



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr G Damiano

v

Ocado Central Services Limited

Heard at: Watford Employment Tribunal (by CVP)
On: 3 and 4 August 2023
Before: Employment Judge Forde

Appearances

For the Claimant: In person
For the Respondent: Mr Livingston

JUDGMENT

1. The claimant's claim of unfair dismissal is unfounded and is dismissed.

REASONS

1. By way of a claim form received on 12 October 2022, the claimant pursues a claim of unfair dismissal arising from the termination of his employment by the respondent on 12 October 2022 when he was dismissed for gross misconduct.
2. At the time of his dismissal, the claimant was employed as a Senior Construction Project Manager. His employment started with the respondent on 12 November 2019. In his claim form and in his witness statement, the claimant contended that the allegations made against him which are summarised below arose as a result of him receiving bullying from his line manager, Mr Guy Digby. In essence, the claimant contends that he has not done anything wrong and that he can prove that all of the issues raised against him by the respondent and which resulted in his dismissal had been either approved or supported by his line manager or senior management.
3. In its response, the respondent contends that he was dismissed for gross misconduct in that he breached respondent's the Conflict of Interest Policy, the Confidential Information Policy, The Acceptable Use Policy and the respondent's guidelines for Non-disclosure Agreements. The respondent provides logistics, engineering and technology services to online retailers globally.

4. As I have said, the claimant's employment was terminated on 12 October 2022. He was dismissed for gross misconduct arising from breaches alleged against him by the respondent in respect of the policies I have detailed above.

Background

5. In late April 2022 a supplier of the respondent, namely Vega Construction Group, alleged that the claimant and his former line manager, Mr Martin Lovatt, were requesting direct financial incentives for facilitating contracts with the respondent. It should be noted that in evidence, the claimant appeared to dispute the provenance of the complaint raised by Vega Construction and in particular its Managing Director, Mr Peter Spendley. The basis for the claimant's disagreement in this regard emanates from his belief that the reason behind his dismissal was not in fact anything to do with the findings reached by the dismissing officer, Miss Amy Brookbanks, but instead an animus between himself and Mr Digby.
6. Notwithstanding the claimant's concerns, it was alleged that the claimant and Mr Lovatt had demanded the sum of £14,800 as payment from Mr Spendley in relation to a purchase for a portal frame.
7. On 12 May 2022 the claimant was suspended from work on full pay pending the outcome of the respondent's investigation into the claimant's conduct. As part of the investigation, meetings were held with the claimant on 25 May, 8 June and 13 June of 2022. At the same time, the respondent undertook a series of investigation meetings with Mr Jon Satinet (Construction and Installation Director and the claimant's ultimate line manager) and Mr Spendley, the CEO of Vega Construction Group). In addition, Mr Lovatt was interviewed and the claimant's laptop and mobile phone were reviewed.
8. The investigation was conducted by Ms Dena Sulieman. Her investigation concluded on 5 August 2022. It found that there was insufficient evidence that the claimant had committed anything of concern relating to the allegation of financial impropriety (namely the £14,800 allegation described above). However, the investigation uncovered concerns which required further investigation, namely breaches of the policies governed by the respondent's code of conduct, the policies that I have identified above. This led to a further investigation into the claimant's conduct.
9. An initial disciplinary meeting with the claimant took place on 7 September 2022. The meeting was chaired by Ms Brookbanks. The meeting took place on 29 September 2022 to discuss the allegation that the claimant had breached the respondent's code of conduct and, specifically, the following policies and guidelines:
 - 9.1 Fraud and Prevention Policy
 - 9.2 Confidential Information Policy

- 9.3 Acceptable Use Policy
 - 9.4 Conflicts of Interest Policy
 - 9.5 Llobal Travel and Expenses Policy
 - 9.6 Guidelines on using Non-disclosure Agreements
10. During the course of these meetings the claimant was accompanied by a friend and was able to do so as a result of the respondent extending the claimant's right to be accompanied. The respondent did so in response to the claimant's concern that his mental health had deteriorated during the course of the respondent's investigation.
 11. The investigation found that between July 2021 and February 2022, the claimant was involved in an arrangement whereby he arranged for the respondent to make payments to a supplier. In the first instance the supplier was Vega Construction Group and Elco. In respect of both suppliers, the claimant arranged for the supplier then to pay two individuals, namely Brett Davis and Natalie Bates. The arrangement arose from the claimant's need for support in order to fulfil his role (it was recognised that the claimant was overworked at the relevant time). The claimant identified Mr Davis and Ms Bates as two people who could assist him at different times with different tasks. Both Mr Davis and Ms Bates were his friends. In mr Davis' case is that he was working as a runner on the respondent's sites. Ms Bates was providing the claimant with admin support, primarily transferring documents from the claimant's email account to his Box account.
 12. The investigation uncovered a number of matters pertaining to both Mr Davis and Ms Bates. Specifically, that:
 - 12.1 In July 2021, the claimant paid £200 to Mr Davis out of his own pocket to cover Mr Davis' expenses and asked Elco to repay the money to him directly.
 - 12.2 In July 2021, the claimant allowed Mr Davis to access his Ocado laptop to create a CV and an invoice template.
 - 12.3 In December 2021, the claimant engaged Ms Bates to do work with him without it is said informing his line manager at the time (Mr Satinet) that she was his friend. The claimant disputes Mr Satinet's lack of prior knowledge of this matter.
 - 12.4 The claimant allowed Ms Bates to access his laptop to create an invoice template.
 - 12.5 In May 2022, the claimant wrote a character letter for Ms Bates on the respondent's headed notepaper in relation to a drink driving charge.

- 12.6 The claimant allowed Ms Bates to access his laptop, email and Box account without having a proper non-disclosure agreement (NDA) in place. The question of the NDA, its relevance and need was a matter of significant dispute between the parties. The claimant's case, as I understand it, is that it was not necessary for an NDA to be in Place in respect of Ms Bates given that he was overseeing her work directly by sitting next to her and in addition, she was not accessing confidential information either because that information was in the public domain or because she was not accessing individual documents which give rise to a breach of the respondents policy on confidential information.
- 12.7 On 3 May 2022, Mr Digby sent an email setting out that on 28 April 2022 he had been informed by Mr Spendley that monies had been demanded by Mr Lovatt and the claimant.
- 12.8 On 3 and 5 October 2022, attempts were made by the respondent to obtain the claimant's availability to attend a reconvened disciplinary meeting so that the outcome could be delivered to him in person. The claimant was unwell at this time and failed to respond.
- 12.9 On 11 October 2022, the claimant advised that he had been signed off for stress until 30 October 2022. By this time, the claimant had been suspended pending investigation for almost five months. The respondent considered that due to the length of time that had passed since the claimant was first suspended, it would deliver the outcome of the disciplinary process to the claimant in writing to avoid further delay. The outcome letter was produced by Ms Brookbanks who was at the time, the respondent's former Head of Legal Operations, the position she held until 30 April 2023 before she was made redundant and exited her employment with the respondent. Ms Brookbanks' decision was to terminate the claimant's employment immediately without notice for gross misconduct. She based her decision on the following factors:
- 12.9.1 The claimant's decision to make an advance payment to Mr Davis which he sought to recover directly from Elco as well as allowing Mr Davis to use his Ocado laptop she felt fell below the standards expected of a senior manager of the respondent;
- 12.9.2 The claimant's failure to disclose his personal friendship with Ms Bates to both Mr Satinet and Mr Lovatt which in turn was a breach of the respondent's conflicts of interest policy, as did the claimant's use of the respondent's letterhead to provide a character reference for Ms Bates in relation to a drink driving charge; and
- 12.9.3 The claimant's failure to obtain a signed NDA from Ms Bates despite attending training around their importance and use, and despite having a familiarity with the process of obtaining

NDA's. Ms Brookbanks identified that the claimant had authored 26 NDAs relating to other contractors which demonstrated that he was familiar with the system used by the respondent. Ms Brookbanks determined that the claimant had exposed the respondent to risk because it had no contractual protection in respect of the disclosure of its confidential information against Ms Bates. Further, the claimant allowed Ms Bates to use his laptop and give her access to his emails and his Ocado Box account.

13. In weighting up the decision to dismiss, Ms Brookbanks took into consideration mitigating circumstances that the claimant had raised with her specifically suffering multiple bereavements and the impact that these had had on his mental health. However, Ms Brookbanks concluded that the claimant's behaviour fell significantly below the respondent's expectation of a senior manager. The outcome letter informed the claimant of his right to appeal the decision. The deadline for an appeal was extended until 7 November 2022 given that the claimant had been signed off sick until 30 October 2022 (the time period for an appeal within the respondent's relevant policy is 7 days).

The hearing

14. At the start of the hearing I took steps to explain to the claimant legal parameters for the employment tribunal's review of the respondent's decision to dismiss. I explained in terms that it was a review of the genuineness and reasonableness of the respondent's decision to terminate his employment in the circumstances that it had, confronted with the information that it had at the time of his dismissal. Specifically, I explained to the claimant that the information that the respondent relied upon in order to justify his dismissal would be one that I would assess in terms of its reasonableness of that decision and in relation to the extent of his enquiry conducted prior to dismissing him.
15. Having made enquiries of the parties it emerged that the case management summary and orders from the telephone preliminary hearing that had taken place before Employment Judge Tobin on 8 June 2023, had arrived two days before the start of the hearing. The case management summary set out the issues to be determined in the case. I was at pains to point out particularly to the claimant that the issues that are to be determined are those which should guide the evidence provided to the tribunal in the form of the bundle of documents prepared and submitted and in terms of the witness evidence in the form of statements and oral evidence that it was to hear.
16. The case management order also contained a series of directions. Specifically, the disclosure of documents by list was ordered to take place on or before 29 June 2023 with final hearing bundles to be prepared by 6 July 2023. Judge Tobin had ordered that the parties must agree which documents were going to be used at the final hearing and thereafter, that the respondent must paginate and prepare the bundles and file and send

electronic copies to the tribunal and to the claimant respectively . The order provides guidance as to the content of the bundles noting as follows at 3.2:

“The bundles should only include documents relevant to any disputed issues in the case in respect of both liability and remedy. This means that the hearing bundle should not necessarily be the sum of each party’s disclosure. The hearing bundle should only include the following documents:”

17. The order goes on to describe the normal tribunal forms, documents that would be referred to at the final hearing and the documents must follow a logical sequence in which should normally be a simple chronological order.
18. At the start of the hearing there were two bundles in existence. I am not sure that I received a satisfactory explanation as to why this was the case. The bundles were a main hearing bundle and a supplementary bundle which comprised of respectively 662 pages and 940 pages. In fact, the second bundle had been expanded to from 896 pages. When I asked the parties why it was that there were two bundles in existence which appeared to include a number of irrelevant documents, Mr Livingston explained that the tribunal’s orders in respect of disclosure and bundle preparation were challenging and tight, there had been some slippage in respect of the bundle preparation. It emerged at the end of the first day of the hearing that the supplementary bundle had been expanded and sent to the claimant at 4 o’clock the evening of 2 August, meaning that he was exposed to a review on cross examination of a documents that he had received some 24 hours earlier.
19. At the start of the hearing I was asked to confirm that the only claim before the tribunal was unfair dismissal which was the only claim that was identified on the claimant’s claim form. The claimant confirmed that he was, in addition, seeking to pursue an additional claim of wrongful dismissal. In order for him to do so, he would be required to apply to amend his claim to include a claim of wrongful dismissal. The claimant submitted in respect of his application to amend that it was an error or oversight on his part not to include a claim of wrongful dismissal and that the oversight arose due to him feeling particularly stressed at the time the claim form had to be submitted.
20. The respondent’s response to the application was that this was an amendment at the latest possible moment which would be prejudicial to the respondent, on the basis that the respondent would have to consider whether or not it would have to call further witnesses to deal with the different legal test that wrongful dismissal has to a claim of unfair dismissal. Specifically, the respondent would want to focus on whether the claimant’s conduct did amount to gross misconduct and this in turn would lead to a longer set of questioning, more witnesses potentially and a longer hearing.
21. In summary, the respondent submitted through Mr Livingston that it would not be a proportionate use of the tribunal’s time to amend the claimant’s claim to include one of wrongful dismissal and pointed out that if the claimant

was successful in his claim of unfair dismissal any award of damages would cover the period from the point of which he lost his employment with the respondent. In other words, adding a claim would not make a material difference to the value of his claim.

22. I considered the parties submissions and determined that in line with the case of Selkent Bus Company Ltd v Moore [1996] ICR 836, and Vaughan v Modality Partnership [2021] ICR 535, EAT. I considered that the core test in considering this application to amend was the balance of injustice and hardship in allowing or refusing the application. Having heard representations from the parties, specifically in respect of the practical consequences of allowing or refusing the amendment, and considering all of the relevant factors and determined that balance of convenience in this case lay with the respondent in that the respondent would have to undertake further work of enquiries and in respect of the interests of justice in that it was likely that the longer hearing would be required while the respondent acquired further evidence to address the further issue of gross misconduct. Accordingly, I dismissed the application to amend the claimant's claim to include a further claim of wrongful dismissal.
23. Mr Livingston then raised with me the issue of remedy and highlighted the fact that the claimant had had, during the period after his dismissal taken up temporary employment but had not disclosed any documents in relation to earnings. The claimant was asked to provide that evidence during the course of the hearing. Mr Livingston went on to explain that as the claimant sought re-instatement a witness on the respondent would have to give evidence as to whether or not that was a viable remedy open to the tribunal. However, no such evidence had been presented and therefore Mr Livingston expressed the view that the tribunal should consider the two day full merits hearing as one dealing with liability only with remedy set aside for another time. I determined that the hearing would deal with the issues of liability and remedy (liability and remedy if appropriate) during the two days set aside for the hearing. Given this, Mr Livingstone confirmed that the respondent would arrange for a suitably witness to provide a short witness statement addressing the issue of re-instatement.
24. Turing to issue of case management, and specifically the content of the supplementary bundle. It came to light at the end of day one that the respondent had submitted an amended version of the bundle to the claimant for the first time the day before the hearing. In essence, this was not an agreed bundle and it contained documents where permission had not been sought from the tribunal to adduce further documents to the bundle at such a late stage. It was conceded by Mr Livingston that the respondent had failed to take the steps necessary to bring to the tribunal's attention the contents of the bundle and its desire to include documents that had not been disclosed claimant with the concession coming after I had him a number of questions. I considered that the respondent was making an application to adduce further disclosure at a late stage. I determined that the respondent would not be allowed to adduce one document of the additional, late disclosure, namely the respondent's guidelines to Non-Disclosure

Agreements. I reached my decision in this regard on the basis that it appeared to represent an inherently unfair prejudice to the claimant who, as a litigant in person, was having to contend with a professionally represented opponent and in turn a very sizeable bundle containing myriad and multiple documents which he would have had little time to consider. In my view, it was unreasonable to expect the claimant to be able to deal with this document submitted in so late in the day and then be questioned upon it.

Evidence

25. Ms Brookbanks gave evidence first. The claimant started by asking her questions about the way in which the investigation was conducted, specifically that he was not provided with any information in relation to the specific allegations of misconduct that were being investigated against him. Ms Brookbanks confirmed that she did not conduct the investigation which had been undertaken by Ms Sulieman. The point was also made that it was as a result of the investigation that the allegations of misconduct which led to the claimant's dismissal had been determined.
26. Thereafter, the claimant asked Ms Brookbanks a series of questions around her familiarity with the construction industry in respect of which Ms Brookbanks made the point that she was a qualified commercial lawyer and therefore unfamiliar with the construction sector. She went on to point out that the respondent employed specialist construction lawyers who were best placed to address the claimant's questions in this area and that the issue of the claimant's competence or ability as a construction lawyer was not something that she . Thereafter, the claimant asked Ms Brookbanks a series of questions on non-disclosure agreements and their production within the respondent's Plexus system. In particular, the claimant asked Ms Brookbanks whether or not a Non-Disclosure Agreement was required where no information was being passed to a third party to the respondent, something which Ms Brookbanks confirmed.
27. I asked Ms Brookbanks a series of questions in relation to the breach of conflict policy and the allegations emanating from the claimant's interaction with Ms Davis and Elco. Ms Brookbanks confirmed that she remained of the view that the claimant's conduct in this regard had fallen well below that expected of a senior manager. She said that it was of grave concern to her, that it would fall foul of an audit, and that it was a very serious breach of the respondent's conflict of interest policy as was the loan of a laptop to Mr Davis.
28. Similarly, Ms Brookbanks explained that the engagement with Ms Bates was in breach of the conflict of interest policy because the claimant had a personal relationship with her but had failed to disclose that to his line manager, namely Mr Satinet and previously Mr Lovatt. She made the point as she had done in her letter dismissing he claimant that the claimant's failure to provide a Non-Disclosure Agreement had meant that he had failed to follow the respondent's correct procedure. In addition, it meant that the respondent had no contractual protection against Ms Bates in

circumstances where it was clear that she had had access to confidential information.

29. I assessed Ms Brookbanks was an accurate, reliable and honest historian. If I had any doubt about this they were assuaged by the claimant's description of Ms Brookbanks as having been "quite fair" during the course of her investigation that ultimately led to his dismissal.
30. The claimant gave evidence after Ms Brookbanks. First, he addressed the issue of the £200 payment to Mr Davis. In his view, he felt that this was an appropriate payment to make. He cited his position as a project manager and that it was necessary to have someone recruited to Mr Davies' position so as to facilitate the completion of work at a quicker pace than had been the case hitherto. He confirmed that he allowed Mr Davis used his laptop to create a CV and invoice stating that he created the templates and no one else. He did not agree with Ms Brookbanks' conclusions that his personal relationship with Mr Davis had clouded his judgment and conflicted with his professionalism such that his conduct had fallen below that reasonably expected of a senior manager. It was pointed out to the claimant that Mr Satinet had identified during the course of his interviews that had he been aware of the relationship between Mr Davis and the claimant he would have identified that as a "red flag" and asserted that at no point did he know that Mr Davis was a personal friend of his. The claimant disputes what Mr. Satinet says here.
31. Moving on to Ms Bates, the claimant accepted that he had used the Ocado letterhead for a reference for Ms Bates. He disputed whether Ms Satinet was aware of the fact that Mr Satinet was not aware of his relationship with Ms Bates. In answer to a question on this point the claimant stated the following:

"I remember the conversation with John Satinet. I requested local support, from someone I know, to undertake the role which I was struggling with. I made it quite clear that I was familiar with Natalie Bates..."
32. When it was pointed out by Mr Livingston that the claimant had not mentioned the above provision of information to Mr Satinet in his witness statement, the claimant responded that there were a lot of things in his statement that he had not mentioned.
33. Thereafter, Mr Livingston questioned the claimant in respect of the creation of an invoice template on behalf of Ms Bates. In response, the claimant asserted that he created the invoice templates which he filled in. Mr Livingston pointed out that the claimant had during the course of being interviewed in the misconduct investigation mentioned four times that Ms Bates had created the invoice. In response, the claimant said that he had responded under stress of the situation but he was clear in his mind that he had created the invoice templates.
34. The discussion moved on to cover the issue of Ms Bates' use of the claimant's Ocado laptop. The claimant explained that Ms Bates was

responsible for transferring documents from his Ocado Gmail account to his Ocado Box account for storage. He insisted that as a result of this Ms Bates was not privy to seeing any confidential information which could be accessed on his laptop and that at all times he was able to oversee what she was doing as he was sat next to her. In the circumstances, the claimant asserted the following in respect of the issue of the existence or not of the Non-Disclosure Agreement:

- That he had prepared a Non-Disclosure Agreement for Ms Bates which was produced in hard copy and which she had signed but one that he could not locate during the course of the misconduct investigation and subsequently thereafter.
 - That in any event and following his enquiry of the Plexus System, no NDA was required as he was not sharing confidential information with Ms Bates.
 - That he had not acted in accordance with a provision contained within the respondent's guidelines on Confidential Information Policy and checked the position with the respondent's legal department as to whether or not a Non-Disclosure Agreement was required in respect of an individual third party. The respondent's policy anticipated that it would be an exceptional circumstance where Non-Disclosure Agreements would be allowed for use in such a circumstance.
35. Although the claimant oscillated between two positions the first of having had a signed hard copy Non-Disclosure Agreement with Ms Bates in respect of the work that she was undertaking and second, of no Non-Disclosure Agreement being required due to the fact that no confidential information came before Ms Bates, it appeared to me that his settled position was that he did not accept a Non-Disclosure Agreement was required if no information of a confidential nature was before Ms Bates. In other words, there had been no breach of the relevant policy by virtue of Ms Bates not being able to see confidential information which the claimant asserted to certain of given his close working proximity to Ms Bates and because he was able to observe what she was doing.

Ulterior motive

36. As identified earlier in this judgment, the claimant explained that he was concerned that the genesis of the investigation into his conduct was underpinned by a bad relationship that he had with his line manager Mr Digby. He explained that he had raised the issue with HR who in turn had advised him to raise a grievance which he had declined to do, preferring instead to raise the issue by way of informal words of advice to Mr Digby from HR. The claimant was consistent in his evidence that he felt that Mr Digby was the cause of his issues, something that was refuted in evidence by Ms Brookbanks. That said, the claimant was prepared to volunteer that he had no evidence to support his contention that Mr Digby was responsible for his dismissal.

Issues for the tribunal to decide

Unfair dismissal

37. What was the principal reason for the claimant's dismissal and was it a potentially fair reason under s.98(1) and (2) of the Employment Rights Act 1996? The respondent asserted that the reason behind the claimant's dismissal was one of gross misconduct, namely an accumulation of a number of issues as identified above which in totality were determined by Ms Brookbanks to amount to gross misconduct.
38. If so, was the dismissal fair or unfair within s.98(4), and in particular, did the respondent in all circumstances act within the band of reasonable responses? The claimant stated that the dismissal was unfair because the respondent pursuing an ulterior motive or had reached findings of fact which were not open to it. In addition, the claimant takes issue with the fact that during the course of the investigation conducted by Ms Sulieman that the totality of the allegations that led to his dismissal were not identified to him.

Findings of fact

39. The relevant findings of fact are as follows.
40. As was pointed out by Mr Livingston in submissions, there was very little in terms of factual dispute between the parties. The only factual disputes are the ones that I have identified above as well as the overarching allegation made by the claimant that there was an ulterior motive behind the respondent's actions that led to his dismissal. However, I find no evidence that the claimant's dismissal arose as a consequence of the actions of Mr Digby. In fact, this case is notable in so far as that there is a total absence of any evidence which would support the view that Mr Digby was involved in the claimant's dismissal.
41. Accordingly, I find that in all of the circumstances, the respondent conducted a fair and reasonable investigation of the claimant's misconduct. The consequence of that fair and reasonable investigation allowed Ms Brookbanks to reach the decisions that she did in respect of the allegations of breaches relating to the respondent's policies that are identified earlier in this judgment. Specifically, I find that:
 - 41.1 By advancing a payment from his personal bank account to a sub-contractor of a supplier for the respondent, a person friend and in arranging for the supplier to deduct an equivalent sum from the pay owed to the sub-contractor to be paid to him directly, the claimant allowed his conduct to fall below the standard expected of a senior manager of the respondent.
 - 41.2 By allowing Mr Davis, in his capacity as a sub-contractor, to use the claimant's laptop to create an invoice and template and also a CV constituted a serious breach of the respondent's Confidential Information Policy and Acceptable Use Policy.

- 41.3 That the claimant failed to disclose his personal relationship with Ms Bates to his senior managers in breach of the respondent's Conflicts of Interests Policy.
- 41.4 The claimant used the respondent's letterheads to provide a character reference for Ms Bates which I consider to be a serious breach of the respondent's Conflicts of Interest Policy.
- 41.5 The claimant failed to provide a Non-Disclosure Agreement for Ms Bates or, alternatively, failed to consider the appropriateness of having one in place during the period of her engagement.
42. It follows that I find that Ms Brookbanks' decision to dismiss the claimant for gross misconduct is one that bears scrutiny but more importantly, is one that allows the respondent to assert that the claimant was dismissed for the potentially fair reason of conduct under s.98(2) of the Employment Rights Act 1996. Further, I find that the claimant's dismissal was fair in all the circumstances in that Ms Brookbanks had a genuine belief that the claimant was guilty of the misconduct and that her assessment of the claimant's guilt was based upon reasonable grounds having had the benefit of the findings a reasonable investigation into the claimant's conduct. Furthermore, I find that a fair procedure was employed by the respondent and that the dismissal fell within the range of reasonable responses; in other words I find that given the findings made by Ms Brookbanks, it was open to her to consider dismissal as one of a number of disciplinary sanctions open to her.
43. In terms of my finding in regard to the respondent's genuine belief in the claimant's misconduct, I make this finding having taken into account all relevant evidence available to Ms Brookbanks and the evidence of the two witnesses who gave evidence before the tribunal. While it might be the case that the claimant's position as regards one or two of the allegations may have been misconstrued by Ms Brookbanks (which is not something I accept or find) I nonetheless find that it was open to Ms Brookbanks to reach the findings that she did. In other words, it was open to Ms Brookbanks to conclude that the claimant had breached the respondent's code of conduct and particularly the Conflicts of Interest Policy, the Confidential Information Policy, the Acceptable Use Policy and the Guidelines on Using Non-Disclosure Agreements. It follows that it was open to Ms Brookbanks to conclude that cumulative effect and serious nature of the breaches amounted to gross misconduct.
44. As regards reasonable grounds for the belief, I have set out above the factual findings that I have reached in terms of the allegations raised against the claimant. As I have said, I have seen no evidence to rebut the contention that the respondent's investigating was reasonable and proper in all of the circumstances.
45. Having reached the decision that she did in respect of the totality of the claimant's conduct, I find that the decision to dismiss was a fair sanction that fell within the range of reasonable responses. I find that Ms Brookbanks took into account the claimant's personal circumstances which she weighed

up appropriately against the serious nature of some of the breaches she had identified. Accordingly, I find that the respondent's dismissal to be a fair one. It must therefore follow that the claimant's claim of unfair dismissal is dismissed.

Employment Judge Forde

Date: 22 August 2023

Sent to the parties on:
13 September 2023

For the Tribunal Office