EMPLOYMENT TRIBUNALS

Claimant: Ms Regina Quartey

Respondent: G4S Secure Solutions (UK) Limited

Heard at: London South Tribunal

On: 22nd, 23rd and 24th February 2023

by: CVP

Before: **Employment Judge Clarke (sitting alone)**

Representation
Claimant: Mr C. Mannan (Counsel)
Respondent: Ms Beech (Counsel)

WRITTEN REASONS

Introduction

1. The Claimant was employed by the Respondent as a Security Officer. She commenced her continuous employment with the Respondent on 4th August 2008 and was dismissed without notice on 23rd January 2020. She notified ACAS under the early conciliation procedure on 3rd March 2020. The ACAS certificate was issued on 3rd April 2020.

2. By a claim presented to the employment tribunals on 12th May 2020 the Claimant complained of both unfair and wrongful dismissal and that her dismissal was both procedurally and substantively unfair. She also complained of disability discrimination but subsequently withdrew that complaint at the preliminary hearing on 3rd December 2021.

3. The Respondent resists the claim asserting that that it fairly dismissed the Claimant for gross misconduct (namely for sleeping whilst on duty) after following a fair procedure and that the decision to dismiss was a fair one in all the circumstances and within the band of reasonable responses open to the

Respondent. In the alternative, the Respondent contends that the Respondent would have been dismissed in any event and that the Claimant's conduct contributed to his dismissal.

4. The case was listed as a final hearing on merits and liability on 22nd, 23rd and 24th February 2023. An oral judgment on liability was given on 24th February 2023, dismissing the claims. The Claimant subsequently requested that written reasons be provided.

The Evidence

5. At the hearing, the Claimant was represented by Counsel and gave sworn evidence.

6. The Respondent was represented by Counsel who called sworn evidence from Mr Soni Shemar (the investigating officer), Mr Jack Islam (the disciplinary officer) and Mr Russel Gregoriades (the appeal officer).

7. I was also referred to, and considered, witness statements from each witness who gave oral evidence, various documents contained in a bundle comprising 355 pages, and the Claimant's grievance appeal outcome letter dated 1st April 2015. References in square brackets hereafter are to page numbers within the bundle.

8. In addition, I was provided with, and viewed several times both in the course of pre-reading, evidence and during my deliberations, a video of 2 minutes 8 seconds in duration showing the Claimant whilst at work on a date unknown in 2019.

9. I was provided with, and listened to, audio recordings (and viewed their transcripts provided separately to the main bundle), of meetings held between Mr Gregoriades and Jack Islam and between Mr Gregoriades and Mr S Kapoor during the appeal process.

10. Following the hearing, I received oral submissions from both Counsel as to the merits of the claim.

11. The hearing was intended to deal with both merits and remedy. However, due to technical difficulties experienced by the Claimant in dealing with the remote hearing and electronic bundles, a significant amount of Tribunal time was lost on day 2 of the hearing during her evidence which had to be paused whilst the technical difficulties were resolved. Consequently, I indicated that the hearing would deal with liability only. Accordingly, no evidence or submissions were heard as to remedy. The technical difficulties experienced by the Claimant in no way influenced any other aspect of this case.

12. Having heard evidence from all the witnesses, I am satisfied that none of them came to court intending to give dishonest evidence and all gave evidence to the

best of their ability. However, some considerable amount of time has passed since the events this case concerned, which primarily took place in 2019 and early 2020 (over 3 years ago). Additionally, I was referred to events in 2014-2015 (over 8 years ago). Time inevitably takes its toll on the accuracy and reliability of memory and in this case, I found that the passage of time has negatively impacted on the extent and accuracy of the recollections of all of the witnesses. However, I found the evidence from the Respondent's witnesses to be more consistent with other witnesses and with contemporaneous documents and consequently to be more reliable than that of Claimant.

The Submissions

13. In essence Ms Beech, on behalf of the Respondent, highlighted the evidence which she said established that the reason for dismissal was the Claimant's conduct and that the Respondent acted reasonably in treating it as sufficient reason for summary dismissal and that the dismissal was fair. She points to the objective video evidence as reasonable grounds for the Respondent's belief and asserts that, in light of this, the Respondent's investigation was sufficient, and no further investigation would have changed the conclusion. She suggested the Claimant's case was incoherent and not consistent with itself or objective evidence. She submitted that it was not inappropriate to take a final written warning into account but that in any event the Respondent's witnesses had indicated they would have dismissed in an event as a result of the seriousness with which they viewed the Claimant's conduct and the presentational and reputational risk her conduct posed to the Respondent.

14. She asked the Tribunal to conclude that even if there was procedural unfairness, it would have made no difference to the outcome, that the Claimant contributed to her dismissal as a result of her conduct and that it would be just and equitable to reduce both the basic and compensatory award. She also sought a reduction of any compensatory award by 25% to reflect the Claimant's failure to engage with her appeal hearing.

15. In summary, Mr Mannan, on behalf of the Claimant, submitted that the Respondent's investigation was deficient and not reasonable in all the circumstances, in particular as they failed to try to interview the person identified as being the maker of the video and did not ask all the employees who were interviewed all relevant questions or establish relevant details regarding the Claimant's break entitlement and where she took them. Also, that procedurally the disciplinary process was unfair as Mr Islam should not have been the disciplinary officer in light of a previous grievance raised by the Claimant about him and because he had initially received the video. He requested an ACAS uplift to reflect these deficiencies.

16. Mr Mannan was also suggested that Mr Islam had made his mind up before hearing from the Claimant and that the Respondent should not have taken the existence of a final written warning into account as it post-dated the conduct which led to the dismissal, asserting that the Claimant may not have been dismissed had it not been.

17. He asked the Tribunal to draw a distinction between a brief nap in a state of semi-consciousness where at least some alertness was maintained, and a deep sleep where it was not. He suggested that as the Respondent's examples of gross misconduct included only sleeping on duty, a brief nap could not have amounted to a gross misconduct and asked the Tribunal to find that the video did not establish anything more than that the Claimant had closed her eyes and the Respondent's failed to have sufficient regard to the Claimant's account that she was not sleeping. He suggested any *Polkey* reduction should be no more than 5-10%.

The Issues for the Tribunal

18. Prior to the hearing the issues had been agreed at the case management hearing on 2nd March 2021. Some of those issues fell away on the Claimant's withdrawal of her discrimination complaint. The relevant parts of the agreed list of issues are appended to these reasons.

Relevant Law

19. Section 94 of the Employment Rights Act 1996 ("the 1996 Act") confers on employees the right not to be unfairly dismissed. Enforcement of that right is by way of complaint to the Tribunal under section 111.

20. The Claimant must show that she was dismissed by the Respondent under section 95 but in this case, the Respondent has admitted that it dismissed the Claimant (within section 95(1)(a) of the 1996 Act) on 23rd January 2020.

21. Section 98 of the 1996 Act deals with the fairness of dismissals. There are 2 stages that the Tribunal must consider. Firstly, the Respondent employer must show that it had a potentially fair reason for the dismissal within section 98(2). In this case. The Respondent states that the reason was gross misconduct, a potentially fair reason.

22. Secondly, having established the reason for the dismissal, if it was a potentially fair reason, the Tribunal has to consider, without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason.

23. Section 98(4) of the 1996 Act deals with fairness generally and provides that the determination of the question of whether or not the dismissal was fair or unfair, having regard to the reason shown by the employer:
    (a) depends upon whether in the circumstances (including the size and administrative resources of the employers undertaking) the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee; and
    (b) shall be determined in accordance with equity and the substantial merits of the case.

24. There is also well-established guidance for Tribunals on the fairness within s.98(4) of misconduct dismissals in the decisions in ***British Home Stores -v- Burchell [1980] ICR 303*** and ***Post Office –v- Foley [2000] IRLR 827***. In summary, the Tribunal must consider whether:
    (i) the employer had a genuine belief in the employee's guilt (this goes to the reason for the dismissal);
    (ii) such genuine belief was held on reasonable grounds;
    (iii) the employer had carried out a reasonable investigation into the matter;
    (iv) the employer followed a reasonably fair procedure; and
    (i) dismissal was an appropriate punishment as opposed to some other disciplinary sanction, such as a warning.

    The burden of proof in relation to (i) is on the Respondent whereas for (ii) to (v) above the burden of proof is neutral.

25. In considering all aspects of the case, including those set out above, and in deciding whether or not the employer acted reasonably or unreasonably within section 98(4) of the 1996 Act, the Tribunal must decide whether the employer acted within the band of reasonable responses open to an employer in the circumstances.

26. The Tribunal is not required to decide whether in fact, the Claimant was sleeping on duty and indeed the Tribunal makes no findings in relation to this.

27. It is immaterial how the Tribunal would have handled events or what decisions the Tribunal would have made. The Tribunal must not substitute my view for that of the reasonable employer – ***Iceland Frozen Foods Limited –v- Jones [1982] IRLR 439***, ***Sainsbury's Supermarkets Limited –v- Hitt [200]3 IRLR 23***, and ***London Ambulance Service NHS Trust –v- Small [2009] IRLR 563***.

28. The standard of proof to be applied by the Tribunal is the civil standard, namely, on the balance of probabilities.

Relevant Findings of Fact and Conclusions

29. The Respondent is well-established company providing security guarding and related services to customers at various locations. It employed approximately 20 persons at the location where the Claimant worked and a substantially greater (but unknown) number throughout the UK.

30. The Claimant started her employment with the Respondent on 4th August 2008, working as a security guard. Over the course of her employment with the Respondent she has had 2 contracts of employment. Her initial contract of employment [**82-85**] was superseded by a new employment contract on 4th March 2010 [**89-95**]. This latter contract was in the Respondent's standard format, required the Claimant to work 42 hours per week [**90**] and contained a mobility clause [**89**].

31. The company handbook and disciplinary procedure contained examples of gross misconduct [**252 &135**]. The list of examples included "Fighting or assault on another person" and "Sleeping whilst on duty".

32. There was some debate between the parties as to what meant by "sleeping" for the purposes of this latter example of gross misconduct. In particular, whether only deep sleep lasting a significant period was covered or whether it could also encompass a lighter nap with eyes closed, and a reduction in consciousness (not amounting to complete unconsciousness) for a short period of say 10-15 mins.

33. I heard evidence from the Respondent's witnesses that it was part of the job of security guard to respond emergencies, and that they must be ready to react quickly. To some extent this was also acknowledged by the Claimant in her statement. Although the Respondent's employees are entitled to breaks during their working day, they must remain alert during those breaks and ready to respond in the event of an emergency. If an emergency occurs during their break time they are required to respond quickly and drop everything but are entitled to make up the lost break time by taking a further equivalent period of break later in the working day once the emergency has resolved. Those requirements are reflected in the fact that they are paid for the duration of all breaks.

34. The examples of what constitute gross misconduct cover all of the Respondent's employees across all its locations, including all security guards. It is not relevant to its interpretation, as was suggested by the Claimant, that there were plenty of other staff at the Claimant's place of work who could respond in an emergency. The purpose and intent of the job and its terms is to be alert and responsive throughout working hours and it makes no difference to that requirement how many other people might also be able to respond in case of occurrence of an emergency.

35. I concluded that the example of gross misconduct "sleeping on duty" encompasses both deep sleep and light naps. Both reduce alertness. It is not qualified and covers all hours of work including all break times, whether that be 15 minute morning or afternoon breaks, or the longer lunch break. It also covered any further periods of break time which were afforded to the Claimant by way of reasonable adjustment as a result of her disabilities.

36. The Claimant originally worked as a security agent at London City Airport but during the course of her employment with the Respondent the Claimant has worked at a number of different locations on various dates.

37. Neither Mr Islam nor Mr Gregoriades were based at any of the locations where the Claimant worked. Mr Islam worked remotely and had oversight over a large number of sites. He visited the locations where the Claimant worked from time to time.

38. In 2014/2015 the Claimant was working at Romford JCP. As a result of a number of incidents which occurred there, she raised a formal grievance complaining of being picked on, bullied and discriminated by other members of the security team. She also complained of a lack of adjustments for disability (she has a foot

condition which impacts on her ability to stand) and that Mr Islam had picked on her by failing to grant periods of requested leave on 2 occasions and by sending a text.

39. That grievance was investigated and determined by Mr Gregoriades. Following the investigation and a grievance hearing held on 5th November 2014 and 26th March 2015, the Claimant was sent a grievance response letter dated 1st April 2015 [**supplementary document**]. That letter partly upheld her grievance, finding that some officers on site had acted unacceptably and inappropriately. The other parts of her grievance were not upheld and in particular, those parts relating to Mr Islam were not upheld although it was acknowledged that there could have been better communication.

40. The Claimant did not appeal the grievance outcome and made no further complaints about Mr Islam's conduct despite her evidence to the Tribunal that she experienced unease on the infrequent occasions when he attended site as she was uncomfortable with the way she perceived that he looked at her. Although the Claimant now places great weight on her treatment by Mr Islam, none of the evidence I saw or heard suggests that Mr Islam held any personal bias against, or animosity towards, the Claimant or that he was keen to dismiss her. In fact, as I will set out below, it is clear that he did not dismiss her when he first had the opportunity to do so.

41. At the time of the incidents underpinning this claim the Claimant was working as a Security Officer at the DWP's Barking premises, where she was placed between about January 2019 and September 2019.

42. On 26th September 2019 an allegation was made against her that she had assaulted her Team Leader, Shabbir Ahmed. She was suspended from work whilst Mr Shemar investigated that allegation and until the conclusion of the disciplinary process. A disciplinary hearing was held on 17th October 2019 by Mr Islam. Following the conclusion of that hearing she was issued with a final written warning on 18th October 2019 as a result of a finding that she had, whilst on duty, physically assaulted her team leader by grabbing his neck with her hand [**96-97**].

43. Had Mr Islam wanted to remove the Claimant from the Respondent's business, as the Claimant suggested, he had ample opportunity to do so at this point. Assault was classed as a gross misconduct offence [**252 & 135**] and he had satisfied himself that it occurred. He did not do so, he issued final written warning instead.

44. Although the Claimant told the Tribunal that she did not accept that she assaulted her team leader as was alleged in that disciplinary, she did not appeal the final written warning that she was given in relation to that incident and the validity of the final written warning not challenged in these proceedings.

45. As a result of this incident, the Claimant was removed from Barking JCP and placed instead at the DWP's offices in Walthamstow. She did not work at Barking at any other time than the period between about January 2019 and September 2019.

46. The parties are agreed that the Claimant was dismissed without notice on 23rd January 2020 and that the reason given for the dismissal was gross misconduct by way of sleeping on duty.

47. The circumstances in which this came about were as follows:

48. Shortly after issuing the final written warning Mr Islam received an e-mail from one of the Respondent's Barking JCP employees, Mr Baig which attached a video clip. The video was accompanied by an e-mail read "Sir i am sending proof about your g4s staff thanks regards from ijaz' [**98**].

49. The Claimant suggested that Mr Baig's use of the words "i am sending proof" inferred that this video was somehow procured by, or requested by, the Respondent's management or that the Respondent's managers had requested that the Claimant be monitored or filmed. There is no other evidence of this and Mr Islam denied it. There could be many reasons why the e-mail is worded in the way that it is, including but not limited to language discrepancies, between the way Mr Baig might use English and the way other people might. I accept Mr Islam's evidence that he had not sought, and neither had any other person on behalf of the Respondent, to obtain evidence about the Claimant. I can find no plausible reason why he would be seeking to remove Claimant. I have already noted that, had he wished to do so, he had ample opportunity to as a result of the assault allegation.

50. On receipt of the e-mail, Mr Islam passed it to Mr Shemar to conduct an investigation. Mr Shemar did so by viewing the video, interviewing the Claimant [**101-109**] and then interviewing Mr Baig and 5 other employees of the Claimant who worked alongside the Claimant at Barking JCP [**110-127**]. The interviews were very brief. Mr Baig said that he did not take the video and did not know who had. It had been sent to him by WhatsApp from an unknown number that did not respond when he telephoned it. He did not know when it was taken and could not remember when it had been sent to him.

51. The other employees were asked whether they had seen the Claimant sleeping at work. All said they had not. Ahmed Atiq additionally volunteered that he had seen a video taken by Waseem Akhtar which showed the Claimant sleeping in the security office. He did not know when the video had been taken.

52. By the time the video was received by Mr Islam, Waseem Akhtar was no longer an employee of Respondent as a result of having been dismissed following a disciplinary process. No attempt was made to contacted him as part of the investigatory process or subsequently.

53. Having viewed the video, Mr Shemar formed the view that the video showed the Claimant to be sleeping whilst on duty. None of the employees interviewed gave any evidence that was corroborative of that conclusion, but neither did they undermine it. If any had said they had seen her sleeping, that had would have been corroborative of the impression Mr Shemar formed of the video contents.

54. However, as the time when the video was taken had not been identified, the fact that no employee had seen the Claimant sleeping on duty was not evidence that she was not doing so on the occasion caught on video. I conclude that the information given by the other employees was indicative only of the fact that it was very unlikely that the Claimant regularly slept whilst on duty. Having heard from the Respondent's witnesses and seen the various documents in the case, I am satisfied that in all that followed, the Respondent's proceeded on the basis of the single incident shown in the video.

55. The video footage is 2 minutes, 8 seconds long. It shows the Claimant (there is no dispute as to this) in work uniform slouched back and semi-lying in a grey office type chair with arms and wheels. She has one hand resting on her chest and the other resting on her leg. Neither are holding any item. The Claimant is wearing earpods (not part of her work equipment) and appears to have her eyes closed throughout. A mobile telephone, a security identity card with its lanyard wrapped around it and a work radio are situated on a white table-top next to her. None can be positively identified as being the Claimant's. Although she was in possession of all of these items, and none is visible about her person, the view of her on the video does not preclude the possibility that they were on her person in a pocket but out of view. The Claimant is entirely motionless throughout the footage and does not stir or react at all to any outside stimulus. Background sounds which can be clearly heard on the video include, in particular, a door opening/closing and creaking, people talking in background and (apx 1min 50 into the recording) an electronic ringing noise like a mobile ring tone.

56. Mr Shemar's view that the Claimant was sleeping whilst on duty was neither perverse nor unreasonable in light of the contents of the video.

57. There is no dispute between the parties that the location of the Claimant at the time the video was taken was a room at Barking JCP described as 'back of house'. This is a room behind an area where there is requirement for DWP staff and visitors to the building to sign in. The Claimant's location was clearly visible to anyone signing in as a result of large windows from that sign in area as can be seen on photographs [**351-353**]. It was not a designated break room. There were however 2 other substantial sized break rooms with ample seating at Barking JCP where staff were permitted to take breaks [**354-355**].

58. The location of the Claimant in the video means that it must therefore have been taken sometime between January and September 2019 and prior to the issue of the Claimant's final written warning.

59. During his investigatory interview with the Claimant on 2nd January 2020 [**106-108]** Mr Shemar showed her the video and put to her his view that the video showed her to be sleeping whilst on duty. He noted that she was on duty from 08:45 to 17:15 including breaks which is what she was paid for. The Claimant was accompanied by her union representative, Nigel Brewster. She denied sleeping on duty but refused at that stage to acknowledge that it was her in the video. She challenged the Respondent placing any reliance on a video taken without permission on work premises and questioned both the delay since the video came to the Respondent's attention and the contents of the video, noting

the lack of information as to the date when it was taken and effectively suggesting that the officer in the video might be listening to music rather than sleeping.

60. The delay between the video being received by the Respondent on 12th November 2019 and the investigatory interview on 2nd January 2020 was a longer period than might have been expected. However, taking into account all the circumstances, there was nothing unreasonable or inappropriate about it. Within days of the Respondent receiving the video the Claimant was absent from work for an extended period until 20th December 2019 due to being on compassionate leave or annual leave. The investigatory meeting was first scheduled for 24th December 2019 but was rearranged for the Claimant's convenience as her union representative was not available. The Christmas period of absence intervened and the investigatory interview was held as soon as work reconvened after the holidays. I can see no unfairness to the Claimant nor any cause for criticism of the Respondent in relation to this.

61. Following the completion of the investigatory stage, Mr Shemar produced an investigatory report [**129-130**] and referred the matter to Mr Islam for a disciplinary hearing.

62. Mr Islam reviewed the material gathered at the investigatory phase and the video itself. He did not undertake any additional investigations of his own before conducting a disciplinary hearing with the Claimant on 23rd January 2020 [**146-161, 157-161**]. At the hearing the Claimant was again supported by her union representative, Nigel Brewster. She was given another opportunity to view and comment on the video. On this occasion the Claimant confirmed that it was her that was shown in the video. In brief, she denied sleeping on duty or that she would go to the back of house location if she wanted to sleep but accepted via her union rep that her posture was wrong. She suggested that she could be on her phone or listening to music and denied that the phone seen on the desk in the video was hers. She also said: "how can anyone conclude that I was sleeping as I had my earpiece on?"

63. Mr Islam adjourned the disciplinary hearing after interviewing the Claimant and took about 1 hour to review the allegations, evidence and the Claimant's response before resuming the hearing and informing the Claimant and her representative that the Claimant would be summarily dismissed for gross misconduct for sleeping on duty and that her employment would terminate immediately. He subsequently wrote to the Claimant on 24th January 2020 confirming his decision and the reasons for it [**162-163**].

64. I am satisfied, having received Mr Islam's evidence, and considering the contemporaneous documentation, that Mr Islam reached the conclusion, independently of Mr Shemar, that the video showed the Claimant to be sleeping whilst on duty and that the Claimant had provided no explanation for the same. He concluded that this was a serious disciplinary matter for the reasons outlined at paragraphs 33-34 above and because there was a serious reputational risk to the Respondent from the Claimant's conduct, especially as the Claimant could have been seen by the Respondent's client or anyone walking into the building

as a result of her location in the back of house. He concluded that the only appropriate sanction was summary dismissal without notice.

65. He took into account the Claimant's length of service, albeit that he miscalculated or mis recorded the duration of service by 1 year. However, I accept his very clear evidence that difference between 10 years, 1 month length of service (the recorded amount) and 11 years, 1 month length of service (the actual amount) would have made no difference to the outcome.

66. He also took into account the existence of the final written warning detailed at paragraph 42 above.

67. Following her dismissal, the Claimant brought an appeal against her dismissal. She did so by a letter from Addison & Khan Solicitors whom she had instructed rather than directly from herself [**164-167**]. That letter set out a number of reasons for her assertion that the outcome of dismissal was unfair. For the first time, she sought to challenge the final written warning, which she suggested was part of plot to remove her from site or dismiss her. She also suggested that she had been dismissed not for allegations of gross misconduct but for the benefit of the Respondent because she held a contract with different terms from other employees including 42 hours guaranteed work and an inability to be moved from site to site. The letter stated that the Claimant maintained that she was not sleeping whilst on duty and would not have done so. It suggested that she was holding her phone in her hands on the video and that had she been asleep her phone could not have remained clutched in her hand. It also stated that the only reason she would have been sitting in the area shown on the video was whilst she was on a break when she usually listened to music and would be browsing on her mobile phone or talking on her mobile phone. The letter declared that it was only an assumption that she was asleep and that she had not been given an opportunity to defend herself and asserted that a proper investigation had not been carried out and that the procedure adopted had not been fair.

68. This letter contained a number of matters which had not previously been raised by the Claimant during the disciplinary process. Further, some of the assertions made in the letter were demonstrably incorrect. The Claimant had by that stage been afforded opportunities both at the investigatory hearing and disciplinary hearing to defend herself and the video clearly showed that she did not have a mobile phone in either of her hands.

69. The appeal was referred to Mr Gregoriades for determination. He reviewed the appeal letter and the material that had been available to Mr Islam, including that generated by Mr Shemar, and sought to hold an appeal hearing with the Claimant.

70. He scheduled a hearing for 12th March 2020 and wrote to the Claimant directly notifying her of the hearing on 28th February 2020 [**276**]. The Claimant did not attend the hearing, and Mr Gregoriades received no communication which requested a change in date or explained her absence. He wrote to the Claimant again on 17th March 2023 [**168**] noting her non-attendance at the hearing on 12th March 2020, inviting her to a further video hearing on 26th March 2020 and

advising her of her right to be accompanied and that it was her responsibility to attend. He also warned her that if she failed to attend without prior notice and without good reason the meeting could be held in her absence.

71. The hearing on 26th March 2020 was scheduled to be by video rather than face to face as by that date the COVID 19 pandemic had resulted in the UK government imposing restrictions on face-to-face contact between people.

72. The Claimant did not attend the hearing on 26th March 2020. No message was received by Mr Gregoriades regarding her non-attendance or requesting that the appeal hearing be rescheduled to a different date. Consequently, Mr Gregoriades proceeded with the hearing, which was also attended by Babs Lawal as notetaker, in the Claimant's absence [**171-173**].

73. The Claimant said in her oral evidence that both she and her solicitors had tried to contact Mr Gregoriades both by telephone and by e-mail in advance of one or other (or both) of the hearings. However, she also gave evidence that neither she or her solicitors had in fact made contact with him by telephone, and that her e-mail bounced back to her and did not go through. There was no evidence that either she, or her solicitors, had made any written attempt to contact Mr Gregoriades other than the unsuccessful e-mail and no evidence from the Claimant's solicitors as to their attempts to contact him. Nor was it suggested that any voicemail had been left.

74. Following the hearing on 26th March 2020 Mr Gregoriades fully reviewed the investigation and disciplinary packs. Additionally, on 21st April 2020 he interviewed Mr Kapoor (the Claimant's team leader at Barking JCP) by telephone in relation to the use of the room in which the Claimant was filmed. Mr Kapoor told him that the room was for the security team during the course of their active employment, that it was not supposed be used for breaks and that officers working at Barking had been informed on many occasions not to use it as break room. Mr Gregriades was also advised that there was a large canteen area where breaks could be taken and that the clients themselves (that is the DWP) had not made any complaint about officers using that room for their breaks.

75. On 28th April 2020 Mr Gregoriades also interviewed Mr Islam by telephone. Mr Islam told him that no-one had asked for the Claimant to be filmed, that Mr Islam had formed the opinion on seeing the video footage that the Claimant was sleeping, and that both the Claimant's previous conduct (including the live sanction for gross misconduct contained in the final written warning) and the Claimant's length of service had been taken into consideration in reaching the decision to dismiss.

76. Mr Gregoriades also obtained and read a copy of the Claimant's employment contract.

77. On 28th April, having concluded that there was no unfairness in the dismissal and nothing of substance in the points of appeal, Mr Gregoriades wrote to the Claimant dismissing her appeal and addressing in detail the allegations that she

had raised in her appeal [**174-176**]. The letter informed the Claimant of her right to appeal his decision and how to do so.

78. The Claimant did not exercise that right. Nor did she challenge the fact that the dismissal hearing was held in her absence, despite her evidence that she had wanted to attend the appeal hearing but had been unable to do so for a variety of reasons.

79. Instead, she initiated this claim in the Employment Tribunal, raising further new matters that she had not raised previously. These included that it was inappropriate and unfair for Mr Shemar to have been appointed to investigate the allegation and that it was inappropriate and unfair for and Mr Islam to undertake the disciplinary hearing in relation to the video given their prior involvement in the previous disciplinary and in light of the grievance the Claimant had brought against Mr Islam.

80. The disciplinary process followed by the Respondents was in line with the Respondent's disciplinary procedure [**132-140**]. I do not find there be anything suspicious, unfair or inappropriate about the appointment of Mr Shemar and Mr Islam to conduct the investigatory and disciplinary stages respectively of this process.

81. I can find no reason why either were unable to conduct a fair or independent investigation or disciplinary merely because what gone on before. I accept the Respondent's evidence that there was a small pool of people who were dealing with investigatory and disciplinary matters at the Respondent and a fair amount of work as a result the substantial number of employees this Respondent has. Mr Shemar and Mr Islam were the most appropriate and available people to deal with the investigatory and disciplinary stages of this allegation at the time.

82. The mere fact that they were the same individuals involved in a previous disciplinary did not preclude them from dealing with this disciplinary in the same capacities. No allegations of unfairness in relation to the previous process were made by the Claimant and I found no evidence of any personal bias against, or animosity towards, the Claimant by either of them.

83. In relation to Mr Islam, whilst the Claimant had previously brought against him, I repeat my findings of fact regarding that grievance at paragraphs 38 - 40 above. That grievance had been almost 5 years prior to the Mr Islam's involvement in the disciplinary giving rise to her dismissal, it had not been upheld and there had been no further problems or grievances raised. Additionally, no issue had been raised in relation to Mr Islam's role as disciplinary officer in relation to the previous disciplinary concerning the assault which could have led to the Claimant's dismissal (but did not do so – see paragraphs 42-44 above).

84. Against these findings, I considered the legal matters on the list of issues. These are my conclusions on those matters.

Principal Reason for Dismissal

85. It is not in dispute that the reason that the Respondent says that they dismissed the Claimant was because it believed that the Claimant was guilty of gross misconduct by sleeping on duty on the occasion shown in the video. Although the Claimant sought to suggest that there were other reasons for her dismissal, namely that Mr Islam wanted her out of the business, that there was a conspiracy or plot to dismiss her and/or due to the terms of her contract being different and less favourable to the Respondents, for the reasons set out above, I found no credible or convincing evidence to support any alternative reason for dismissal.

86. I am satisfied that the reason for the dismissal was gross misconduct. Misconduct is a potentially fair reason for dismissal - section 98(2)(b). Subject only to the genuineness of the belief, the Respondent has therefore satisfied the requirements of section 98(2).

Genuineness of Belief

87. Having heard from the Respondent's witnesses orally, as well as receiving their written evidence, I find that all the Respondent's relevant management, Mr Shemar, Mr Islam, and Mr Gregoriades held a genuine belief that the Claimant was guilty of misconduct, namely of sleeping whilst on duty. They each reached their own independent conclusion to that effect based upon their own assessment of the contents of the 2minutes 8 seconds video forwarded to the Respondent.

88. Mr Islam's evidence was clear and unequivocal about why he dismissed the Claimant. He had considered the material arising from the investigation, placing particular emphasis on the objective evidence of what could be seen on the video, and the lack of any credible explanation from the Claimant for what was shown. Mr Gregoriades evidence was equally clear about why he dismissed the appeal. The contents of the dismissal letter [**162-163**] and the appeal hearing outcome letter [**174-176**] are also consistent with this being a genuine belief.

89. The Claimant's behaviour, as seen on the video footage, provided an objectively reasonable foundation for a genuine belief.

90. No positive material was presented by the Claimant that contradicted that evidence. The Claimant did not challenge the veracity of the video, or the observations of what the video contained which had led the Respondent's witnesses to conclude that she was sleeping whilst on duty.

91. The Claimant assertions, particularly her suggestion that she may have been browsing on, or otherwise using, her phone at the time the footage was taken (as suggested at her disciplinary interview and in her appeal letter) were inconsistent with the footage and inherently implausible. The fact that no-one else who was interviewed had seen her sleeping was not inconsistent with, and did not preclude, her sleeping on that occasion. None of the other Respondent's employees (other than the author of the footage) is seen in the video.

92. In all the circumstances, I find that it was not beyond the range of reasonable responses for the Respondent to find the Claimant's explanation implausible or incredible in all the circumstances and to reach the conclusion that the Claimant was sleeping based on what was shown on the video. Accordingly, I am satisfied that the Respondent's belief was genuine.

Investigation and Reasonableness of Belief

93. I must also consider therefore whether, at the time the belief was formed, the Respondent had carried out as much investigation into the matter as was reasonable in the circumstances. The Claimant's case is that the investigation was inadequate, in particular as the person who allegedly took the footage was not interviewed and no proper attempt was made to establish the date and time when the footage was taken.

94. The allegation that the Claimant was sleeping on duty was a serious one. Sleeping on duty was categorised as gross misconduct justifying summary dismissal under the Respondent's disciplinary policy. In addition, a dismissal for this type of action could be damaging to the Claimant's future career prospects as a security officer.

95. The Respondent in this case is a fairly large organisation, employing a large number of people and operating a number of different contracts across different sites. It has an extensive management structure, as indicated by the status and job descriptions of the 3 witnesses who gave evidence on behalf of the Respondent. It also has substantial administrative resources, as evidenced by the presence of notetakers at, and transcription of notes from, the various interviews and hearings during the disciplinary process as well as the existence of a written disciplinary policy.

96. The Respondent's investigations consisted primarily of viewing the video, seeking (but not finding) corroborative evidence from the Respondent's employees who worked alongside the Claimant, and giving the Claimant an opportunity to comment upon the video during the investigatory and disciplinary stages.

97. The evidence of the video was compelling, objective and did not rely on subjective considerations for its veracity. The Respondent's investigatory and disciplinary officers were entitled to form their own view as to what the video showed and did so. Each separately, and without hesitation, concluded that the video evidence showed that the Claimant was sleeping whilst on duty.

98. Although they took no additional steps to investigate the alternative possibily, put forward by the Claimant in the investigatory interview, as to what she was doing in the video (resting and using her phone) it is difficult to see what further investigation could have been undertaken. Close inspection of the video shows she is not holding her phone and has her eyes closed.

99. The allegations now raised by the Claimant about the appropriateness of Mr Islam to conduct the disciplinary hearing and as to the conspiracy or plot to remove her from the business were not raised by her prior to her dismissal and could not therefore be investigated.

100. During her appeal, but not before, the Claimant said that a team leader at Barking had said that she was going to be removed from site. Although this was not investigated by Mr Gregoriades, by time the video had been sent to the Respondent the Claimant had already left the Barking site as detailed above and the Claimant did not attend the appeal hearing to provide further information. In her evidence to the Tribunal, the Claimant accepted that nobody, including that team leader, had said they want to get her out of a job altogether. For the reasons set out above (paragraph 49) there was no reason to suppose that this was material to her dismissal, and I do not find that the Respondent can be criticised for not pursuing enquiries regarding this.

101. Even if the Claimant had raised the issues about conspiracy and/or the appropriateness of Mr Islam to conduct the disciplinary process, there was in fact nothing in these issues and an investigation of them would have revealed nothing which would have changed the course of the disciplinary process.

102. There were however other investigations that could have been undertaken by the Respondent, but which were not undertaken.

103. Although the Claimant had not positively asserted in the investigatory meeting or the disciplinary meeting that she was on a break, she had alluded to that possibility.

104. At no stage did the Respondent did not ask the witnesses they interviewed if they had seen the video. They did not ask questions of those who stated that they had seen it (Mr Baig and Mr Atiq) which might have assisted to narrow down the date and time when the video was taken. For example, by asking when they had first become aware of it. Nevertheless, even had such questions been asked, it is unlikely that it would have led to the specific date and time when the video was taken being identified and, if this could not be identified, it would not have assisted to determine whether the Claimant was in fact on a break or not at the time the video was filmed.

105. The Respondent also did not ask any of the employees interviewed during the investigatory phase about where in Barking JCP the Claimant took her breaks and whether, despite not being supposed to do so, the Claimant regularly took breaks in the location where she was filmed.

106. It is however clear that both Mr Islam and Mr Gregoriades had some regard to these matters. Each considered the location and that she might have been on a break but concluded that she should not have been on a break in that location and at appeal stage Mr Gregoriades made enquiries of the Barking Team leader, Mr Kapoor, who informed him that the staff members at Barking had been told that repeatedly that they should not take breaks in that location.

107. In any event, for the reasons detailed above, the Respondent considered the Claimant to be on duty the entire time she was present at work, in uniform and logged in, even during her breaks. Accordingly, in the context of the disciplinary for sleeping on duty, whether the Claimant was on a break or not was considered irrelevant or largely irrelevant.

108. Further, any mitigation that may have resulted from the Claimant being clearly established to have been on a break at the time when the video was filmed, is likely to have been largely negated by the fact that she was taking a break where she should not have been and was visible to any client or contractors who went through that area, carrying a risk of reputational damage.

109. Perhaps most significantly, no attempt was made by the Respondent to contact or interview potentially the most important witness, Waseem Akhtar, who had been identified by another witness as being the person who recorded the video.

110. Notwithstanding the resources available to it, there were barriers to the Respondent's ability to do so as Mr Akhtar was no longer employed by the Respondent. Further, he had been dismissed by the Respondent following a disciplinary process and as well as being less easily accessible, the circumstances in which he had left reduced the prospects of him being cooperative and the Respondent would no longer have had any ability to compel him to provide any information.

111. As, for the reasons set out above, I am satisfied that each of the Respondent's witnesses independently reached their own conclusions as to what the video evidence showed and were not influenced by anyone else's perception, the only potential advantage to interviewing Mr Akhtar would be to put the video in context in terms of identifying a particular date and time and what happened either side of the video clip. Any information provided would not however have detracted from what could be independently observed on the video and this, and this alone, was the basis for the dismissal. Interviewing Mr Akhtar would therefore have been unlikely to have provided any material additional evidence that would have influenced the outcome of the disciplinary process.

112. I conclude that the failure to investigate the matters set out above did not undermine the fairness of the investigation or the reasonableness of the genuine belief reached. In light of the objective evidence of the video and the Respondent's views regarding breaks, I cannot conclude that no reasonable employer in the Respondent's position would have failed to take the actions the Claimant's counsel has suggested should have been taken through the investigatory and disciplinary process. It was well within the range of reasonable responses of a reasonable employer to proceed in the manner the Respondent did and not conduct further enquiries.

113. Taking all the circumstances into account, I do not consider that there were any deficiencies in the extent and quality of the initial investigation conducted by the Respondent which were material or impacted on the fairness of the dismissal.

Other Procedure

114. I must also consider the disciplinary procedure adopted by the Respondent. The Claimant has taken no issue with the general procedure adopted by the Respondent, which was in accordance with its written disciplinary processes, but has asserted that the disciplinary hearing should not have been conducted by Mr Islam.

115. For the reasons set out above (paragraphs 40 and 80-83) I am not satisfied that there was any reason why Mr Islam should not have been appointed as the disciplinary officer. I note that at no stage prior to the Tribunal proceedings was Mr Islam's appointment as the disciplinary officer challenged by the Claimant, despite the fact that she was assisted by a union representative at the disciplinary hearing and by solicitors at the appeal stage.

116. The procedure adopted by the Respondent appears entirely reasonable and in accordance with requirements of the ACAS Code. Letters were sent in advance of the disciplinary hearing and appeal hearing, the Claimant was afforded the opportunity to attend both disciplinary and appeal hearings and was given ample opportunity to see and comment upon the contents of the video and raise any points that she wished to make. She was given a second opportunity to attend an appeal hearing after failing to attend the first despite no reason for non-attendance having been given and she was offered a second appeal, which she did not avail herself of.

117. For the reasons set out above, I am not satisfied that the procedure adopted by the Respondent was materially unfair or rendered the Claimant's dismissal unfair.

Reasonableness of Sanction

118. I must also consider whether it was in the range of reasonable responses for the Respondent to dismiss the Claimant having formed a genuinely held and reasonable belief that the Claimant was sleeping whilst on duty on a single occasion.

119. That conduct of this nature would be considered to be gross misconduct was clearly set out in both the Respondent's handbook [**252**] and disciplinary procedure [**135**].

120. Although this was a first offence of this type, the Respondent's disciplinary policy clearly permitted dismissal for a first offence in cases of gross misconduct and expressly stated that where an employee commits an act of gross misconduct, then dismissal will normally result [**132 & 134**].

121. Nevertheless, it is clear that dismissal was not the inevitable consequence of gross misconduct. The Claimant was not dismissed in the previous process which also concerned gross misconduct, namely the assault on her team leader but was issued with a final written warning.

122. The Claimant had a lengthy period of service with the Respondent, which was a factor in her favour. However, she also had a previous final written warning for gross misconduct, as above.

123. Mr Islam had regard to the previously given final written warning in reaching his decision to dismiss. Mr Gregoriades also accepted that this was a matter in his mind. The Claimant took issue with the appropriateness of giving any consideration to this final written warning.

124. I note that the behaviour under consideration in this disciplinary process (sleeping) must have taken place prior to the final written warning being issued as it occurred at Barking JCP and the Claimant did not work there after the issue of the final written warning. In light of the Claimant's suspension shortly after the assault allegation, it is likely that it also took place prior to the assault which led to the final written warning.

125. However, both Mr Islam and Mr Gregoriades were clear in their oral evidence as to the seriousness with which they viewed sleeping whilst on duty sleeping and why: namely because it potentially impacts on the officer's ability to deliver the service required by the Respondent's clients and has the potential to cause very substantial credibility and reputational risk to the Respondent should any client have observed such behaviour. It was clear that this was at the forefront of their minds when considering the appropriate sanction and both confirmed that they would have dismissed the Claimant for gross misconduct for sleeping on duty even if she had not been the subject of the final written warning.

126. I therefore have no hesitation in also concluding that on the basis of the genuinely and reasonably held and reasonable belief of the Respondent's witnesses that the Claimant had been sleeping whilst on duty, it was within the range of reasonable responses for the Respondent to characterise the Claimant's behaviour as gross misconduct and summarily dismiss the Claimant.

Conclusion on Unfair Dismissal

127. For the reasons set out above, I find that the Claimant was fairly dismissed by the Respondent within section 98 of the Employment Rights Act 1996. Her complaint of unfair dismissal fails and will be dismissed.

Conclusion on Wrongful Dismissal

128. The Claimant was dismissed summarily, with immediate effect and was not paid for any period of notice. For the reasons set out above, I also conclude that the Respondent was entitled to dismiss her in this manner and the Claimant was not wrongfully dismissed. This complaint also fails and will be dismissed.

Other Matters

129. In light of my findings above, there will be no award for the Claimant and I therefore need not go on to consider whether there should be any adjustments to the Claimant's award. However, if for any reason I am found to be wrong in relation to these findings, I nevertheless make the following observations.

Polkey

130. If I am wrong about the fairness of the procedure and had the process been conducted in the manner Claimant suggested it should have been, in accordance with the principles in ***Polkey -v- AE Dayton Services Ltd [1987] UKHL 8***, I considered whether, the Claimant could nevertheless have been fairly dismissed.

131. I would have concluded that any deficiency in the investigatory or disciplinary process would, at most, have led to a marginal delay, probably of no more than 1 week. It would not have been likely to have taken longer than this to have carried out further investigation, attempted to contact Mr Akhtar or to have located and appointed an alternative disciplinary manager.

132. Even if an investigation had resulted in further information about the date, time or context of the video, and established that the Claimant was on a break at the time the video was filmed, the objective evidence (namely the video) against the Claimant was overwhelming.

133. Further, all three of the Respondent's witnesses reached the same independent conclusion as to what the video showed and considered sleeping whilst on duty to be an extremely serious matter. I am therefore unable to conclude that any other officer of the Respondent conducting the disciplinary hearing would have reached a different conclusion.

134. Taking all of the above into consideration, I find that the chances of the Claimant not having been dismissed in any event to be so vanishingly small as to be insignificant and I would therefore have applied a *Polkey* deduction to limit the compensatory element of the Claimant's award to the equivalent of 1 week.

Contributory Fault

135. I also considered whether, had I determined that the Claimant had been unfairly dismissed, I would have made any deduction for contributory fault.

136. The Tribunal may reduce the basic or compensatory awards for culpable conduct in the slightly different circumstances set out in sections 122(2) and 123(6) of the Employment Rights Act 1996.

137. Section 122(2) provides:

> "Where the Tribunal considers that the conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the

amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly."

138. Section 123(6) provides:

"Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."

139. I would have identified the Claimant's conduct, as seen on the video, as conduct that could give rise to contributory fault and would have found this conduct was culpable, blameworthy and unreasonable. The Claimant was clearly in a public facing location not designated as a breakroom, in work attire, apparently on duty and in a posture that was acknowledged as unacceptable by her union rep and which was not merely unacceptable and inappropriate in that location but conveyed the impression that she was sleeping, or at the very least not alert.

140. I would have found that this conduct caused or contributed to the dismissal. Indeed, it was the only effective cause of the dismissal.

141. I would therefore have made a reduction of 100% to both the Claimant's basic and compensatory awards on the basis of this contributory fault.

142. Whilst it is a rare case where the employee's conduct is so bad as to deprive him or her of any compensation at all despite the employer treating him unfairly, such an outcome is neither unheard of nor impermissible – see ***Ladrick Lemonious -v- Church Commissioners [2013] UKEAT/0253/12/KN***. Taking all the circumstances of this case into account, I find that this is such a rare case.

143. The reasons for this are set out in more detail above but can be briefly summarised as follows:
    (i) There was no material before the Tribunal which reasonably suggested any procedural unfairness on the part of the Respondent had causally contributed to the Claimant's dismissal.
    (ii) The Claimant was in a role which required a high degree of alertness and responsiveness, even during break times and her actions as shown on the video demonstrated neither.
    (iii) Sleeping whilst on duty is unquestionably contrary to the requirements of the Claimant's role.
    (iv) There was substantial objective, credible and contemporaneous evidence to support the allegation that she was sleeping whilst on duty, namely the video evidence.
    (v) The Claimant has not mounted any credible denial of her actions and even her union representative conceded at the disciplinary hearing that the Claimant's posture as shown on the video was unacceptable.
    (vi) The Respondent's disciplinary policy clearly states that allegations of this sort amount to gross misconduct which may, and usually would, result in summary dismissal.

(vii) The conduct had the potential to have a very serious detrimental impact both on the Respondent's client and on the Respondent's reputation whether or not an incident in fact occurred. The Claimant's actions were therefore of a very serious nature.

(viii) The Claimant's location was a significant aggravating factor as she was not in break room and was essentially on public display to any visitor signing in.

ACAS Adjustment

144. The Claimant's representative did not raise any specific breaches of the ACAS code in his submissions.

145. It is clear from the evidence that that the Respondents had in place an appropriate disciplinary policy including investigation, disciplinary hearing and appeal and that they followed that process. Having heard the oral evidence and reviewed the correspondence sent to the Claimant throughout the investigatory and disciplinary process, and for the reasons set out above, I am not satisfied that there was any breach by the Respondent of the requirements of the ACAS Code of Practice.

146. The Respondent did however advance an argument that there had been a breach of the ACAS code by the Claimant in failing to attend either of the two scheduled appeal hearings or effectively communicate with the Respondent that she was unable to do so and wanted the hearings rescheduled. Also, by failing to avail herself of the second appeal opportunity offered in the appeal dismissal letter either to challenge the substance of the decision or fact that the appeal had been determined in her absence.

147. None of the factual contentions on which the argument was based were disputed by the Claimant. Nor was it in dispute that the Claimant was aware of the scheduled appeal hearings and received the letter dismissing her appeal.

148. These matters did constitute a breach paragraph 26 of the ACAS Code of Practice. In all the circumstances, I would have considered these matters to have merited a 15% reduction in her compensatory award for breach the ACAS code had I concluded that she had been unfairly dismissed.

Employment Judge Clarke
Date: 24 May 2023

`Claimant: Ms Regina Quartey

Respondent: G4S Secure Solutions (UK) Limited

AGREED LIST OF ISSUES

(as per paragraphs 32 – 39 of the Case Management Order of 2nd March 2021)

Unfair dismissal

32. The claimant was dismissed:

    32.1 Was the reason or principal reason for dismissal conduct, as the Respondent says?

        32.1.1 Was it a potentially fair reason?

        32.1.2 Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

    32.2 The Respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

    32.3 If the reason was misconduct, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

        32.3.1 there were reasonable grounds for that belief;

        32.3.2 at the time the belief was formed the Respondent had carried out a reasonable investigation;

        32.3.3 the Respondent otherwise acted in a procedurally fair manner;

        32.3.4 dismissal was within the range of reasonable responses.

Remedy for unfair dismissal

33. Does the claimant wish to be reinstated or re-engaged to other suitable employment?

34. If so, should the Tribunal order reinstatement or re-engagement? The Tribunal will consider in particular whether this is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

35. If re-engagement, what should the terms of the re-engagement order be?

36. What basic award is payable to the Claimant, if any?

37. If there is a compensatory award, how much should it be? The Tribunal will decide:

    37.1 What figure is to be awarded for loss of statutory rights?

    37.2 What expenses have there been seeking employment?

    37.3 What financial losses has the dismissal caused the Claimant?

    37.4 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

    37.5 If not, for what period of loss should the claimant be compensated?

    37.6 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

    37.7 If so, should the Claimant's compensation be reduced? By how much?

    37.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

        37.8.1 If yes, did the Respondent or the Claimant unreasonably fail to comply with it?

        37.8.2 If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

37.8.3 If the Claimant was unfairly dismissed, did the Claimant cause or contribute to dismissal by blameworthy conduct?

37.8.4 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

37.8.5 Does the statutory cap of fifty-two weeks' pay or [£86,444] apply?

37.8.6 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

Wrongful dismissal / Notice pay

38. What was the Claimant's notice period?

39. The Claimant was not paid for that notice period, and so was the claimant guilty of gross misconduct, or did the Claimant do something so serious that the Respondent was entitled to dismiss without notice?