EMPLOYMENT TRIBUNALS

Claimant: **Mrs P. Mansaray**

Respondent: **Goodmayes Medical Practice**

Heard at: **East London Hearing Centre**

On: **10 January 2024**

Before: **Employment Judge Massarella**

Representation
Claimant: Represented herself
Respondent: Ms S. Quinn (HR consultant)

RESERVED JUDGMENT

The judgment of the Tribunal is that: -

1. **The Claimant's claim of unfair dismissal is not well-founded and is dismissed.**

REASONS

Background

1. This case was presented on 29 June 2023, after an ACAS early conciliation period between 3 May and 12 June; it is a claim of unfair dismissal only. In late 2023, the Respondent applied to have today's hearing converted into a preliminary hearing; EJ Crosfill refused the application, which was not renewed at the hearing.

2. I had an 89-page bundle. I heard evidence from the Claimant (who relied on two written statements) and, on behalf of the Respondent, from Dr Khalid Patel, Dr Adam Razack and Ms Sara Quinn (HR consultant).

3. Ms Quinn was representing the Respondent at the hearing; she was also the person who took the decision to dismiss. She had not produced a witness statement for herself; she told me she had not realised it would be necessary. I asked her if she wanted me to treat the grounds of resistance in the ET3

(which she had drafted) as her witness statement. She consulted with Dr Patel and confirmed that the Respondent was content to proceed on that basis.

4. I heard brief oral submissions from both parties.

Findings of fact: unfair dismissal

The Claimant's employment

5. The Respondent is a GP practice. Dr Khalid Patel has been the lead GP since 2009; Dr Razack is a GP in the practice. The Claimant joined the practice in 2013 as practice manager. One of her responsibilities was to maintain accurate records, including contracts of employment and appraisal documents.

6. In an email dated 26 January 2015, Dr Patel wrote to his accountant, copying in the Claimant that he had 'only realised now that [the Claimant] doesn't have a contract as yet!!!' The Claimant did not reply to contradict that that statement.

The production of the written contract of employment

7. In October 2022, Dr Patel was dealing with a staff sickness issue; he consulted the BMA who advised him to review all staff contracts to make sure they were consistent.

8. Dr Patel asked to speak to the Claimant and raised the need to create a formal, written contract for her. The Claimant then produced an employment contract from her personnel file, dated 3 June 2013; Dr Patel was surprised because he believed there was no such document. He was shocked by the clause relating to annual leave, which provided for 37 days' leave plus bank holidays.

9. In a statement prepared for the internal disciplinary proceedings on 3 February 2023, Dr Patel said that the Claimant told him that she had been working in the NHS for 40 years and so was entitled to an extra day of annual leave per 10 years of employment. When he looked at the last page of the contract, where his signature should be; he found a signature, which was completely different from his own; he was shocked. He asked the Claimant for an explanation; she had no answer, other than to say that he had sent her the contract. He asked for proof of this; she told him she could not provide it because her emails from that time had been 'corrupted' and she did not have access to them. He also asked why the contract was different from that of other staff; again, she had no proper response.

10. In the same statement, Dr Patel went on to describe an occasion several weeks later, when the Claimant came to his room with a printout from a website 'showing the entitlement for annual leave'. He asked her to send him the link, but she did not do so. He pointed out that GP practices were not NHS organisations; any increments that applied in the NHS did not apply to GP practices. He again told her that the annual leave on the contract was far beyond his expectations and that he had confirmed with the BMA and other GPs that this was the case.

11. He repeated that the signature on the contract was not his. He attached to his statement several examples of his signature to demonstrate the difference. He also explained that he had searched his emails and there was no email under cover of which he had sent the Claimant a contract of employment.

12. He did not take action immediately because he wanted to take advice. On 20 December 2022, he contacted K. Bater HR consultancy and told Ms Quinn what he had discovered.

13. The Claimant caught Covid on 13 January 2023 and was off sick for 10 days, after which she returned to work. Although she was still feeling unwell, she agreed to attend, and engage with, all the meetings described below; she did not ask for any postponements.

The suspension

14. Dr Patel had a meeting with the Claimant on 1 February 2023, when he gave her a suspension letter. The letter identified the potential disciplinary charge as follows:

> 'Producing a fraudulent contract of employment with unusually high annual leave, with an unrecognised management signature'.

15. He told the Claimant that the matter would be investigated. I note that there is no reference to appraisal documents in this letter, even though (on his own account) he had discovered the appraisal documents referred to below before suspending her.

16. The Respondent had records of holiday taken in the form of large wall-mounted planners.

The Claimant's account

17. The Claimant gives a different account in her claim form and witness statement in these proceedings: that there was only one conversation between her and Dr Patel, on 2 February 2023, when he called her into his office; he told her that he had found her contract in her staff file and that it was not his signature on it; she told him that she had never taken 37 days; she told him that Dr Patel had agreed to her taking 33 days (because of long service in the NHS) at the interview; she said that she had never taken that amount of leave.

18. The Claimant's account is inaccurate in at least one important respect: she accepted in oral evidence that Dr Patel asked her for her contract; he did not find it himself and confront her with it. On the balance of probabilities, I prefer Dr Patel's account of the two meetings; it is supported by a statement made close in time to the events in question.

The investigatory process

19. Dr Patel asked his colleague Dr Razack to conduct an investigation. Dr Razack invited the Claimant to a meeting on the evening of 9 February 2023 at the practice, which she attended. There are notes of the meeting, prepared by Dr Razack. I accept they are broadly accurate.

20. At the beginning of the meeting Dr Razack told the Claimant that there were more disciplinary charges. The notes of the meeting record them as follows:

> 'Fraudulently signing documents on behalf of Dr Patel
>
> - Contract of employment – signed allegedly by Dr Patel on 3 June 2013
> - Appraisal dated 26 April 2016 [*sic*] - signed allegedly by Dr Patel
>
> Overtaking allocated holidays – 37 as per contract
>
> Fabricating appraisals - allegedly held by Dr Patel on the following dates:
>
> - 25 June 2014
> - 15 June 2015
> - 5 December 2016
> - 26 April 2018 (allegedly signed by Dr Patel)'

21. Dr Razack discussed the contract with the Claimant. She told him that Dr Patel had sent her the contract template; the specific details were entered by her, including the annual leave entitlement. She no longer had the original email; IT had told her they could only trace emails back five years. She told Dr Razak that she believed that she was entitled to an extra day per 10 years of service in the NHS, which amounted to 33 days plus four extra days (37 days), to reflect 43 years of service, plus eight public bank holidays (a total of 45 days). She said that she had agreed this with Dr Patel at the initial interview. She said that she had never taken 37 days.

22. She also said that she had consulted a website about Agenda for Change, which said that, after 10 years of service, staff members were entitled to 33 days plus 8 bank holidays (a total of 41 days). She also knew colleagues who received six weeks plus eight bank holidays (38 days).

23. As for the signature on the contract, she could not confirm or deny whether Dr Patel had signed it because she had received the contract 'ten years ago'. She said that, if she ever signed a document on behalf of Dr Patel, she always pp'd it, signing with her own name.

24. Dr Razack then showed her four annual appraisal documents, which Dr Patel had found in her file. The documents dated from 2014, 2015, 2016 and 2018. All four had headings which recorded that an appraisal meeting had taken place on a particular date and that the Claimant and Dr Patel were both present at the meeting.

25. The appraisals are partly lists of duties and tasks, but they also contain assessments of the quality of the Claimant's work, which is described in glowing terms. The 2014 appraisal records that 'she has very good leadership qualities…[she] is very thorough with all her work, a perfectionist she calls herself… Well done for her hard work in supporting the Team.' The document contains 'objectives', which are then recorded as having been met in subsequent years. Under 'further comments', the Claimant has written:

'Overall excellent performance – Well done Perri'. In the section for integrity, the Claimant inserted 'Excellent'. The 2015, 2016 and 2018 appraisals are in similar terms.

26. There was space for Dr Patel to sign the appraisals; two were unsigned by him; the 2016 appraisal had his typed name in the space for signature; the last purported to have been hand-signed by him.

27. Dr Razack discussed these documents with Dr Patel before the investigatory meeting. Dr Patel told him that he had never conducted appraisals with the Claimant (although he should have done) and that the signature on the last of them was not his. That is what Dr Razack raised with the Claimant at the meeting. She declined to comment on the documents and said she wanted to review them before doing so.

28. Dr Razak said in oral evidence that he spoke to Dr Patel who told him that the annual leave should be 'statutory', i.e. four weeks plus bank holidays.

29. There was no investigatory report as such. Dr Razack simply forwarded his investigation notes to Ms Quinn. The decision to progress the matter to a disciplinary hearing was taken by Dr Patel, having consulted the BMA and Ms Quinn. He delegated the conduct and outcome of the disciplinary stage to Ms Quinn.

30. The two disputed signatures, purporting to be Dr Patel's, resembled each other, but did not resemble the genuine examples of Dr Patel's signature.

The Claimant's account

31. Again, the Claimant gave a very different account in her witness statement, in which she wrote that she did comment on the appraisal documents at the meeting with Dr Razack and accepted that Dr Patel had never done her appraisals. As for the signature on the 2018 document, she says that she told Dr Razack that she had signed it herself; there was a CQC inspection; on the morning of the inspection she suddenly realised that she might be asked to produce her own appraisal and that, if it were not signed, the practice might get into trouble; in a panic, she signed it herself with what she described in her ET1 as a 'squiggle which looks nothing like Dr Patel's signature.' As for the annual leave entitlement, she says that she told Dr Razack that it was a typographical error.

32. On balance, I prefer Dr Razack's account - that the Claimant declined to comment on the appraisals - and I find that the explanation the Claimant gave in her witness statement was not given to Dr Razack at the meeting, although elements of it were later given to Ms Quinn.

The invitation to the disciplinary hearing

33. The Claimant was invited to a disciplinary hearing by a letter dated 10 February 2023 which identified the following disciplinary charges.

> 'Producing a fraudulent contract of employment with unusually high annual leave, with an unrecognised management signature.

> Producing four fraudulent appraisals, one with an unrecognisable management signature.'

34. There was no separate allegation that she had taken excessive leave.

35. The letter explained that the Claimant had a right to be accompanied and warned that, if the allegations were upheld, she might be dismissed. A copy of the disciplinary procedure was attached, together with a copy of the disputed contract and the four appraisals. Dr Patel's witness statement of 3 February 2023 was not attached.

The disciplinary hearing

36. On 14 February 2023, the disciplinary hearing took place by Teams with Ms Quinn. There are notes of the hearing which, while not verbatim, I accept are broadly accurate.

37. In relation to the contract, the Claimant told Ms Quinn that she had received the contract ten years earlier from Dr Patel by email, and that she had completed it as per the terms which had been offered to her. She said that she had signed it, printed it and put it in her file, since when it had 'not seen the light of day'. She could not locate the email to which it was attached; she said that IT had told them they did not keep emails longer than five years.

38. She did not know how Dr Patel's signature got there; she assumed he had signed it but could not remember as it was ten years ago. She was familiar with his signature but 'signatures change under pressure'.

39. She said that she had inserted the salary into the contract but could not remember inserting the holiday days. As for the annual leave entitlement, she told Ms Quinn that she did not realise the contract said 37 days; she believed that for every 10 years of service within the NHS, she was entitled to an additional day; she had 'always worked on the basis of having 33 days.' She said that she had done a summary of all the leave she had taken on 2013 and offered to send it to Ms Quinn, who agreed. The Claimant said she had not taken any more than 29 days until the 2020 lockdown; she said they had 'two years to make up, up to the end of March this year, any leave owing from lockdown'; she said there was no evidence that she had taken 37 days leave.

40. As for the appraisal documents, the Claimant confirmed that Dr Patel had never carried out appraisal meetings with her; she had prepared the documents herself, stating what she believed she had achieved during each year; Dr Patel had never seen any of the appraisals but there was 'nothing in there fraudulently, it's what I've achieved over the years, workwise.'

41. As for the signature on the 2018 document, in preparing for a CQC inspection, she had checked to make sure all staff had completed appraisals. She said that she realised on the day of the inspection that she had done everything apart from looking at her own appraisals; she printed off her appraisals (which were already on her computer) in a state of panic; in the space for Dr Patel signature, she 'did a squiggle [which] doesn't look like anyone's signature to be honest.'

42. She denied fraud, which she said must include 'wrongful gain or loss to a person'. She said that she had never done anything deceitfully or fraudulently; she had never committed theft or anything of the sort.

43. The meeting adjourned at 9.30 a.m.

44. During the adjournment, the Claimant sent Ms Quinn a summary she had produced of her annual leave from 2013 to 2023, which showed that she had not taken any more than 30 days, some years 27 or 28 days; it was only in the last year that she had taken more than 33 days, which she said included days which she was authorised to carry over because of the pandemic. The Claimant created this document from such limited records as she had with her at home. She did not ask to see the planners - which she knew about and which were held at work - nor did Ms Quinn consult the planners to verify the accuracy of the Claimant's summary because nobody had told her about them.

45. The meeting reconvened at 4 p.m. on the same day so that Ms Quinn could give the Claimant the outcome, which was summary dismissal.

46. She began by saying that there was 'no further case to answer to' in relation to the number of days holiday the Claimant had actually taken (even though there was no such specific disciplinary allegation).

47. She then told the Claimant that she had decided to dismiss her summarily because 'in accordance to [*sic*] the disciplinary policy, fraud and deliberate falsification of records is evident.'

48. On 15 February 2023 Ms Quinn sent the Claimant a letter, confirming dismissal for gross misconduct. Ms Quinn referred to the absence of any evidence that the contract had been sent to the Claimant on commencement of employment; the Claimant's inability to explain how a holiday entitlement of 37 days had come to be inserted into the contract; and the Claimant's inability to explain how a signature had been inserted which appeared to be Dr Patel's, but which Dr Patel said was not his. Ms Quinn referred to the Claimant's admission that there had never been any appraisal meetings for her as practice manager; that she had created the documents herself, without showing them to Dr Patel. She also referred to the Claimant's admission that it was she who had signed Dr Patel's name on the 2018 appraisal ahead of the CQC inspection.

49. She ended the letter as follows:

> 'Having carefully reviewed the circumstances, I have decided that dismissal on the grounds of Gross Misconduct is the appropriate sanction as per the disciplinary policy, citing theft, fraud and deliberate. falsification of records.'

50. I accept Ms Quinn's evidence that this last phrase is taken directly from the section of the disciplinary policy which gives examples of gross misconduct one of which is 'theft, fraud and deliberate falsification of records.' I find that Ms Quinn had simply adopted the phrase as a whole, treating it as a single category, even though there was no allegation of theft, nor any suggestion that theft had been committed.

51. Ms Quinn said that she 'did uphold an allegation of fraudulently signing Dr Patel signature'. I asked her whether fraud involved personal gain. She replied: 'the appraisals could have been used going forward'. I asked Ms Quinn what she concluded about the appraisal documents; she told me that she concluded that the Claimant had created the documents herself without having had appraisals; she regarded the documents as dishonest because they purported to show that meetings with Dr Patel had happened on particular dates when, in fact, they had not happened at all.

52. As for how much annual leave the Claimant had taken, Ms Quinn said that she had accepted the Claimant's summary because, so far as she knew, there was nothing to compare it to; she did not know about the holiday planners at the time.

The law

Unfair dismissal

53. S.94 Employment Right Act 1996 ('ERA') provides that an employee with sufficient qualifying service has the right not to be unfairly dismissed by his employer.

54. S.98 ERA provides so far as relevant:

> **(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—**
> **...**
> **(c) relates to the conduct of the employee**
> **...**
>
> **(4) ... 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.**

55. It is notable that s.98(2) refers to 'conduct' as being a permissible reason for dismissal, rather than 'misconduct', gross or otherwise. It is well-established that conduct for these purposes need not be reprehensible or culpable in order for it to be a potentially fair reason for dismissal: see *Royal Bank of Scotland v Donaghay*, UKEATS/0049/10 at [43] and *JP Morgan Securities plc v Ktorza* UKEAT/0311/16/JOJ at [42].

56. In *Orr v Milton Keynes Council* [2011] ICR 704 at [78], Aikens LJ summarised the correct approach to the application of s.98 in misconduct cases:

> **'(1) The reason for the dismissal of an employee is a set of facts known to an employer, or it may be a set of beliefs held by him, which causes him to dismiss an employee.**
>
> **(2) An employer cannot rely on facts of which he did not know at the time of the dismissal of an employee to establish that the "real reason" for dismissing the employee was one of those set out in the statute or was of a kind that justified the dismissal of the employee holding the position he did.**
>
> **(3) Once the employer has established before an employment Tribunal that the "real reason" for dismissing the employee is one within what is now section 98(1)(b), ie that it was a "valid reason", the Tribunal has to decide whether the dismissal was fair or unfair. That requires, first and foremost, the application of the statutory test set out in section 98(4)(a).**
>
> **(4) In applying that subsection, the employment Tribunal must decide on the reasonableness of the employer's decision to dismiss for the 'real reason'. That involves a consideration, at least in misconduct cases, of three aspects of the employer's conduct. First, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case; secondly, did the employer believe that the employee was guilty of the misconduct complained of; and, thirdly, did the employer have reasonable grounds for that belief."**
>
> **If the answer to each of those questions is 'yes', the employment Tribunal must then decide on the reasonableness of the response of the employer.**
>
> **(5) In doing the exercise set out at (4), the employment Tribunal must consider, by the objective standards of the hypothetical reasonable employer, rather than by reference to its own subjective views, whether the employer has acted within a 'band or range of reasonable responses' to the particular misconduct found of the particular employee. If it has, then the employer's decision to dismiss will be reasonable. But that is not the same thing as saying that a decision of an employer to dismiss will only be regarded as unreasonable if it is shown to be perverse.**
>
> **(6) The employment Tribunal must not simply consider whether they think that the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that of the employer. The Tribunal must determine whether the decision of the employer to dismiss the employee fell within the band of reasonable responses which 'a reasonable employer might have adopted'.**
>
> **(7) A particular application of (5) and (6) is that an employment Tribunal may not substitute their own evaluation of a witness for that of the employer at the time of its investigation and dismissal, save in exceptional circumstances.**
>
> **(8) An employment Tribunal must focus their attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any appeal process) and not on whether in fact the employee has suffered an injustice.'**

57. At (4) above, Aikens LJ was summarising the well-known test in *British Homes Stores Ltd v Burchell* [1980] ICR 303 at p.304.

58. In *Sainsbury v Hitt* [2003] IRLR 23 at paras 30-34, the Court of Appeal held that:

> **'The investigation carried out by Sainsbury's was not for the purposes of determining, as one would in a court of law, whether Mr Hitt was guilty or not**

> **guilty of the theft of the razor blades. The purpose of the investigation was to establish whether there were reasonable grounds for the belief that they had formed, from the circumstances in which the razor blades were found in his locker, that there had been misconduct on his part, to which a reasonable response was a decision to dismiss him. … In my judgment, Sainsbury's were reasonably entitled to conclude, on the basis of such an investigation, that Mr Hitt's explanation was improbable. The objective standard of the reasonable employer did not require them to carry out yet further investigations of the kind which the majority in the employment Tribunal in their view considered ought to have been carried out.**
>
> **In suggesting further investigations of the kind set out in paragraph 6 of the extended reasons, the majority of the employment Tribunal were, in my judgment, substituting their own standards of what was an adequate investigation for the standard that could be objectively expected of a reasonable employer. On the decision of this Court in Madden, that is not the correct approach to the question of the reasonableness of an investigation.'**

59. The distinction between dishonest behaviour and fraudulent behaviour is not always easy to draw. However, the label attached to the employee's conduct is not crucial provided he or she was aware that his or her behaviour was unacceptable and amounted to misconduct (*Brito-Babapulle v Ealing Hsoptal NHS Trust* [2014] EWCA 1626). If fraud is relied on, even where the employee does not gain from his or her ostensibly fraudulent conduct, it may so undermine the employer's confidence that dismissal will still be fair (*AEI Cables Ltd v McLay* [1980] IRLR 84).

60. The Supreme Court reviewed the law on dishonesty in *Ivey v Genting Casinos. (UK) Ltd* [2018] AC 391, a non-employment case concerning a contract between a gambler and a casino. In a decision that effectively aligns the criminal and civil tests for dishonesty, the Supreme Court held that the subjective element of the test in *R v Gosh* [1982] QB 1053 does not correctly represent the law and directions based on it should no longer be given. Where a question arises as to whether conduct is in fact dishonest, the fact-finding tribunal must first ascertain the actual state of the individual's knowledge or belief as to the facts. The question whether the conduct was honest or dishonest should then be determined by applying the objective standards of ordinary decent people.

61. Even if the dismissal decision falls within the band of reasonable responses, it may still be unfair, if the Respondent has not followed a fair procedure. The Tribunal must evaluate the significance of the procedural failing, because 'it will almost inevitably be the case that in any alleged unfair dismissal a Claimant will be able to identify a flaw, small or large, in the employer's process' (*Sharkey v Lloyds Bank Plc* UKEATS/0005/15/JW at [26]). The Tribunal has to look at the question in the round and without regard to a lawyer's technicalities (*Taylor v OCS Group Limited* [2006] ICR 1602 at [48]). This need for a holistic approach has been reiterated in later cases, notably *Sharkey v Lloyds Bank Plc* UKEATS/0005/15/JW and *NHS 24 v Pillar* UKEATS/005/16/JW.

62. In looking at whether dismissal was an appropriate sanction, the question is not whether some lesser sanction would, in the Tribunal's view, have been appropriate, but rather whether dismissal was within the band of reasonable

responses. The fact that other employers might reasonably have been more lenient is irrelevant (*British Leyland (UK) Ltd v Swift* [1981] IRLR 91).

63. There is no requirement in the unfair dismissal analysis to determine whether conduct amounts to gross misconduct, which involves a separate contractual concept. That was made clear by Langstaff J in *West v Percy* UKEAT/0101/15 at [24-26 and 28]:

> **'[…] gross misconduct is a contractual concept. Where there is misconduct, an employee may be dismissed, and he may be dismissed either with or without notice: but if without notice, there is likely to be an issue as to whether the misconduct is or is not gross. That is a contractual, not statutory, issue upon which the payment of the sum otherwise due during a notice period would depend if an action for wrongful dismissal were to be brought (no such action was brought in the present case). Whether there has been gross misconduct is a finding of fact dependent upon what actually happened. By contrast, a decision in respect of section 98 depends not upon what happened but upon asking what the employer thought had happened, which is a different enquiry.**
>
> **[…]**
>
> **It may be more usual that a dismissal is held fair where there is something that might be described as gross misconduct contractually, and as such within the terms of the employer's disciplinary procedure (especially if that is contractual) it would be held unfair. It may be unusual that a dismissal is held unfair where there is no gross misconduct. But in neither case is the presence or absence of gross misconduct, as such, determinative. […] The question is whether what the employer thought had happened, in the circumstances in which the employer thought the conduct to have occurred, was or was not sufficient to justify the employer's actions so as to be held not unfair within section 98(4).'**

Conclusions

What was the sole or principal reason for the dismissal? Was it a permissible reason?

64. I am satisfied that the sole reason for dismissal was conduct: the creation of a false contract of employment, containing an excessive entitlement to annual leave; the creation of four false appraisal documents, which had not been agreed with the employer; and the Claimant's signing of Dr Patel's name on the contract and the 2018 appraisal.

65. I have concluded that the terms 'fraudulent' and 'falsification' were used interchangeably by Ms Quinn to refer to the creation by the Claimant of a contract of employment between the Claimant and Dr Patel, which had not been agreed by Dr Patel; the creation of four appraisals which recorded meetings which had never taken place; and the Claimant's signing of Dr Patel's signature on the contract and the 2018 appraisal. I reminded myself of the guidance in *Brito-Babapulle*: that the label attached to the conduct is not crucial provided the employee is made aware during the disciplinary process that her behaviour was unacceptable and amounted to misconduct.

Did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case?

66. As for the four appraisals, the Claimant accepted that she alone had created them; that the meetings referred to in the documents had not taken place; that Dr Patel had not been involved in the creation of the documents; and that the signature on the 2018 appraisal, purporting to be his, was inserted by her.

67. As for the contract, the Claimant asserted that it had been created in 2013 and that the signature on it was Dr Patel's, but she had no evidence to support this. Dr Patel told Ms Quinn that the Claimant had never had a written contract and that the signature on the document was not his; Ms Quinn had examples of Dr Patel's signature, which were different from the signature on the contract.

68. In my judgment no further investigation was reasonably necessary; the question for Ms Quinn was whose account she believed.

Did the Respondent believe in the guilt of the Claimant of that misconduct at that time?

69. I accept Ms Quinn's evidence that she considered that the Claimant had acted dishonestly by creating four appraisal documents which purported to show meetings having taken place on specific days between the Claimant and Dr Patel, when no such meetings had taken place; by including in them an assessment of her own performance, which appeared to be agreed with Dr Patel, when in fact Dr Patel had had no input into the assessment; and by signing Dr Patel's name on the 2018 appraisal.

70. I accept Ms Quinn's evidence that she believed that the Claimant had created the contract herself; that she had had inserted a term providing excessive leave entitlement, which had not been agreed with Dr Patel; and that she had falsified Dr Patel's signature on it.

Did the Respondent have reasonable grounds for that belief?

71. As for the fact of the appraisals, the Claimant's own admissions provided the necessary grounds. As for dishonesty, even if Ms Quinn accepted the Claimant's explanation as to why she had signed Dr Patel's name on the 2018 appraisal, it did not explain why the document existed in the first place in the form that it did, nor why there were three other documents, going back to 2014, which purported to record appraisal meetings which had never taken place and assessments which had never been carried out. Further, if the Claimants explanation as to why she had signed Dr Patel's name was true, her stated purpose was to mislead the CQC, which was itself an act of dishonesty.

72. As for the contract, Ms Quinn was entitled to prefer Dr Patel's account that there had never been a written contract of employment and that the signature on the document presented by the Claimant was not his. She was entitled to believe that the Claimant had created the contract herself, that she had signed Dr Patel's name and, by doing so, had sought to pass it off as a document which had been agreed with him. In particular, she knew that Dr Patel would not have agreed to such a high level of annual leave entitlement. Ms Quinn was entitled to have regard to the fact that the Claimant initially sought to explain to Dr Patel and Dr Razack why the annual leave entitlement was justified, before changing her position and telling Ms Quinn that she could not remember how it found its way into the contract.

73. The Claimant points to the fact that Ms Quinn did not uphold an allegation that she had, in fact, taken excessive leave. I have concluded that Ms Quinn, who thought she was dependent on the Claimant's own account of the leave taken (because she did not know about the planners), simply took it at face value. In judgment, she had reasonable grounds to believe that the act of creating a

false contract for herself and falsifying Dr Patel's signature on it was itself serious misconduct.

By the objective standards of the hypothetical reasonable employer, did the decision to dismiss the Claimant fall within the band of reasonable responses which a reasonable employer might have adopted in response to the misconduct?

74. The Claimant accepted that she was familiar with the disciplinary policy; she had been involved in its creation. She knew that the falsification of records was categorised as gross misconduct.

75. I accept Ms Quinn's submission that creating false documents and falsifying the signature of her employer was not only a breach of the Respondent's disciplinary policy, it was also a breach of trust, having regard to the Claimant's seniority and the responsibilities of her role, which included accurate record-keeping.

76. I have concluded that, by the ordinary standards of reasonable and honest people, Ms Quinn was entitled to conclude that the Claimant had acted dishonestly by creating false records and by signing Dr Patel's name on documents he knew nothing about. The Claimant must have realised that what she was doing was wrong; that is suggested by the fact that she did not consult Dr Patel before creating the contract or mention it to him until he asked about it, and never mentioned the appraisals to him at all, even after she had signed his name on one of them (according to her) in a panic.

77. There were procedural aspects which caused me some concern: the Respondent ought to have disclosed to the Claimant Dr Patel's statement before the disciplinary hearing; on the other hand, the Claimant knew what Dr Patel's position was because he had told her during their face-to-face meetings. The dismissal letter was poorly expressed and contained a significant error (finding that an allegation which was not in fact pursued was 'substantiated', when it meant 'unsubstantiated'). However, standing back from the process, taking into account the admissions the Claimant made in respect of the appraisals and the evident contradictions in her evidence, I am not satisfied that these flaws rendered the dismissal unfair.

78. I have concluded that the Respondent's decision to dismiss the Claimant fell within the band of reasonable responses which a reasonable employer might have adopted in response to the misconduct it believed, on good grounds, had occurred.

79. For these reasons, the Claimant's claim of unfair dismissal fails and is dismissed.

Employment Judge Massarella
Date: 15 February 2024