



EMPLOYMENT TRIBUNALS

Claimant: Mrs V Anaele

Respondent: Signature Senior Lifestyle Operations Limited

Heard at: London South (by CVP)

On: 29/30 June 2023

Before: Employment Judge Kumar

Representation

Claimant: Mr H Anaele, lay representative

Respondent: Ms J Spavska (Litigation Consultant, Peninsula)

JUDGMENT having been sent to the parties on **4 July 2023** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Claim and Issues

1. The claimant brings a claim for unfair dismissal. The claimant was represented by her husband, Mr Anaele. The respondent was represented by Ms Spavska, litigation consultant.
2. The claimant was employed by the respondent as a senior health care assistant. She was transferred to the respondent under the Transfer of Undertakings (Protection of Employees) Regulations 2006 (TUPE). She had continuous service from 21 February 2019 until the date of her dismissal on 3 August 2022.
3. At the outset of the hearing in discussion with the parties I identified the following issues for determination:
 - 1) What was the reason or principal reason for the dismissal?
 - 2) Was it a potentially fair reason for dismissal?

The respondent states that the reason was misconduct. If the reason was conduct:

- 3) Did the respondent genuinely believe the claimant committed misconduct?
- 4) Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?
The tribunal will need to decide in particular whether:
 - i) There were reasonable grounds for that belief
 - ii) At the time the belief was formed the respondent had carried out a reasonable investigation
 - iii) The respondent otherwise acted in a procedurally fair manner
 - iv) Dismissal was within the range of reasonable responses

If the tribunal considers the dismissal was unfair

- 5) 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?
- 6) Did the claimant or the respondent unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures?
- 7) Did the claimant contribute to the dismissal by blameworthy conduct?

The hearing

4. I heard evidence from the claimant and from the following witnesses on behalf of the respondent: Ms Gabriela Smith, general manager Ms Lynn Grafham, formerly general manager and Ms Elizabeth Mclaughlan, general manager.
5. I read witness statements from each of the witnesses and was taken to pages within a 190 page bundle.

Facts

6. Having heard the evidence I make the following findings of fact based on the balance of probabilities.
7. The respondent is a care company, specialising in providing residential, nursing and dementia care to its service users.
8. The claimant was employed as a senior care assistant in the respondent's Signature Luxury Living Care home in Esher, Surrey. The claimant was transferred from a previous employer under TUPE. She had 3 years' continuous service at the time of her dismissal. She had an unblemished disciplinary record.
9. The claimant's duties involved giving personal care to residents, administering medication, taking the lead on first aid and allocating the care of residents to team members.
10. Service user D was a resident in the care home within which the claimant worked. On 7-8 July 2022 the claimant was working the night shift and D

was one of the residents under her care. There were three staff including the claimant on duty that night.

11. On 10 July 2022 the duty manager was contacted by police who informed her that they had received a report relating to a resident in the home. The police explained that they had in turn been contacted by the district nurse who had raised a concern about a telephone voicemail that had been received in the early hours of 8 July 2022.
12. The police subsequently confirmed that there had in fact been three voicemails left on the district nurse's phone timed at 01.13am, 01.18am and 1.20am. It transpired that the district nurse had been called accidentally by the claimant from a phone that she had on her person. The voicemails were therefore inadvertent recordings. The police informed the respondent that they had only taken a recording of the voicemail made at 01.13am and that the other voicemails *'did not contain anything evidential, or that added any value compared to the third one which was much clearer and of better quality.'*
13. The police expressed concern about the contents of the recording in which they said a staff member could be heard shouting at a resident. The police reported that on the recording the service user could be heard saying that she 'is frightened' and 'in pain'. The police provided a typed-up transcript of the recording which appeared within the bundle. Upon consideration of the transcript it was evident that the resident had not in fact used the word 'frightened'. The claimant raised issues over the accuracy of the transcript and she provided her own typed-up transcript. Both versions of the transcript provided commentary over and above that which was actually said.
14. Gabriela Smith, general manager informed the police that having listened to the recording they had identified that the staff member whose voice had been recorded as that of the claimant and that the respondent was taking legal advice and would be referring the matter to Surrey Safeguarding Team. The resident was identified as service user D.
15. On 11 July 2022 Gabriela Smith spoke to D about the morning of 8 July 2022. D confirmed that she had since been spoken to by the district nurse and by the police. She described a member of staff being rude to her and described them as unhelpful. She said that they had upset her by telling her that she was wasting her time.
16. On 12 July 2022 the claimant was suspended on full pay. She was notified of her suspension by telephone and later the same day she was sent a letter confirming her suspension and informing her she had been suspended to allow an investigation to take place following allegations that she had failed to follow company rules and procedures, namely Care Standard Procedures in respect of the care and dignity of service users. The letter stated,

"it is alleged that on 8th June 2022 you have spoken to the service user in an unacceptable manner and refused assistance when asked for help. It is

also potentially viewed as an allegation of abuse under the company's abuse policy as well as a gross breach of trust."

17. The reference to 8 June 2022 was an error and should have read 8 July 2022.
18. The letter went on to explain that if the investigation indicated there was some substance to the allegations the claimant would be required to attend a disciplinary hearing. It further stated '*You will be provided with all relevant documentation prior to the hearing and you will be notified in writing of the time, date and venue.*'
19. The following day on 13 July 2022 a letter was sent to the claimant inviting her to attend an investigation meeting on 15 July 2022. The letter stated that the purpose of the meeting was to allow the claimant the opportunity to provide an explanation "for the following matter of concern...

Alleged failure to follow company rules and procedures namely, Care Standard Procedures in respect of the care and dignity of service users. Further particulars being, that it is alleged that on 8th June 2022 you have spoken to the service user in an unacceptable manner and refused assistance when asked for help. It is also potentially viewed as an allegation of abuse under the company's abuse policy as well as gross breach of trust."

20. The reference to 8 June 2022 was again an error.
21. The letter indicated that a possible outcome of the meeting was that the formal disciplinary procedure would be pursued.

The investigation meeting

22. The investigation meeting took place on 15 July and was attended by the claimant, Gabriela Smith and Jane Wells who took a note. The handwritten notes which had been edited and signed by the claimant as accurate were in the bundle.
23. At the outset of the meeting Ms Smith clarified that the reference to 8 June 2022 in the suspension letter and the letter inviting the claimant to the meeting was incorrect and should have read 8 July 2022. The claimant was informed that service user D had made an allegation that a night worker had not spoken to her in a pleasant way and had not been very helpful. She was asked to comment on this. The claimant denied there had been an incident. She described going to D and discovering she was wet and saw her putting her wet clothes in a red laundry bag. She described later D sitting on a step talking to herself and the conversation that followed. The claimant said that she had called the other staff on night duty who had joined the conversation. The claimant confirmed that D had been in pain in her groin and back and that she had been scratching. The claimant accepted that she had not recorded D's pain or skin issue on Care Connect, the electronic notes system. The claimant was then specifically asked if she had raised her voice to D, whether she had lost

her patience with D, whether she had made a comment to D 'you are in pain because you want to be in pain', and whether she had called her stupid. The claimant denied that she had done or said these things. She was then informed of the recording and the police involvement. She was given a copy of the typed transcript of the recording the police had made. She said she did not remember saying the things recorded in the transcript.

24. The claimant was then played the recording. The claimant confirmed it was her voice. She was asked if she accepted saying 'it's stupid' and she said she could not remember saying that. The claimant then said she was remembering what happened and said D was scratching and that she fingered herself (understood to mean masturbates). She said she had forgotten to report it. This was the only reference the claimant made during the investigation meeting to sexual activity on the part of D, which subsequently became the basis of her explanation as to why the claimant had acted in the manner the recording showed.
25. The claimant accepted the way she could be heard speaking to D on the recording was not correct. She accepted her 'voice was bad'. She said, 'It is bad I know'. The claimant then went on to say she had been confused about the dates as she had been given the wrong date of the incident.
26. Following the investigation meeting a report was produced that was dated 17 July 2022. It appears to be common ground that the report itself was not provided to the claimant at any stage of the disciplinary procedure. The report concluded with a recommendation that a disciplinary hearing be convened and expressed the view of Ms Smith that the claimant should not return to her duty pending that meeting.

The disciplinary meeting

27. On 22 July 2022 the claimant was invited to a disciplinary meeting which was to be held on 1 August 2022. The matters of concern identified in the letter were said to be:
 - alleged failed to follow company rules and procedures namely, Care Standard Procedure in respect of the care and dignity of service user. Further particulars being, that it is alleged that on 8th July 2022 you have spoken to the Service User in an unacceptable manner and refused assistance when asked for help. It is also potentially viewed as an allegation of abuse under the company's policy as well as a gross breach of trust.
28. The letter informed the claimant that if the matters were substantiated they would be regraded as gross misconduct. The letter referred to documents enclosed with it. The investigation report was not one of those documents but minutes of the investigation meeting were included. On the morning of the disciplinary meeting the claimant sent by email a response and also her own version of the transcript of the recording, annotated to say what was happening at that particular time.
29. The claimant's response document went into considerably more detail about what she said happened than she had described at the investigatory meeting. The claimant described finding D with her fingers in her vagina thrusting back and forth and moaning and groaning in pleasure. The claimant's account was

that D was trying to get the claimant involved in her sexual activity. She said that D had grabbed her hand and held on to it. The claimant said that the reason she had reacted as she had was in response to what D was doing. The claimant said that as an African lady she had a naturally high tone of voice. She said she was being assertive so she could get D to understand why the claimant needed to leave. She said her voice went up when D pulled her hand towards her. The claimant said that D's facial expression showed that she was deriving sexual pleasure. The claimant said she did not consider the way she spoke at the time was unacceptable in the circumstances she was in. She said that the reason she had called the other staff members to the step later on after the incident was so that they could be witnesses and hear from D what she had been asking the claimant to do.

30. At the disciplinary hearing the claimant gave an oral account. She said she had been offended by D's actions and said she was trying to be assertive. She accepted that her voice on the recording was loud and apologised about using the word 'nonsense'. She did not think she had said anything else wrong.
31. The claimant was asked why had not given this account in investigation meeting. The claimant said her head had been all over the place.
32. At one point in the minutes of the meeting it shows that after hearing the claimant's account there had been a pause whilst Ms Grafham had re-listened to recording. The hearing then reconvened and Ms Grafham explained that she had concluded the claimant was being aggressive not assertive and it did not matter what was said. She said she went with her feeling. The claimant was informed of her right to appeal.
33. On 3 August 2022 the claimant's dismissal was confirmed by letter. The letter set out the matters of concern in the same form the invitation letter had and concluded:

"At the hearing your explanation was that you were being assertive.

I considered your explanation to be unsatisfactory because the recording has clearly proven you have been aggressive toward the service user.

Having carefully reviewed the circumstances and considered your responses, I have decided that your conduct has resulted in a fundamental breach of your contractual terms which irrevocably destroys the trust and confidence necessary to continue the employment relationship. I have referred to our standard disciplinary procedure when making this decision. It states that an act of misconduct of this nature warrants summary dismissal, however, I have considered whether, in the circumstances, a lesser sanction may be appropriate. However, I am unable to apply a lesser sanction in this case because of the reasons given above.

You are therefore dismissed with immediate effect. You are not entitled to notice or pay in lieu of notice."

34. The claimant was informed of her right of appeal.

The appeal

35. The claimant sent the respondent an appeal letter dated 8 August 2022 within which the claimant set out her grounds of appeal which I summarise as:

- The respondent had failed to give documents to the claimant prior to hearing
- The approach to the investigation was biased
- The investigation did not corroborate the transcript, interview staff and the service user's statement did not address the incident itself

36. The claimant further set out that she considered sanction was unfair as

- The decision maker had based her decision on her feelings
- The decision maker said she was basing her decision on the tone of the claimant's voice
- The decision letter only referred to the claimant being aggressive
- The service user was not harmed and she did not mention being upset or the claimant being aggressive in her statement
- The claimant had been in a situation where she felt she was being sexually molested
- The claimant had a blameless service record
- The claimant had raised in her response document concerns about the managers generally and D's sexual harassment and none of this was taken into account

37. On 16 August 2022 a letter confirming that the appeal hearing would take place on 18 August 2022 was sent to the claimant. The appeal hearing was chaired by Ms Mclaughlan, and Chris Woodward, HR partner, attended to take notes. The claimant alleged Mr Woodward took over the hearing and he asked the questions of the claimant. Ms Mclaughlan in her oral evidence confirmed that Mr Woodward had explained the process to the claimant but she had asked all of the questions and she was the decision marker.

38. The claimant's appeal was dismissed by letter of 30 August 2022 which confirmed that the decision to dismiss the claimant was upheld. Ms Mclaughlan said she was satisfied the claimant had the complete disciplinary back (although notably did not address the absence of the investigation report within the pack) and that she found not evidence that mitigation had not been considered. Ms Mclaughlan said she had considered the claimant's prior service history but did not consider this was sufficient to overturn the decision to dismiss.

The Law

39. S98 ERA 1996 provides as follows;

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

.....

(4) In any other case where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

40. I was guided by the EAT judgment in **British Homes Stores v Burchell 1978 IRLR 379 EAT**, being mindful that the employer must show that he had a genuine belief in the employee's guilt, held on reasonable grounds, after reasonable investigation. I was also guided by the Court of Appeal in **Sainsbury's Supermarket Ltd v Hitt 2003 IRLR 23 CA** that the reasonable range of responses test applies to the whole disciplinary process and not just the decision to dismiss.

41. In accordance with the Employment Appeal Tribunal's guidance in **Iceland Frozen Foods Ltd v Jones 1982 IRLR 439**, I was mindful, in reaching my conclusions, not to substitute my own view of what the appropriate sanction should have been for that of the respondent's, but that I should consider whether the decision to dismiss fell within the range of reasonable responses open to a reasonable employer in the particular circumstances of the case.

42. I was referred by the R to **Trusthouse Forte Leisure Ltd v Aquilar [1976] IRLR 251; Maintenance Co Ltd v Dormer [1982] IRLR 491** and reminded of the principle that a genuine, even if mistaken, belief on the part of the employer as to the conduct of the employee relied upon will be sufficient to discharge the burden of establishing this potentially fair reason for dismissal.

43. Phillips J giving judgment for the EAT in *Trust Houses Forte Leisure Ltd*:

"It has to be recognised that when the management is confronted with a decision to dismiss an employee in particular circumstances there may well be cases where reasonable managements might take either of two decisions: to dismiss or not to dismiss. It does not necessarily mean if they decide to dismiss that they have acted unfairly because there are plenty of situations in which more than one view is possible."

44. I was also referred to the EAT case of **Ms I M Yeung v Capstone Care Ltd UKEAT/0161//13/DA** by the respondent's representative. Whilst I note that the case has some similarities in terms of the facts in that the

claimant in that case was dismissed for alleged abuse I did not find it assisted me on the legal principles beyond the usual cited authorities.

45. As to the investigation the extent of the investigation and the form that it takes will vary according to the particular circumstances. In some cases, as the Code explains, the investigation stage will only involve the employer collating evidence; in others, an investigatory meeting with the employee will be required (see para 5). If the employer decides to hold an investigatory meeting, it is important that it should not result in disciplinary action (see para 7). If it becomes clear during the course of such a meeting that disciplinary action is needed, the meeting should be adjourned and the employee given notice of a separate disciplinary hearing and told of his or her right to be accompanied.
46. There is no hard-and-fast rule as to the level of inquiry the employer should conduct into the employee's (suspected) misconduct in order to satisfy the test in **Burchell**. This will very much depend on the particular circumstances, including the nature and gravity of the case, the state of the evidence and the potential consequences of an adverse finding to the employee. In **ILEA v Gravett 1998 IRLR 497 EAT** Mr Justice Wood (then President of the EAT) offered the following advice:

“At one extreme there will be cases where the employee is virtually caught in the act and at the other there will be situations where the issue is one of pure inference. As the scale moves towards the latter end so the amount of inquiry and investigation which may be required including questioning of the employee is likely to increase”

47. In conducting the investigation, an employer should interview witnesses, although there is no need to interview every available witness once a fact has been clearly established. However, the investigation may be flawed if an obvious witness is overlooked. Similarly, failing to reinterview a vital witness as more information comes to light may be fatal. What amounts to a fair investigation will depend on the particular facts of the case.

Discussion and decision

48. I received written submissions from the respondent and the claimant and both given an opportunity to address me orally.
49. My conclusions on the relevant issues are as follows:-

Did the respondent dismiss the claimant for alleged misconduct

50. The claimant did not substantially challenge that the reason for dismissal was alleged misconduct and this was in my view the current approach.
51. It was established beyond any doubt that there was an unpleasant altercation between the claimant and D. It is clear that the conduct of the

claimant fell below that which is reasonable in the work place and more specifically in the environment of her particular work place where she was working with vulnerable elderly people.

52. The claimant herself appeared to acknowledge that but considered that her conduct needed to be viewed in context. None the less I have no hesitation in concluding that the reason for the claimant's dismissal was conduct.

Was the reason for dismissal a potentially fair reason

53. Pursuant to section 98 ERA conduct is a potentially fair reason for dismissal. I need say no more on that point.

Where there reasonable grounds for the respondent's belief

54. I conclude without hesitation that the respondent's belief in the claimant's misconduct was reasonable. The key piece of evidence is the recording that was provided to the respondent by the police. In the recording the claimant can be heard shouting at D. Whilst there are some divergences in the two transcripts contained within the bundle as to precisely what was said, the divergences are minor. The claimant can be heard calling D 'stupid' in the exchange. Whilst the claimant denied that she had said this, it was reasonable for the respondent to base its decision on its own hearing of the recording and the police's transcription.

55. On the claimant's own case, she accepted the way she spoke to D was unacceptable. She admitted that she was shouting and expressed regret. She did not consider that speaking in a raised voice to a service user amounted to abuse and said it needed to be looked at in the context. However it is difficult to envisage any context that could mitigate shouting at a vulnerable person and calling them stupid such that it did not amount to misconduct. I am therefore satisfied that on the basis of the recording alone the respondent had reasonable grounds for believing that the claimant had committed an act of misconduct.

Had the respondent conducted a reasonable investigation at the time the belief was formed?

56. This question requires careful analysis as (together with the question of procedural fairness) it has formed the focus of the claimant's case. The claimant asserted

- she was initially provided with the wrong date for the alleged incident which caused her to fail to recall the events of the correct morning at the investigatory meeting
- the respondent failed to make a concerted effort to obtain the other voicemail messages
- the respondent failed to interview other staff on duty on that night
- the respondent failed to listen to the interview to corroborate the transcript

- the respondent failed to investigate the claimant's allegation of sexual harassment by D
- The investigation was biased from the outset

57. I address each of claimant's criticisms of the investigation in turn.

Provision of the wrong date

58. The respondent accepts that the incorrect date of the alleged incident was provided in both the letter suspending the claimant and in the letter inviting the claimant to the investigation meeting. This was an unfortunate error but it is clear to me from the notes of the investigation meeting that the claimant recalled the night in question. She was able to identify the other members of staff who were on duty that night. She remembered in some detail going to check on D and finding her wet and putting her clothes into a red laundry bag. She recalled D later sitting on the step and the claimant and other staff members talking to her. She remembered in some detail the conversation on the step and D complaining that she had not been given food or drink and the claimant telling her that she had not asked for food or drink.

59. I find it inconsistent that claimant remembered such detail but not the significant incident.

60. I do not conclude that the error regarding the date, which was promptly corrected, hampered the investigation or the claimant's ability to participate in the investigation.

The recordings

61. The respondent asked the police for the other two recordings that they had referred to in their email correspondence to the respondent. The police confirmed that they had not recorded the other two voicemails as they did not consider them to have evidential value and the quality was poor. The respondent does not appear to have made efforts to obtain the recordings from district nurse. The claimant considers the recordings were important to the investigation as they may have provided more context to what happened after the incident. However I note that the claimant does not at any time appear to have requested the voicemails during the investigation or disciplinary procedure.

62. I do not have the voicemails and therefore am unable to conclude that they would have had evidential value. However I do not consider that the respondent was unreasonable in relying on the police's confirmation that the other voicemails were unclear. Moreover it is difficult to see how recordings from after the event would have rendered the claimant's actions during the first voicemail anything but misconduct. Even giving the claimant the benefit of the doubt and accepting her version of events I am not drawn to the conclusion that claimant's behaviour did not amount to misconduct or was somehow justifiable. I do not accept that the respondent's failure to obtain the voicemails rendered the dismissal unfair.

Failure to interview other staff on duty

63. The respondent explained that it had not interviewed staff as it was not suggested that any member of staff had been a witness to what occurred between the claimant and D. On the claimant's own case she does not say that the other staff members witnessed what occurred. She described how the two members of staff on duty were privy to a conversation that took place between the claimant and D after the incident on the step but again on her own evidence nothing was said that shed any light on what had occurred earlier. Whilst I find that a employer may well have interviewed the other staff on duty, I do not consider that the failure to do so renders the investigation insufficient or unreasonable.

Failure to corroborate the transcript

64. I accept Ms Grafham's evidence that she listened to the recording several times and considered it against the transcript. Whilst there are some differences between what is transcribed in claimant's version from respondent's version, much of it is agreed in any event. I note that claimant's raised voice and tone of voice is of particular concern in the disciplinary and appeal hearings and that in any event his is not something that would have been evident in the transcripts. More important than considering the transcripts was listening to the recording and I find that the recording was listened to at each stage. I do not find this criticism upheld.

D's statement not addressing the allegation

65. D's statement refers to the claimant going 'over the top', being rude to D, not being helpful and saying that D was wasting her time. This corroborates some of what can be heard on the recording. I consider that D's statement does address what is alleged. I note that D was a vulnerable person and had already been spoken to by the police and by the district nurse. I do not think it was unreasonable for the respondent not to probe D further in respect of the allegations.

Failure to investigate sexual harassment by D

66. I do not consider this needed to form part of the respondent's investigation. I remind myself of Mr Justice Wood said in *ILEA v Gravett*. The recording in itself was a compelling piece of evidence. The claimant's explanation as what could be heard on the recording about did not give rise to the necessity of an investigation of the sort she says should have happened. Whatever provocation there might have been the focus of the investigation was on the claimant's conduct, not what D may have done to provoke the claimant. I remind myself that D was a vulnerable service user and the claimant was a trained and experienced carer.

Bias

67. The claimant raised an issue with the fact that for a previous disciplinary hearing (which resulted in no disciplinary action) she had asked that it be

heard by managers who were not based Esher as she did not believe she would get a fair hearing and that she was being scapegoated. I note that the claimant did not make the same request on this occasion which it would have been open to her if she had wished to do so. I do not know why this is. I have seen nothing to suggest that there was bias in the investigation or disciplinary process. The claimant was given a full opportunity to respond to the allegations in the investigation meeting. She was given a full opportunity to put her case at the disciplinary hearing. She was given a further opportunity to set out her case at the appeal hearing.

Did the respondent act in a procedurally fair way?

68. In my judgment it was inevitable that the matter would be investigated and upon gathering and considering the evidence that the claimant would be subject to a disciplinary hearing. Both of those decisions fell within a band of reasonable responses. The product of the investigation provided evidence upon which the respondent was entitled to make their findings. I am satisfied that Ms Smith and Ms Grafham did sufficient and discharged their duties reasonably and fairly in all the circumstances
69. To the extent that there were could be said to be initial failings in the investigation (specifically the failure to obtain recordings and the error over the date in the letters sent to claimant) and the failure to provide the claimant with the investigation report, I am confident that when looked at as a whole the procedure was fair and such defects did not render it procedurally unfair.
70. Moreover again looking at the process as a whole it was conducted in accordance with the ACAS Code. The claimant was given an opportunity to be accompanied which she chose not to take up. She was given the opportunity to her put her position across. She was informed of her right of appeal. I am satisfied that at both the disciplinary and appeal stages that the mitigation that the claimant raised was considered as was the claimant's service record which I note was specifically referred to in appeal outcome letter.

Did the dismissal fall within the range of reasonable responses?

71. The claimant's case was that in all the circumstances dismissal was not the appropriate response.
72. I remind myself I am not to substitute my view for that of the decision maker. It is irrelevant whether I would have dismissed the claimant in the same circumstances. My role is to adjudicate upon whether the dismissal fell within the range of reasonable responses.
73. The respondent provides care to vulnerable adults. I take into account the respondent's industry type. I find that the respondent believed that the claimant's conduct on 8 July 2022 was very serious. I am satisfied upon finding that the conduct had been proven consideration was given to the claimant's mitigation in respect of her blameless conduct record. I cannot say if the claimant adopting a more conciliatory approach by recognising

her conduct was unacceptable earlier would have resulted in a lesser sanction. There may well have been other employers who would have given the claimant the benefit of the doubt as to her explanation of what occurred.

74. None the less I am satisfied that the respondent's decision to dismiss fell within the range of reasonable responses. It was reasonable to characterise the conduct as misconduct for which dismissal and in this case summary dismissal was the reasonable sanction. Whilst I acknowledge the decision has been a grievous blow for the claimant and may have affected her adversely on the job market I do not consider the dismissal unfair and I dismiss her claim.

75. Having reached this conclusion I do not go on to consider matters pertaining to any award as set out in the list of issues.

Employment Judge **Kumar**

Date 11 September 2023