chose not to be forthcoming. Mr. Badami ought to have understood the seriousness of the questioning if not immediately but certainly once the information governance team wrote to him.
37. Mr. Badami stated in evidence he was suffering with depression at the time and had been affected by the two incidents which had left him feeling humiliated and he did not want to work with the co-worker involved in those incidents. He accepts he failed to accept he had in fact had the CCTV footage on his phone even when he had the opportunity to do so when questioned by the information and governance team. I find this contributed to and compounded the respondent's belief that Mr. Badami had been deliberately dishonest and had withheld information from them.
38. Mr. Badami states in evidence Mr. Vaughan knew the CCTV footage was not password protected and he should have done some fact finding first in light of Mr. Badami telling him someone had sent him the CCTV footage and that he had not copied it himself. Mr. Badami's position is the investigation was inadequate and impartial.
39. I accept the clear evidence of Mr. Vaughan that his investigation comprised of speaking to Ms. Creighton and based on the information from her that Mr. Badami had CCTV footage on his phone Mr. Vaughan proceeded to investigate how it got there and whether Mr. Badami copied the CCTV footage onto his phone.
40. Mr. Vaughan gave a clear unchallenged account of how he investigated whether the CCTV footage could have been copied and by whom. He spoken with Adam Lunn the Area developmental manager who looked after the installation of the CCTV. The CCTV footage sits outside the remit of the IT department. Mr. Vaughan was told by the IT department to check with the supplier, the manual or the manager in charge of the installation. Again, I accept the unchallenged evidence of Mr. Vaughan that he checked the manual and spoke with Mr Lunn who informed him that access to the CCTV system is via the mouse connected through the console unit. A PIN number is needed to access the system and a key is needed to unlock the console

unit. Both the PIN and key were accessible to all staff during this period. I find that Mr. Vaughan did check the rota for the 33-day period the CCTV footage would have been available for after the paper incident and whilst he did not check who had used their fobs, he could see from the rota all of the staff had been in at some point during that period. Mr. Badami has presented no evidence to challenge the steps Mr. Vaughan took as part of his investigation and I accept Mr. Vaughan's clear account of the investigation he undertook.

41. Mr. Vaughan also stated in evidence there was no way to narrow down who might have downloaded it during that 33-day period that he was aware of or advised of. Mr. Vaughan confirmed there were 9 or 10 people in the team plus a technician and he narrowed down 6 or 7 of them would have had access to the CCTV. This evidence again was unchallenged.
42. Mr. Badami largely challenged the extent to which the matter was investigated questioning why Mr. Vaughan had not interviewed the team to see if they had accessed the CCTV footage. However based on Mr. Badami's previous omissions when questioned by the respondent and his continued failure to say who he thought had sent him the footage despite accepting he was asked repeatedly about this by the respondent I find Mr. Vaughan held a reasonable belief that no one else copied and sent the footage to Mr. Badami based on his earlier omissions and on the basis Mr. Badami continued to fail to be forthcoming about anyone he believed could have done this despite accepting in evidence he knew of the serious sanction which would have resulted.
43. I find it was reasonable based on Mr. Badami having previously given a different account to both Ms. Delany and the information governance team and on the basis that there was no further evidence to indicate who else could have sent Mr. Badami the CCTV footage Mr. Vaughan came to a reasonable conclusion that it was not necessary to question the whole team who had access to the CCTV and there was insufficient evidence to do so. Mr. Badami at today's hearing stated he believed the person who sent him the footage was the same person he raised a grievance about, but he accepts he did not give this name to Mr. Vaughan even whilst knowing the seriousness of the outcome for him.
44. Mr. Vaughan confirms, and I accept that Mr. Badami during the investigation meeting told him the CCTV footage had been sent to him with an accompanying emoji of a pig's face. I found Mr. Badami gave a consistent account about this in evidence, and I find he could have been sent the CCTV footage anonymously. However, I also find due to Mr. Badami's earlier concealment of having had the CCTV footage on a number of occasions this informed the respondent's reasonably held belief that Mr. Badami had been dishonest and had continued to be dishonest when questioned about the CCTV footage up until the investigation meeting when he gave a new version of events. Even then Mr. Badami by his own admission refused to name anyone who he thought could or would have done this. Absent this Mr. Vaughan reasonably considered Mr. Badami's new account implausible

given his earlier denial of having had the CCTV footage. It was also reasonable for Mr. Vaughan in the absence of Mr. Badami naming who he thought had sent him the CCTV to have concluded it was not appropriate for him to question everyone in the team who could have accessed the CCTV over a 33-day period. Based on Mr. Badami's earlier omissions and denials in relation the CCTV footage it was

reasonable for Mr. Vaughan to conclude Mr. Badami was being dishonest also about someone sending him the CCTV footage.

45. Whilst I accept Mr. Vaughan knowing of the incidents between Mr. Badami and a co-worker and the grievance history could have asked the coworker whether he had sent Mr. Badami the CCTV footage It is immaterial how the Tribunal would have handled the events or what decision it would have made providing the Tribunal concludes the respondent carried out a reasonable investigation.
46. Mr. Vaughan had a meeting with the claimant who gave a new version of events following which he spoke with the IT department, he read the manual and spoke with Mr. Lunn. He tried to ascertain how long the CCTV footage was available for, checked the staff rotas and understood all of them had access to the CCTV including the claimant and at that time that it was not password protected. Absent any evidence to suggest anyone else in the team had copied and sent the CCTV footage to the claimant and given the claimant refused to name anyone, his actions could reasonably have been perceived to be evasive and dishonest. I find Mr. Vaughan did consider whether to speak to the rest of the team but he did not find Mr. Badami's version credible given his previous omissions and he did not have any other evidence to suggest someone else sent it to him. I find the steps Mr. Vaughan undertook amounted to a reasonable investigation.
47. Based on this investigation Mr. Vaughan added dishonesty to the allegation to be considered at the disciplinary hearing. As the dishonesty allegation affected the trust the respondent had in Mr. Badami (if established) Mr. Vaughan considered if Mr. Badami was found to be dishonest this would amount to an act of gross misconduct.
48. Whilst Mr. Badami raised in evidence that a security guard was a possible lead enquiry wise there is no evidence before the Tribunal from any security guard. Mr. Vaughan accepts he did not speak to the security guard but in evidence it was unchallenged that all the security was alleged to have said to Mr. Badami is that she knew people were talking about an incident involving CCTV footage as opposed to having any information about how the CCTV footage came to be on the claimant's phone.
49. On 15 December 2021 Mr. Vaughan wrote to Mr. Badami to provide him with the outcome of the disciplinary investigation (p98 and p99) and confirmed the additional allegation that he had not been honest when previously questioned about the footage.

50. The disciplinary hearing took place on 30 March 2002. Mr. Badami was told in the letter inviting him to the hearing that one possible outcome was dismissal. Mike Evans heard the disciplinary hearing and was the decision maker in Mr. Badami's dismissal.
51. By the time of the disciplinary hearing Mr. Badami had raised a grievance in relation to CCTV footage being taken and sent to him via WhatsApp on the grounds this amounted to a data breach of his own personal data. Given both the grievance and the facts of the disciplinary were so linked it was decided to hear both matters together.
52. Mr. Badami attended this disciplinary hearing without a representative but with his aunt for support and to assist him taking notes.
53. Mr. Evans states two allegations were presented at the disciplinary hearing and potentially constituted gross misconduct;
- a) Allegation 1 – that the claimant had copied council owned data without permission in the form of the CCTV footage recorded at St Barnabas Library which constitutes a data breach.
 - b) Allegation 2 - that the claimant had not been honest when questioned about this on number of occasions.
54. It is not unchallenged again that Ms. Creighton gave an account at the disciplinary hearing which was consistent with her statement at p89, and this account was also consistent with what Mr. Vaughan had recorded that Ms. Creighton had told him during his investigation. I find Mr. Evans found no motivation for Ms. Creighton to provide anything other than an accurate description of what she saw on the claimant's phone. She advised at the hearing that she was conflicted giving this evidence as she had a positive relationship with Mr. Badami. At the disciplinary hearing Mr. Badami's view is she was mistaken about what she saw on his phone.
55. Mr. Evans concluded whilst it was not certain that the claimant, based on the information he had, copied the CCTV footage the evidence did however support that it was more likely than not the claimant did have the CCTV footage of the paper incident on his phone. He also concluded it was clear he should not have had the footage. Mr. Badami's position remained throughout that the footage he had was of the biscuit incident but not the paper incident. The biscuit incident took place on 24 November 2020 and the footage is only retained for 33 days and the claimant states he did not receive the CCTV footage until August 2021 which is several months later. I find the respondent reasonably believed the claimant's account was not plausible as this would have required an awful lot of pre planning by someone.

56. Mr. Evans concluded Mr. Badami was blameworthy of both allegations. Given the finding that Mr. Badami had been dishonest Mr. Evans considered the appropriate sanction to be dismissal without notice. It was the dishonesty which led to the dismissal. The claimant's appeal against dismissal was also not upheld.

Relevant law and conclusions – unfair dismissal

57. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that he was dismissed by the respondent under section 95, but in this case the respondent admits that it dismissed the claimant (within section 95(1)(a) of the 1996 Act).

58. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

59. In this case it is not in dispute that the respondent dismissed the claimant because it believed he was guilty of misconduct. Misconduct is a potentially fair reason for dismissal under section 98(2). The respondent has satisfied the requirements of section 98(2).

60. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

61. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in **Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an

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employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23, and London Ambulance Service NHS Trust v Small 2009 IRLR 563**)

62. I find the decision maker was Mike Evans who following the disciplinary hearing which took place on 30 March 2022 made the decision to dismiss the claimant without notice for gross misconduct. Mr. Evans concluded following the investigation carried out by Mr. Vaughan and the disciplinary hearing that the claimant had CCTV footage on his phone of the paper incident and that he had been dishonest about it when questioned on several occasions. He was dismissed for these reasons. I find the dishonesty compounded the gravity of the matter and I accept his evidence that having the CCTV footage alone may not have necessarily resulted in dismissal.
63. I find that the respondent held a genuine belief that the claimant was guilty of misconduct based on the claimant's previous failures to admit he had the CCTV footage and the account provided to them by Kirsty Creighton who was a witness at the disciplinary hearing. Whilst she is not here today there is no evidence before me that her account should not be accepted. Whilst the claimant in questioning alluded to a relationship between Ms. Creighton and a Director at Leicester City Council, I accept the witness accounts that any alleged relationship was unknown to them and there is no evidence before me today as to its relevance to the dismissal or the appeal outcome. Further Mr. Badami in evidence openly stated Ms Creighton would not lie and she must have seen some footage on his phone but states she was mistaken about which incident she saw.
64. I find Kirsty Creighton said that she saw CCTV of what is described as the paper incident on the claimant's personal phone and this then escalated into the disciplinary investigation. I find her account led to the respondent reasonably concluding that the CCTV footage of the paper incident was on the claimant's phone and that she had seen this either by the claimant showing it to her whilst he was responding to an email about the grievance he was pursuing about his co-worker or she had simply seen it whilst the claimant was looking at his phone.
65. I accept the unchallenged evidence of Mr. Vaughan as to the differences in the CCTV for both incidents and based on the differing incidents I find the incident Ms. Creighton describes in the disciplinary hearing is the paper incident. She also describes what she saw in her account at page 89 of the bundle as a colleague throwing 'a large amount of paper over a screen'. Had Ms. Creighton seen the biscuit incident there is no explanation or evidence as to why she would not have simply described the biscuit incident. I find therefore the claimant had CCTV footage of the paper incident on his phone.

66. I find the claimant had a number of opportunities ahead of any disciplinary action when questioned by both Ms. Delany and the Governance team to admit he had CCTV footage on this phone but he failed to do so and this resulted in a serious breach of confidence. I am grateful for Mr. Badami's candor today that he realises he should have been more forthcoming and I accept that he was under some stress due to the grievances he had with his co-worker and the outcome of those grievances may have impacted his mental health. However, I find he knew or ought to have known of the seriousness of the alleged data breach when it was raised with him and there is no good explanation as to why he simply did not admit to having the CCTV footage sooner particularly if he believed it was sent by the co worker against whom he had raised a grievance which ought to have made disclosing that he had received it more pertinent.
67. I find the respondent did take sufficient steps by liaising with OH before holding the disciplinary meeting to ensure Mr. Badami was fit and able to deal with it. I also note Mr. Badami himself wanted to attend the hearing and was given the opportunity to have support with him. The issue remained that he was not honest about having the CCTV footage and this ultimately resulted in the respondent's reasonable belief that the subsequent version of events he advanced was implausible and they did not believe his account of how he came to be in possession of the CCTV footage.
68. I find despite this Mr. Vaughan nevertheless conducted a reasonable investigation and whilst Mr. Badami believes that it was not, because he did not interview all the team who could have accessed the CCTV footage, I find in the absence of Mr Badami being forthcoming again as to who he now alleges sent him the footage the steps Mr. Vaughan took were reasonable and that he conducted a reasonable investigation.
69. I find that the respondent acted in a procedurally fair manner. There was no evidence that the decision maker or the appeal was influenced by any alleged relationship Mr Badami alluded to. Nor do I find that Mr. Vaughan, as Mr. Badami asserts, was inexperienced or biased. No evidence has been presented to the Tribunal which supports these assertions. I find the disciplinary investigation and hearing were procedurally fair. I find the ACAS code of conduct was not breached by the respondent.
70. In the circumstances given the finding that claimant was not honest about having CCTV footage on his phone the claimant's dismissal was within the

range of reasonable responses. I therefore find the claimant's dismissal was fair and the claimant's claim is not well founded.

Employment Judge N Wilson
Date: 25 March 2023