



EMPLOYMENT TRIBUNALS

Claimant: Mr Z Raja

Respondent: Summit Learning Trust

Heard at: West Midlands (Birmingham) Employment Tribunal **On: 26 - 27 June and 2 October 2023**

Before: Employment Judge Childe

REPRESENTATION:

Claimant: In person

Respondent: Mr Rozycki (Counsel)

JUDGMENT

1. The complaint of unfair dismissal under Part X Employment Rights Act 1996 is not well-founded and is dismissed.

Procedure

2. This case was heard on 26 - 27 June and 2 October 2023.
3. The claimant represented himself. The respondent was represented by Mr Rozycki of counsel.
4. I've heard evidence from the claimant. I also heard evidence from Mr Richard Bohdanowitsch, Usha Devi and Vincent Green.
5. I was referred to bundle of documents that ran to 944 pages.

Findings of Fact

6. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.
7. The claimant commenced employment with the respondent on 4 November 2019. The respondent is a multi-academy trust comprising three secondary schools, four primary schools and 6 form colleges.
8. The claimant was a maths teacher. He worked at Lyndon School where he taught key stage 3 and key stage 5 (years 7 to 11).

Policies and procedures

Disciplinary Policy

9. The respondent had a disciplinary policy. The claimant accepted he had access to the disciplinary policy since 22 April 2021 after it was emailed to him by the respondent.

10. Section 17 of the respondent's disciplinary policy gave examples of gross misconduct. It said "*Gross misconduct*" is the term given to misconduct that is so serious it undermines the contract of employment. A single act of gross misconduct will warrant dismissal, even if no previous warnings have been given. There is no definitive list of examples that constitute misconduct or gross misconduct and the examples given below are not exhaustive."

11. The examples relevant in this case are:

- a. Supplying your personal contact details to a student without express authorisation from the Principal.
- b. Interacting with a student online out of school hours other than through the Learning Environment.
- c. Improper relations with a student of the Trust (including use of Social Media).
- d. Incidents relating to safeguarding or putting the trust in potential disrepute.

12. The claimant did not read the disciplinary policy prior to the disciplinary allegations being raised against him.

Safeguarding training

13. The claimant completed 'safeguarding and child protection training' on 22 September 2021.

14. This training stated '*under no circumstances is it acceptable to communicate with children via mobile phone/social networking sites or similar.*'

Department for Education teacher's standards guidance for school leaders, school staff and governing bodies ("Teacher's Standard Document")

15. The claimant accepted he was aware of this guidance during his time as teacher for the respondent.

16. Part two of that guidance deals with personal and professional conduct. It states:

Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:

treating pupils with dignity, building relationships rooted in mutual respect, and

at all times observing proper boundaries appropriate to a teacher's professional position.

Person specification. Job role teacher

17. The person specification for the role of teacher stated a candidate is required to:

Have knowledge of good practice guidelines to form and maintain appropriate relationships and personal boundaries with children and young people.

18. The claimant said possessed such knowledge.

Staff code of conduct

19. The staff code of conduct stated:

All staff have a duty to keep children safe as per the safeguarding and child protection policy. Staff must take reasonable care of students/pupils under their supervision with the aim of ensuring their safety and welfare. Staff should act in an open and transparent way that would not lead any reasonable person to question their actions or intent. Staff should think carefully about their conduct so that misinterpretations are minimised.

20. The claimant was aware of this code of conduct at the relevant time.

Factual background

21. On 12 June 2022 the claimant emailed a maths test paper to student A. Student A was not in the claimant's maths class at the time. The claimant did not email any other students the maths test paper.

22. On 14 June 2022 the claimant sent student A his personal mobile phone number, by email.

23. On 15 June 2022 student A raised an oral complaint about the claimant with Lindsay Clark, the respondent's pastoral manager. Student A said the claimant had sent her a maths test, bought her a book as a gift and gone to touch her on her leg. Lindsay Clark said the student would have to write her complaints down.

24. On 16 June 2022 Sarah Bloomer, designated safeguarding lead, had a discussion with the claimant about his behaviour towards student A. The claimant didn't tell Sarah Bloomer that he had sent student A his personal mobile phone number during this conversation.
25. Sarah Bloomer followed this discussion with an email on 24 June 2022 to the claimant, in which she summarised her discussion. In this email Sarah Bloomer said to the claimant that he had previously spoken to a number of students and emphasised that he loved them like them as if they were his own children. Sarah Bloomer said that they had discussed this and agreed a more formal approach would be for him to say that he wanted the best for them. Sarah Bloomer went on to say that they had discussed how some students might perceive staff behaviour in a different way to how it was intended. The implication from this discussion and email was that the claimant should consider carefully his behaviour.
26. On 23 June 2022 the claimant sent students B and C his personal email address and said they could contact him on this for any reason.
27. On 30 June 2022 an incident occurred in the pastoral room. Lindsay Clark was present. Student A came into a private area in the pastoral room and said she wanted to be alone. She was upset. Shortly afterwards the claimant came into the pastoral room. The claimant asked Lindsay Clark whether he could go in and speak to student A. Lindsay Clark said it would be best if he didn't because she was upset and didn't want to speak with him. Despite this, the claimant nonetheless went into the area that student A was situated and had a discussion with her. Lindsay Clark's analysis was that this discussion was not welcome.
28. On 1 July 2022 student A raised a formal complaint about the claimant. The broad nature of the concerns was that the claimant sent emails, even though he wasn't

her teacher and that he provided presents such as poems, pens and chocolate. Student A said the claimant told he loved her and wanted to touch her leg. Student A also said that the claimant had emailed a maths test assessment and told her not to tell anyone.

29. The matter was initially discussed with the claimant by Abid Butt, school principal. At that time the claimant was told to stay away from student A. The claimant did not tell Abid Butt but that he had sent student A his personal mobile number, during this meeting.

30. On 4 July 2022 the claimant was off work sick. On that same day student A raised a fresh concern that the claimant had emailed her his personal mobile phone number.

31. The claimant was suspended on full pay 6 July 2022 because he had given student A his mobile phone number on 14 June 2022. It was alleged the claimant had attempted to form an inappropriate relationship and had breached the teacher standards. The claimant was provided with access to Geoff Dibble, HR business partner, if he had any queries about his suspension, on 27 September 2022.

32. An investigation took place and the respondent took statements from the claimant, Abid Butt, Lindsay Clark and Sarah Bloomer.

33. As part of the investigation the respondent discovered 50 emails that have been sent to student A, B and C by the claimant, over a three-month period.

34. On 27 September 2022 the claimant was invited to a disciplinary hearing. The claimant was provided with all relevant documents in the disciplinary invite and was given the right of representation at the final hearing. The claimant was allowed a trade union representative at the disciplinary hearing. The key allegation set out to the claimant was that he had breached the teacher code of conduct by attempting

to form an inappropriate relationship with a pupil by emailing her his personal telephone number on 14 June 2022; sending his personal email address to student A in June 2022 and had provided a copy of the year nine maths test to student A.

35. The disciplinary hearing took place on 6 October 2022. The hearing took place by way of a disciplinary panel which was chaired by Ms Devi.

36. The claimant was dismissed for gross misconduct on 12 October 2022. I find as a fact that the reason Ms Devi dismissed the claimant was as follows:

- a. The claimant had shared his personal mobile phone number with student A on 14 June 2022, in breach of the respondent's safeguarding training, and through which he was trying to form an inappropriate relationship.
- b. The familiar tone that the claimant continued to take in emails to students and the approach the claimant took to interacting with student A after he had been told to take a more professional approach by Sarah Bloomer on 17 June 2022.
- c. The volume of email contact that the claimant had with three students, students A, B and C, outside of school hours.
- d. Providing a maths paper to student A on 12 June 2022, ahead of her maths test and thus giving her an unfair advantage
- e. Bringing the trust into disrepute by attempting to forge relationships that did not observe appropriate boundaries and could reasonably be seen as favouritism or mis-use of authority.

37. The claimant appealed the decision to dismiss on 19 October 2022.

38. The claimant's appeal was subsequently dismissed.

Relevant Law and Conclusions

Unfair Dismissal

39. The relevant law is found in sections 94, 95 and 98 of the Employment Rights Act (**“ERA 1996”**).

40. S.98 deals with fairness. There are two stages. First the employer must show a fair reason. Then the Employment Tribunal should consider (with the burden of proof on neither party) whether the respondent acted fairly or unfairly in dismissal.

41. The respondent says the claimant was dismissed for a reason related to the claimant’s conduct. This is contested by the claimant.

Reason for dismissal

42. Taking each of the reasons I have found the respondent’s reason for dismissal was misconduct, which is a potentially fair reason for dismissal. The specific instances of misconduct are as follows:

The claimant had shared his personal mobile phone number with student A on 14 June 2022, in breach of the respondent’s safeguarding training and through which he was trying to form an inappropriate relationship.

43. It is agreed that the claimant had shared his personal mobile phone number with student A by email on 14 June 2022. The claimant did not get express authorisation from the respondent’s school principal before doing so. A copy of the email was available to Mr Devi and the claimant accepted he had done so.

44. The guiding principles and the respondent's safeguarding training said: '*Under no circumstances is it acceptable to communicate with children via mobile phone/social networking sites or similar.*'
45. It was reasonable, in my view, for Ms Devi to form the view that in sharing his mobile phone number with student A, the claimant intended to communicate with her by mobile phone. Indeed, having shared his number, he was in effect giving student A permission to contact him by mobile phone.
46. The claimant's assertion that in providing this mobile phone number he did not intend to communicate with that student via mobile phone was illogical, incredible and Ms Devi was entitled not to accept it.
47. Under the school's disciplinary policy, a member of staff supplying personal contact details to a student without express authorisation from the principal is identified as an example of gross misconduct.

The familiar tone that the claimant continued to take in emails to students and the approach the claimant took to interacting with Student A after he had been told to take a more professional approach by Sarah Bloomer on 17 June 2022.

48. The Teachers Standards Document, Person Specification for the Job and Staff Code of Conduct all broadly set out that teachers should have knowledge of good practice guidelines; form, and maintain appropriate relationships and personal boundaries with children and young people and should act in an open and transparent way that would not lead any reasonable person to question their actions or intent.
49. The claimant accepted that student A had raised a concern about the claimant's conduct on 10 June 2022. This had led to the discussion with Sarah Bloomer and

the claimant on 17 June 2022. The outcome of that discussion was an email from Sarah Bloomer to the claimant dated 24 June 2022. Sarah Bloomer specifically advised the claimant to adopt a more formal approach when interacting with students. Sarah Bloomer went on to discuss how some students might perceive staff behaviour in a different way to how it was intended and the obvious suggestion here was that the claimant take this on board.

Familiar tone with students

50. There were emails available to Ms Devi that were a legitimate cause of concern.

On 30 June 2022 the claimant emailed student C again and said: '*I really miss you a lot.*' The claimant went on to suggest that they would '*walk to school together.*' This was an example of the claimant using informal language, which could have been misinterpreted as overfamiliar by student C.

51. As I have already found, the claimant provided his personal email address to students B and C on 23 June 2023, after the discussion with Sarah Bloomer. The claimant tried to characterise this interaction as him providing an email address in case the students required a referee in the future. However, the respondent was entitled to reject this. The wording in the email does not limit the invitation to contact the claimant to seeking a reference only. It says '*if you ever need to contact me for anything.*' Ms Devi was entitled to conclude that this was inappropriate, was an invitation for the students to contact the claimant personally for anything on his personal email, and could have been misinterpreted as overfamiliar by students B and C.

52. I find that Ms Devi was entitled to conclude that the claimant's contact with students B and C was overfamiliar and took place after the claimant was specifically advised to take a more professional approach in his communications with students.

53. Under the school's disciplinary policy, incidents relating to safeguarding or putting the trust in potential disrepute, are identified as an example of gross misconduct.

Conduct towards Student A

54. Turning to specific issue with student A. Ms Devi was entitled to conclude that the claimant had behaved unprofessionally and had crossed the boundary in the relationship between teacher and student in respect of student A.

55. The evidence available to Ms Devi was that on 30 June 2022 student A had entered the pastoral area of the school and said that she wanted to be alone. Student A was upset. Lindsay Clark, Pastoral manager was present in the pastoral area at the time. The claimant entered the pastoral area and wanted to speak to the student. Lindsay Clark suggested to the claimant that it was best to leave it for now. In other words Ms Clark was telling the claimant not to go and speak to Student A.

56. The claimant accepted this was said to him but nonetheless went into the room that student A was in, despite her having said she wanted to be left alone and despite Ms Clark saying to him not to.

57. This was sufficient evidence from Lindsay Clark's report of the event and the claimant's response for Ms Devi to conclude that the claimant was not observing appropriate boundaries with student A on this occasion.

58. Under the school's disciplinary policy, incidents relating to safeguarding or putting the trust in potential disrepute, is identified as an example of gross misconduct.

The volume of email contact that the claimant had with three students, students A, B and C outside of school hours.

59. There were a number of emails available to Ms Devi which were sent to the students A, B and C outside of school hours. For example, the claimant sent an email to student C at 2322 on 6 May 2022. Earlier that day the claimant had referred to student C in the following terms '*you are such a lovely girl*'.

60. On 30 March 2022 the claimant sent an email to student A out of hours, at 1915, in which he said '*you're an angel*'.

61. On 10th May 2022 the claimant email students C at 10:10 PM, again outside of school hours.

62. Ms Devi had information before her that the claimant had sent over 50 emails to students A, B and C over a three-month period. The evidence available was that the claimant had not sent a similar volume of emails to other students.

63. Under the school's disciplinary policy interacting with a student online out of hours other than through the learning environment is identified as gross misconduct. Whilst the claimant was interacting through the learning environment, there was evidence that he was interacting with student online out of hours.

Providing a maths paper to student A on 12 June 2022, ahead of her maths test and thus giving her an unfair advantage

64. The claimant accepted he had provided student A with a copy of a maths paper, by email, on 12 June 2022. A copy of the email was available to Ms Devi and the claimant accepted he had done so.

65. It wasn't the actual maths paper that student A was sitting. Nonetheless, there were a number of concerns raised by the approach the claimant had taken. He was not student A's maths teacher. He had not told student A's maths teacher that he was providing a copy of the test. There was a similarity between the test provided (it was a lower maths test) and the test that student A was sitting (the higher maths test). Crucially, the claimant accepted that he hadn't given any other student the test.

66. Mr Devi was entitled to conclude that not only did this conduct actually place student A at an advantage, but it also risked student A misinterpreting the claimant's intentions because he was in effect giving her special treatment.

67. Under the school's disciplinary policy, Incidents relating to safeguarding or putting the trust in potential disrepute, is identified as an example of gross misconduct.

Bringing the respondent trust into disrepute.

68. Taking the above matters into consideration, there was evidence available to Ms Devi to conclude that the claimant's conduct had the potential to bring the respondent trust into disrepute. Student A's mother had complained about the claimant's conduct towards her daughter. There was therefore the risk that the respondent trust's reputation was brought into disrepute.

69. The respondent has satisfied s.98(2) ERA.

Dismissal fair in all the circumstances

70. S.94 deals with fairness generally. Key factors are whether in the circumstances (including size and admin resources of the respondent), the respondent acted

reasonably or unreasonably in dismissing the claimant, determined in accordance with equity and substantial merits of the case.

71. I remind myself of the well-known Burchell principles which states in all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, I must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances.

72. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer.

73. I find that it was within the range of reasonable responses, open to a reasonable employer, to summarily dismiss the claimant for the misconduct upheld by Ms Devi.

Sharing personal mobile phone number with student A

74. The claimant had breached a specific example of gross misconduct by supplying his mobile telephone number to student A.

75. The claimant's only explanation for doing so was that he had done so without the intention that student A should contact him.

76. The respondent was entitled to reject this explanation.

77. The respondent considered members of staff sharing personal mobile phone numbers with students to be a serious matter. There was no reason for a member of staff to do so other than to maintain contact with a student outside of the learning environment. This had the potential to breach the boundaries between teacher and student and could be a very real safeguarding issue.

78. The claimant's case in relation to this allegation is that he didn't read the respondent's disciplinary procedure and therefore wasn't aware that sharing his

personal mobile phone number with a student was classified as gross misconduct.

The respondent was entitled to conclude that a failure on the claimant's part to read and understand a disciplinary policy sent to him did not excuse his breach of that disciplinary policy.

79. The respondent was also entitled to take into account that the claimant was already aware of his responsibilities regarding communicating with students from the safeguarding training he had undertaken which specifically stated *under no circumstances is it acceptable to communicate with children via mobile phone/social networking sites or similar.*

80. The claimant said in cross examination that he had not communicated with student A via mobile phone. However, it is clear, on any sensible analysis of what the claimant did, that in sharing his personal number with student A, his intention was to communicate with student A via his mobile telephone and this was a reasonable view for the respondent to reach.

81. The respondent was therefore entitled to reject the claimant's argument that the respondent was at fault for not telling him that he should not share his personal mobile phone number with his students.

Familiar tone that the claimant continued to take in emails to students and interaction with Student A after 17 June 2022.

82. The claimant did except in his submissions and evidence that he ought to have used more formal language with his students.

83. Turning to the meeting of 17 June 2022 with Sarah Bloomer. The respondent was entitled to consider that a key outcome from this meeting should have been that the claimant was very mindful of the impact of his behaviour on students and the

fact that his intentions could be misinterpreted. In addition, the respondent was entitled to conclude that this guidance should have suggested to the claimant that he ought to be mindful of the boundaries between him as a teacher and his students. Language could be misinterpreted by students.

84. I've identified the emails that the claimant sent after 17 June 2022. In evidence, the claimant could not accept their content was inappropriate, in breach of the respondent's policies and against the advice he had been given earlier in the month by Sarah Bloomer. For example, the claimant was unable to accept that the phrase "*you are a lovely girl*" was inappropriate in the student-teacher context.

85. The claimant's position was that he treated the students as his own children. The difficulty with this approach was that the claimant was required, in his position as teacher, to have a very a different relationship with his students than he would have with his own children. There was a power imbalance between the claimant and the students. Appropriate boundaries had to be maintained to protect both the claimant and his students from misinterpretation of his conduct towards them.

86. Whilst the claimant may have been sending these communications with good intention, the difficulty for the claimant was that his intentions could be misinterpreted. In sending these communications the claimant failed to appreciate the boundaries that should exist between him as a teacher and his students. This was despite the specific advice he had been given by Sarah Bloomer less than a month before these communications were sent.

87. The respondent was entitled to conclude that the tone of the communications from the claimant to his students was overly familiar. It risked blurring the boundaries between teacher and pupil. It could have suggested to the students that the claimant had wanted a more familiar relationship with them than was appropriate.

It represented a potential safeguarding concern. It could have brought the respondent into disrepute. The respondent was entitled to treat this as such.

88. It was open to the respondent to find that the claimant did not respect the boundaries between student and teacher after 17 June 2022. This wasn't a case where the claimant had to interpret broad guidelines issued under a policy. The claimant had been specifically told to be mindful of his behaviour towards students and how that might be interpreted, by Sarah Bloomer

Conduct towards Student A on 30 June 2022

89. The claimant was specifically told on the day of this incident by Lindsay Clark to respect student A's wish not to see him in that moment. The claimant's decision to ignore this advice was evidence available to the respondent that the claimant did not understand the boundaries between a student and their teacher, even when these were specifically pointed out to him.

The volume of email contact that the claimant had with three students, students A, B and C outside of school hours.

90. The claimant has attempted to minimise the allegations against him regarding the volume of email contact he had with student A, B and C outside of school hours. He said in submissions that he was only sending two emails a week to these students, and this was not excessive.

91. As a matter of fact, the claimant had sent students A, B and C over 50 emails over a three-month period, many of them well out of school hours and not on the topic of schoolwork. Whilst these may not have taken place outside the school systems, the respondent was entitled to treat them as inappropriate in all the circumstances.

92. There was evidence available to the respondent that no other students were receiving the same volume of emails as students A, B and C. This reasonably gave rise to concern on the part of the respondent that the claimant was treating the students more favourably than others, in breach of boundaries between the teacher and student that should exist.
93. The claimant said in submissions that the school needed to be clearer with him what was appropriate behaviour and inappropriate behaviour. I reject this submission. Firstly, the claimant had the teacher' standard document available to him which dealt specifically with maintaining appropriate boundaries between staff and pupils. The claimant said in evidence that he understood and had knowledge of the guidelines on how to form and maintain appropriate relationships between staff and students. From the claimant's own understanding and the guidance available, it should have been clear to the claimant that sending this quantity of emails to 3 specific students outside of school hours breached those boundaries. The respondent cannot be reasonably expected to have provided an example of each act of appropriate and inappropriate behaviour to the claimant.
94. The respondent was entitled to find this was the claimant interacting with students online out of school hours.

Maths Paper

95. The respondent was entitled to find that the claimant was treating student A more favourably than others and offering special treatment by providing the paper to her and no one else. He hadn't told student A's own maths teacher he was doing this. There was a lack of transparency. This behaviour placed student A at a clear advantage and could have given the impression that the claimant favoured student

A over other students. The respondent was entitled to treat this as behaviour which blurred the boundaries between teacher and student and had the potential to be a safeguarding issue.

Procedural matters

96. The main criticism the claimant has of the respondent's investigation is that the respondent didn't interview parents of students about the claimant's supportive nature. Nor did the respondent interview members of staff on the groups that the claimant sat on, for example UNICEF, a multicultural group. The claimant said this would have helped the respondent to get a broader picture of who he was as a teacher.

97. The difficulty with the claimant's criticism here is that the respondent was looking at the very specific allegations of gross misconduct. The claimant accepted that none of the witnesses identified by the claimant had witnessed the alleged incidents or indeed knew about them. I therefore don't find that this was a reasonable line of enquiry the respondent needed to take, before reaching a decision. I do not find that the respondent's investigation in respect of this charge was outside the band of reasonable responses. There were no further lines of enquiry that the respondent could reasonably take.

98. Turning to the issue of whether the respondent followed a fair procedure. The claimant accepted he understood the allegations made against him ahead of the disciplinary hearing and was given the opportunity to put forward his version of events at the disciplinary hearing. The claimant was represented at the final hearing.

99. The main criticism the claimant has of the respondent's procedure is that he only had a week to prepare for the disciplinary hearing. He contrasts this with the three-month period the respondent had to conduct its investigation. Despite only having a week to prepare for the final disciplinary hearing the claimant accepted that he was able to provide a comprehensive response to the charges against him. He accepted in cross examination that nothing was missing from his response and had he been given any more time, it was unlikely to make a difference to the information he provided in his response. In the circumstances, I find a week was sufficient to enable the claimant to prepare for the disciplinary hearing and indeed he was able to effectively prepare and present his case at that hearing.

100. The other criticism the claimant made about the respondent's disciplinary process was that it was not transparent. The claimant complains that the respondent didn't give him anyone to support and advise him about the process. He considered he was kept in the dark. I find that the claimant had several resources that he could have turned to if he wanted to understand the disciplinary process. Firstly, the respondent's disciplinary processes set out in the disciplinary procedure which was available to the claimant. Secondly the claimant had access to union representation, and he accepts the union were guiding him through the process at that time. Thirdly, the claimant could have asked the respondent and did not do so.

101. The claimant said that he believed no one on the disciplinary panel listened to his case or considered what he said. I do not accept this submission. I find that Ms Devi and the panel considered the claimant's points carefully but were entitled to not accept them for the reasons set out in this judgment. Whilst the claimant might not like the outcome of the disciplinary process, the procedure followed was fair.

102. Overall, I find the procedure was within the band of reasonable responses.

Decision to dismiss

103. Turning now to the decision to dismiss. The respondent's disciplinary policy makes it clear that a single act of gross misconduct will warrant dismissal even if no previous warnings have been given.

104. There was evidence of the claimant showing his personal mobile phone number with student A. This was identified as gross misconduct in the disciplinary policy. Given the context of the respondent's organisation, the power imbalance between student and teacher, the need to protect staff and students and the potential safeguarding concerns I find that it was open to a reasonable employer to dismiss the claimant for this reason alone.

105. In addition to this, there was evidence about the content of the email communications between the claimant and students A,B and C, the special and more favourable treatment of student A in respect of supplying her with the maths test and the specific incident on 30 June 2022 where the claimant entered a private space, in the pastoral room, against student A's wishes and against the advice of Lindsay Clark to have a discussion with her.

106. I find the respondent was entitled to decide that claimant did not appreciate how his behaviour could be perceived or misinterpreted by students or the impact of his conduct on students. He did not seem to appreciate the boundaries that should exist between teacher and student. He did not seem to appreciate how his intentions could be misunderstood by him breaching those boundaries and using overfamiliar language and sending emails at inappropriate times of the day.

107. The respondent was entitled to find that the claimant hadn't responded to the guidance he had been given by the respondent in this area, through the various policies and procedures and the very specific guidance he had been given on 17 June 2022 about boundaries and use of language. The respondent was entitled to find this guidance had not been taken on board.

108. In conclusion it was open to a reasonable employer to summarily dismiss the claimant in the circumstances. The respondent was entitled to uphold its policies. I accept the respondent's submission that its policies are important and are there to protect pupils and uphold the dignity of the teaching profession. Whilst the claimant did offer mitigation and suggests that he had learned his lesson, the respondent was entitled to consider that the claimant had previously been warned about his misconduct, given specific guidelines about how to conduct himself, and had continued to the boundaries between teacher and student.

109. Having reached this finding, I do accept that some employers might have given the claimant the benefit of the doubt, might have concluded the claimant had understood the seriousness of his misconduct and was going to change his approach moving forwards. However, this employer did and the question for me is whether the decision to dismiss in the circumstances is out with a band of reasonable responses and I find it is not.

110. The claimant's claim that he was unfairly dismissed by the respondent is not well founded and is dismissed.

111. Having reached the issue of Polkey and Contributory fault do not arise.

Employment Judge Childe

20 November 2023

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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