



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

12, 13 and 14th February 2024 (in person)

Claimants: Mr Nicolas Maari [C1] &
Mrs Anastassia Maari [C2]

Respondents: J & A Pellings Limited [R1] &
RSK Group Limited [R2]

Full merits hearing

Before: Judge M Aspinall (sitting alone as an Employment Judge)

Appearances: Miss M Sharpe (Counsel) for the Claimants
Miss K Barry (Counsel) for the Respondents

JUDGMENT WITH REASONS

UPON having seen and heard evidence and submissions from and on behalf of all parties, the Tribunal finds as follows:

1. The Tribunal finds that both Claimants were solely employed by J&A Pellings Limited at the relevant times. Neither Claimant has proven they were also employed by RSK Group Limited. Therefore, RSK Group Limited is removed as a Respondent.
2. Mr Maari's claim for unfair dismissal fails and is dismissed.
3. Mrs Maari succeeds in her claim for unfair dismissal.
4. Mrs Maari's remedy for unfair dismissal will be determined on the papers, unless either party requests a remedies hearing. Separate case management orders will follow.

Reasons

Background

5. The First Claimant, Mr Nicolas Maari, was engaged by the First Respondent, J&A Pellings Ltd (J&A Pellings), as an Architect in 2016. J&A Pellings provides architectural services and is based in Redhill, Surrey.

6. Mr Maari entered a permanent employment contract with J&A Pellings. Over his tenure, he was promoted through the ranks to eventually become Head of the Architecture Department.
7. The Second Claimant, Mrs Anastasia Maari, was employed by J&A Pellings in 2017. She worked in the Architecture Department under Mr Maari's indirect supervision.
8. J&A Pellings were purchased by the Second Respondent, RSK Group Ltd (RSK Group). RSK Group is a professional services firm operating across the UK in areas including engineering, environmental consultancy, and laboratory analysis.
9. Following RSK Group's acquisition of J&A Pellings, the roles, responsibilities and place of work of both Claimants remained unchanged.
10. During late 2020, concerns were raised within J&A Pellings regarding alleged inflation of costs being quoted to clients for subcontracted architectural and engineering/building services. It was claimed that the quotes being presented to clients exceeded the actual quotes received from subcontractors; notwithstanding the standard 15% markup for management which was routinely – and openly – added by J&A Pellings.
11. These concerns culminated in the submission of an anonymous whistleblowing email in September 2020 to J&A Pellings' management. This sparked separate, but joined, internal investigations into the allegations of overcharging clients through misrepresentation of subcontractor costs, against both Claimants.
12. Mr and Mrs Maari were both suspended from their roles pending the outcome of those investigations. They were subsequently invited to attend investigation meetings in early November 2020.
13. Following conclusion of the investigations, both Mr and Mrs Maari were invited to separate disciplinary hearings in December 2020 chaired by Mr Nigel Board. Mr Board ultimately decided to dismiss them both for gross misconduct, at separate hearings, in January 2021.
14. Mr and Mrs Maari appealed their dismissals, but the appeal hearings chaired by Mr Gary Young in February 2021 upheld the dismissals. This led them to lodge their claims for unfair dismissal with the Employment Tribunal having availed themselves of the ACAS Early Conciliation process first.

Claims

15. The First Claimant, Mr Maari, brought a claim against J&A Pellings Ltd and RSK Group Ltd for unfair dismissal. He contended that his dismissal in January 2021 for alleged gross misconduct constituted an unfair dismissal.
16. Mr Maari claimed there were several procedural flaws and failures relating to disclosure of evidence that rendered his dismissal unfair. Specifically, he argued he was not provided with full access to documentation needed to enable him to properly respond to the allegations and defend himself.
17. He asserted that complete disclosure was requested on multiple occasions during the investigatory and disciplinary stages, but these requests were denied. Mr Maari claimed this lack of full disclosure meant he could not mount a comprehensive defence and represented a serious procedural failing.
18. The Second Claimant, Mrs Maari, similarly brought an unfair dismissal claim against the Respondents. She argued her dismissal in January 2021 was procedurally flawed and unfair.
19. Mrs Maari claimed she was not responsible for preparing client cost estimates or quotations. She asserted her role was limited to administrative tasks like formatting documents and collecting materials as instructed by her line manager, Mr Andrew Fisher.

20. Mrs Maari denied any knowledge of or involvement in misrepresenting costs to clients. She contended she merely compiled information provided to her and had no oversight of the accuracy of the figures presented in documents she helped format.
21. Both Claimants argued the investigation process conducted by Mr George Tuckwell was fundamentally flawed. They asserted Mr Tuckwell was biased, failed to interview key witnesses, ignored evidence, and predetermined the outcomes.
22. The Claimants contended this allegedly biased and unreasonable investigation process rendered their subsequent dismissals unfair.
23. Mr and Mrs Maari also claimed their disciplinary hearings chaired by Mr Nigel Board failed to properly consider their explanations and defences. They asserted Mr Board ignored mitigating factors and alternative explanations regarding their lack of personal involvement.
24. Finally, the Claimants claimed their appeal hearings were procedurally flawed and unreasonable in upholding dismissal. They contended the appeals strayed beyond their grounds into full rehearings rather than focusing on the specific grounds of appeal as they should have done.

Issues before the Tribunal

25. Given that this claim was joined with that of Mrs Maari, and they were heard together, and given how the cases were presented and the evidence emerged, I have found it helpful to reframe the agreed issues, in relation to Mr Maari, thus:

Issue 1: Did the investigation process followed by the Respondents meet the standards of procedural fairness? Was Mr Maari provided sufficient opportunity to respond to the allegations and adequate disclosure of pertinent evidence?

Issue 2: Was the subsequent disciplinary hearing conducted fairly and reasonably in respect of procedure? Were Mr Maari's explanations and defences properly considered prior to findings being made?

Issue 3: Was Mr Maari's dismissal for gross misconduct substantively fair based on the evidence presented at the disciplinary hearing? Could dismissal be deemed within the reasonable range of responses open to the Respondents?

Issue 4: Was Mr Maari unfairly prejudiced at the disciplinary stage due to any alleged deficiencies or unfairness in the initial investigation process?

Issue 5: Was the appeal hearing reasonable and compliant with established procedure? Should the appeal have been limited to the specific grounds raised by Mr Maari rather than encompassing a full rehearing?

Issue 6: Has Mr Maari demonstrated, on the balance of probabilities, that there were any procedural flaws in the investigation or disciplinary process that rendered his dismissal unfair?

Issue 7: If procedural flaws are identified, were they nonetheless insufficient to alter the fairness of the dismissal outcome considering the evidentiary findings relating to Mr Maari's responsibility for inaccurate cost information being conveyed to clients?

Issue 8: Could the dismissal of Mr Maari for gross misconduct be considered reasonably justifiable and within the range of reasonable responses open to the Respondents based on the available evidence overall?

26. In relation to Mrs Maari, it has been helpful to frame the issues as follows:

Issue 9: Was Mrs Maari provided sufficient opportunity to respond to the allegations and adequate disclosure of pertinent evidence during the investigation process?

Issue 10: Was Mrs Maari's disciplinary hearing conducted fairly and reasonably in respect of procedure? Were her explanations and defences properly considered?

Issue 11: Was Mrs Maari unfairly prejudiced at her disciplinary hearing due to any deficiencies or unfairness in the investigation process?

Issue 12: Was Mrs Maari's appeal hearing reasonable and compliant with established procedure?

Issue 13: Has Mrs Maari demonstrated, on the balance of probabilities, that there were procedural flaws in the investigation or disciplinary process that rendered her dismissal unfair?

Issue 14: If procedural flaws are identified in Mrs Maari's case, were they nonetheless insufficient to alter the fairness of the dismissal outcome considering the evidentiary findings?

Issue 15: Could dismissal of Mrs Maari for gross misconduct be considered reasonably justifiable and within the range of reasonable responses open to the Respondents based on the available evidence in her case?

Issue 16: Did Mrs Maari work for J & A Pellings Limited, RSK Group Limited or both?

The law

27. Claims of unfair dismissal are governed by the Employment Rights Act 1996. This establishes the right of employees not to be unfairly dismissed and sets out the tribunal's powers in relation to such claims.
28. The key considerations relate to whether there were sufficient grounds for dismissal based on the employer's reasonable beliefs, whether a fair procedure was followed, and whether dismissal was within the range of reasonable responses.
29. Relevant sections of the Employment Rights Act 1996 deal with the requirements for a fair dismissal, including:
 - a. Section 98 covers the general fairness of the dismissal process.
 - b. Sections 111A and 112 outline matters such as the ACAS code of practice and rules around informing employees of the allegations against them.
30. The burden of proof rests with the employer to show the reason for dismissal was valid. The Tribunal must determine whether the dismissal was fair or unfair under Section 98(4) of the Act.
31. The leading case which the Tribunal is bound to follow in claims of unfair dismissal is *British Home Stores Ltd v Burchell [1978] ICR 303*. This case set out the three-stage test that the employer must satisfy to show a potentially fair reason for dismissal. These are:
 - a. Did the employer genuinely believe the employee was guilty of the misconduct?
 - b. Did the employer have reasonable grounds upon which to sustain that belief?
 - c. At the stage at which the employer formed that belief, had it carried out as much investigation into the matter as was reasonable in the circumstances?
32. This is known as the 'Burchell test' and was referred to extensively during the submissions in this case.
33. Other cases, cited by the parties, included:
 - a. *Fire Brigades Union v Embery [2023] EAT 51*:

- i. Supports the general principle that one employee cannot simultaneously have two employers for the same work/job.
 - ii. Dual employment is problematic in the context of employment rights legislation as it raises issues around which employer is responsible for statutory duties.
 - iii. The EAT was prepared to depart from the decision in Gough as it doubted the reasoning in that case allowing dual employment.
 - iv. The court emphasized the difference in policy context between tort cases like Viasystems and employment rights cases.
 - v. Strongly suggests dual employment should not be permitted in this case involving statutory employment rights.
- b. *Patel v Specsavers [2019] UKEAT 0286/18:*
- i. Also affirms the general rule against dual employment derived from cases like Laughher v Pointer.
 - ii. Identifies practical difficulties and complications if dual employment is found.
 - iii. Confirms reasoning in cases like Cairns that in the employment rights context there is no good policy reason to depart from the one employer principle.
 - iv. Indicates the ET was entitled to conclude the claimant only had one employer on the facts.
- c. *Prison Officers Association v Gough [2009] UKEAT 0405/09:*
- i. This case supports the possibility of dual employment being compatible and permitted.
 - ii. However, it was fact-sensitive and the payments to Mr Gough were more substantial.
 - iii. The EAT in Embery doubted the reasoning in Gough regarding dual employment.

The hearing

34. The hearing before the Tribunal took place over three days on 12th, 13th and 14th February 2024. The first Claimant, Mr Nicholas Maari, was present on all three days along with the second Claimant, Mrs Anastasia Maari. They were represented by Counsel, Miss Melanie Sharpe.
35. The Respondents were represented by Counsel, Miss Kirsten Barry. The Respondents had three witnesses attend to give evidence - Mr George Tuckwell, who conducted the investigation, Mr Nigel Board, who chaired the disciplinary hearing, and Mr Gary Young, who heard the appeal.
36. On the first day, the Tribunal considered the bundle of documents submitted which included witness statements from Mr Tuckwell, Mr Board and Mr Young. Mr Tuckwell was then called to give evidence and was cross-examined by Miss Sharpe. His evidence covered topics such as the investigation process, disclosure of documents to Mr Maari and the anonymous whistleblowing email.
37. On the second day, Mr Board gave evidence about the disciplinary hearing and decision to dismiss Mr Maari. He was cross-examined by Miss Sharpe. Mr Maari then gave evidence and was cross-examined by Miss Barry.

38. Mr Young gave evidence about the appeal process and was cross-examined by Miss Sharpe. Mrs Maari was cross-examined at length by Miss Barry. There was discussion around Mrs Maari's involvement in projects and knowledge of costs.
39. Miss Sharpe and Miss Barry then both made their closing submissions. Miss Sharpe argued that Mr Maari had been unfairly dismissed both procedurally and substantively. Miss Barry submitted there were reasonable grounds for dismissal and the process was fair. The Tribunal reserved judgment.

Evidence

40. The core bundle for this hearing ran to over 1,200 pages and contained extensive written and documentary evidence, to which the Tribunal was referred by the parties.
41. The evidence included witness statements from the key individuals involved in the Claimants' dismissals. A statement was provided by Mr George Tuckwell as the investigating officer. Mr Nigel Board, who chaired the disciplinary hearings, provided a witness statement. The Respondent's appeal officer, Mr Gary Young, submitted a statement.
42. Statements obtained during the investigation process from other colleagues of Mr and Mrs Maari were also included in the bundle, including Mr Andrew Fisher and Ms. Jane Arnold.
43. The bundle contained Mr Maari's employment contract with J&A Pellings Ltd, along with his job description and appraisal documents.
44. Mrs Maari's employment contract with J&A Pellings, job description and performance reviews were also provided.
45. Documentation relating to the investigation and disciplinary processes was included for both Claimants, such as the anonymous whistleblowing email which sparked the initial investigation, letters regarding their suspensions (pages 128-129), minutes of investigatory meetings, and minutes from their separate disciplinary hearings.
46. There were also documents evidencing the appeal process including minutes and outcome letters for Mr and Mrs Maari's appeals.
47. Examples of project documentation such as quotes, letters and emails were provided for context and to set out the Respondent's case against both Claimants.
48. Mr George Tuckwell, who conducted the investigation, was the first witness called to give oral evidence. Under cross-examination by Counsel for the Claimants, Mr Tuckwell confirmed details from his written statement relating to the investigation process and his findings.
49. Mr Nigel Board, who chaired the Claimants' separate disciplinary hearings, was also cross-examined. He gave evidence that he felt the lengthy suspension period was necessary and reasonable given the seriousness of the misconduct allegations.
50. Mr Gary Young, the appeal officer, gave evidence about the appeal process for both Claimants. In cross-examination, he explained that he had reviewed the requested project documents but found nothing relevant to the cost discrepancies in question. Mr Young confirmed he was willing to disclose further information had a second appeal hearing gone ahead.
51. Mr Nicolas Maari gave oral evidence stating he was unable to fully respond to the allegations without further project documentation that he had requested but not received. He maintained the cost figures may have differed for legitimate reasons, but he was not given the information required to identify explanations.
52. Mrs Anastasia Maari similarly gave oral evidence that she was undertaking administrative tasks as instructed by her line manager Mr Andrew Fisher. She asserted Mr Fisher was responsible

for reviewing costs and figures in documents. Mrs Maari denied any intent to misrepresent costs to clients.

Findings of the Tribunal

53. The Tribunal has carefully considered all the pleadings, witness statements, and documents contained within the core bundle for this hearing. While it is impractical to reference every individual piece of evidence in this Judgment, the Tribunal confirms that all documentation presented by the parties has been reviewed in reaching my conclusions. If a specific document, record, or excerpt has not been directly cited in this Judgment, that does not imply it was excluded from consideration. The Tribunal has undertaken a comprehensive analysis of the parties' evidence, both written and oral, but has refrained from rehearsing the entirety for concision. The Judgment focuses on the most salient evidence underpinning the Tribunal's findings on the central issues, but this does not indicate any evidence was ignored. The parties can be assured that the Tribunal's conclusions are based on the totality of pleadings, statements and documents presented.

Mr Nicolas Maari (2301731-2022)

54. Issue 1: Was Mr Maari employed by either J & A Pellings Limited or RSK Group Limited or both?

- a. The Tribunal finds that the sole employer of Mr Maari at the time of his dismissal was J&A Pellings Limited. The Tribunal reached this conclusion based on carefully weighing the contractual and employment history evidence.
- b. The primary employment contract in place between Mr Maari and J&A Pellings Limited from 2016 clearly names the company as J&A Pellings Limited. There is no reference to joint employment with RSK Group Limited.
- c. Mr Maari's continuous service is recorded as commencing in September 2016, considerably prior to RSK Group's acquisition of J&A Pellings Limited. There is no evidence of any agreed and bilateral change to the contractual arrangements.
- d. In cross-examination, Mr Maari accepted that J&A Pellings Limited was his employer at the time of dismissal; he added that he also considered RSK Group to be his employer too. He did not produce any additional contractual document suggesting additional, joint, dual or any other type of employment with RSK.
- e. The Tribunal considered the definition of 'employee' in RSK's Articles of Association cited by Mr Maari. However, the Tribunal places greater weight on the explicit terms of his personal employment contract specifying the employer as J&A Pellings Limited only.
- f. While Mr Maari performed services for J&A Pellings and sometimes for RSK, the degree of control and integration with the parent group RSK was insufficient to demonstrate an employment relationship or joint employer status.
- g. Having carefully analysed all witness and documentary evidence regarding Mr Maari's employment status, the Tribunal concludes he has not discharged the burden of proving his assertion of joint employment with RSK Group Limited.
- h. RSK Group Limited was not, at any material time – or since – the employer of Mr Maari.
- i. In reaching this conclusion, the Tribunal has borne in mind the relevant case law cited by the parties on the issue of joint employment.

55. Issue 2: Did the investigation process followed by the Respondents meet the standards of procedural fairness?

- a. The Tribunal finds that Mr Tuckwell's investigation process was procedurally fair based on his own evidence, which was coherent and convincing, and corroborated by other witnesses.
 - b. In his witness statement, Mr Tuckwell described undertaking spot checks across all departments over a period of months after receiving the whistleblowing email in late July. This indicates a broad, methodical investigation approach.
 - c. He presented specific examples relating to projects involving the architecture team members, including Mr Maari. This supports his assertion that issues only arose in the architecture department.
 - d. Mr Fisher's evidence in interview (during the investigation process) confirms Mr Tuckwell questioned the process for managing project costs. He does not dispute Mr Tuckwell's account of the investigation focus and scope.
 - e. Mr Maari argued he was not given full disclosure of all documents prior to investigation meetings. However, Mr Tuckwell stated in cross-examination that he provided documents he considered relevant for Mr Maari to respond to the allegations.
 - f. While it could have been preferable for Mr Maari to have earlier access to fuller project files, the Tribunal accepts Mr Tuckwell's rationale for disclosing key evidential documents. It is also found that despite his repeated requests for further documents, Mr Maari was never direct in setting out specific documents, or the reasons why they were necessary. The Tribunal finds no basis to find the lack of additional documents being provided to be procedurally unfair.
 - g. The Tribunal has considered the principles established in cases such as *British Leyland UK Ltd v Swift* [1981] IRLR 91 regarding fair disciplinary investigations. Weighing all the evidence, Mr Tuckwell's investigation met the necessary standards of procedural fairness and did not prejudice Mr Maari's ability to present his case.
56. Issue 3: Was the subsequent disciplinary hearing conducted fairly and reasonably in respect of procedure?
- a. Based on the evidence before it, the Tribunal finds Mr Board's conduct of the disciplinary hearing was procedurally fair and reasonable.
 - b. The minutes of the hearing (pages 302-339) demonstrate Mr Board provided Mr Maari adequate time to respond to the allegations regarding cost discrepancies across multiple projects.
 - c. When Mr Maari complained about lack of access to certain documents, Mr Board focused him on the specific projects discussed and gave him the chance to review the relevant files in the disciplinary pack (page 304).
 - d. Mr Board confined the scope of the disciplinary meeting to the central issue of misrepresentation of costs, rather than expanding it to every concern raised in Mr Maari's grievance letter (page 331). This was an appropriate exercise of Mr Board's discretion as chair. The Tribunal is satisfied that Mr Board considered that there were elements of Mr Maari's grievance that may have merited further investigation – but not by him during the conduct of the disciplinary hearing.
 - e. Mr Maari was afforded the opportunity to present his defences, which rested heavily on blaming errors or omissions by subordinate colleagues like Mr Fisher.

- f. In cross-examination, Mr Board came across to the Tribunal as an impartial, meticulous chair who gave Mr Maari every chance to present his case. Nothing in his oral evidence or the documents supports a finding of procedural unfairness.
 - g. Considering the guidance in cases like *British Home Stores v Burchell* [1978] ICR 303, the Tribunal is satisfied Mr Board conducted a fair disciplinary hearing in line with established procedural standards. There is no basis to conclude Mr Maari's dismissal resulted from an unfair process.
57. Issue 4: Was Mr Maari's dismissal for gross misconduct substantively fair based on the evidence presented at the disciplinary hearing?
- a. Applying the principles from *British Home Stores Ltd v Burchell* [1978] ICR 303, the Tribunal is satisfied the Respondent had reasonable grounds to believe Mr Maari committed misconduct and had carried out a reasonable investigation.
 - b. The investigation meeting notes show Mr Tuckwell presented numerous examples to Mr Maari of project costs being misrepresented to clients.
 - c. In his witness statement, Mr Tuckwell outlined further instances spanning 8 different projects where higher fees were quoted to clients than the subcontractor costs.
 - d. The corroborating statements from colleagues, who were interviewed during the investigation, lend weight to Mr Tuckwell's findings regarding the discrepancy between subcontractor quotes and fees charged to clients.
 - e. In the disciplinary hearing, Mr Maari did not provide a plausible explanation for why quotes had been inflated in letters he signed off. He largely blamed administrative errors by Mr Fisher for which he provided no evidence.
 - f. Mr Board stated in cross-examination that he disbelieved Mr Maari's claim that he knew nothing about costs being misrepresented and found Mr Fisher's evidence more credible.
 - g. Given the seriousness of the potential overcharging identified across multiple projects, the Tribunal finds dismissal for gross misconduct was within the reasonable band of responses available to the Respondent.
 - h. While Mr Maari denies intent to overcharge, the Tribunal concludes there were substantively fair grounds to find him guilty of gross misconduct based on the evidence presented at the disciplinary hearing.
58. Issue 5: Was Mr Maari unfairly prejudiced at the disciplinary stage due to any alleged deficiencies or unfairness in the initial investigation process?
- a. The Tribunal has found under Issue 2 that Mr Tuckwell's investigation met the necessary standards of procedural fairness and did not prejudice Mr Maari's ability to respond to the allegations.
 - b. Mr Tuckwell stated in his witness statement that he disclosed all documents he believed were relevant and pertinent for Mr Maari to address the specific allegations relating to misrepresentation of costs.
 - c. In cross-examination, Mr Tuckwell reiterated that he provided the key evidentiary documents but did not feel Mr Maari needed entire project files to respond on the narrow issue in question; the Tribunal agrees.
 - d. Mr Broad, as the disciplinary chair, focused the hearing tightly on the cost discrepancy examples and afforded Mr Maari opportunity to offer any explanations.

- e. Mr Maari argued he was unable to adequately respond without fuller disclosure but could not specify how additional documents would have aided his defence when pressed by Mr Broad.
- f. While wider disclosure may have been preferable, the Tribunal is ultimately satisfied that Mr Maari was provided the relevant evidential documents relating to the disciplinary allegations.
- g. Applying relevant legal principles, the Tribunal finds no procedural deficiencies or unfairness in Mr Tuckwell's investigation that would have materially impeded Mr Maari's ability to present his defence.
- h. Therefore, the Tribunal resolves this issue in favour of the Respondent and finds Mr Maari was not unfairly disadvantaged at the disciplinary stage by the investigation process followed.

59. Issue 6: Was the appeal hearing reasonable and compliant with established procedure?

- a. Based on the evidence before it, the Tribunal finds Mr Young conducted a reasonable appeal hearing in line with legal requirements and the Respondent's own appeal policy.
- b. Mr Young's witness statement demonstrates he undertook an in-depth review of the disciplinary process, findings, and Mr Maari's specific grounds of appeal.
- c. In the appeal minutes Mr Young is shown walking methodically through the projects, documents, and cost discrepancy examples with Mr Maari. This indicates a comprehensive approach.
- d. Mr Young confirmed under cross-examination that he was willing to provide additional disclosure to Mr Maari had a reconvened appeal gone ahead. This aligns to principles in *British Home Stores v Burchell* [1978] ICR 303 regarding fair appeal processes.
- e. The Respondent's appeal procedure expressly gives a wide discretion to the appeal chair as to how the hearing is conducted.
- f. Therefore, Mr Young's broad review does not contravene the Respondent's policy or statutory guidance around handling appeals. The Tribunal finds his approach reasonable and appropriate.
- g. While Mr Young reiterated the outcome of dismissal, he had provided Mr Maari ample opportunity to argue his case and propose alternative sanctions.
- h. The Tribunal concludes that both the scope and conduct of the appeal hearing were reasonable and compliant with established procedures based on the evidence presented.

60. Issue 7: Has Mr Maari demonstrated, on the balance of probabilities, that there were any procedural flaws in the investigation or disciplinary process that rendered his dismissal unfair?

- a. Having carefully considered issues 2 to 6, the Tribunal concludes that Mr Maari has not discharged the burden of proving his dismissal resulted from procedural flaws that rendered it unfair.
- b. The Tribunal found under Issue 2 that Mr Tuckwell's investigation was reasonable and met the necessary standards of procedural fairness based on his coherent account and corroborating evidence.
- c. Issue 3 determined Mr Board conducted the disciplinary hearing in a fair, meticulous manner that gave Mr Maari adequate opportunity to respond to the allegations and present his case.

- d. Mr Maari argued he was prejudiced by lack of full disclosure, but under Issue 5, the Tribunal found no unfairness or deficiency in the investigation sufficient to impede his defence.
 - e. The appeal hearing, considered under Issue 6, was also deemed reasonable and compliant with policy and statutory guidance.
 - f. Mr Maari's assertion that dismissal was procedurally unfair relied heavily on his view he was denied absolute and full access to any peripheral document. However, aside from speculation, he did not demonstrate how additional disclosure would have materially altered the evidentiary basis for the Respondent's decisions.
 - g. The Tribunal finds that the repeated requests for additional disclosure of any, and all, documents related to projects – which were sought by Mr Maari during the investigation, disciplinary and appeal processes – were no more or less than stalling tactics, attempts to derail or to cause disruption; they amounted to scarcely more than a fishing expedition in the vague and non-specific hope of undermining the Respondent at each of those stages.
 - h. Applying legal principles from cases like *Polkey v AE Dayton Services Ltd* [1987] IRLR 503, the Tribunal finds that Mr Maari has not proven any procedural flaw that caused substantive injustice rendering his dismissal unfair.
61. Issue 8: Could the dismissal of Mr Maari for gross misconduct be considered reasonably justifiable and within the range of reasonable responses open to the Respondents based on the available evidence overall?
- a. Having reviewed the evidence in totality from the investigation, disciplinary hearing and appeal, the Tribunal finds Mr Maari's dismissal for gross misconduct was within the range of reasonable responses available to the Respondent.
 - b. The investigation meeting minutes demonstrate Mr Tuckwell presented multiple examples where costs quoted to clients exceeded subcontractor quotes across projects where Mr Maari was the accountable person.
 - c. Mr Tuckwell's statement further evidence a concerning pattern of inflated costs being put forward in documentation Mr Maari reviewed and signed off.
 - d. Witness statements from several colleagues corroborate discrepancies between actual costs and higher amounts put to clients.
 - e. In the disciplinary hearing, Mr Maari largely blamed administrative errors by junior and subordinate but could not plausibly account for the extent of discrepancies totalling over £120k at that stage.
 - f. Applying the well-known legal principles from *Sainbury's Supermarket v Hitt* [2003] IRLR 23, dismissal for gross misconduct was within the reasonable range of responses given the potential financial and reputational impact of overcharging clients.
 - g. While Mr Maari denies intent, the Tribunal finds the Respondent had reasonable grounds for finding him guilty of gross misconduct based on the body of evidence indicating he signed off on misleading cost representations across multiple projects.
 - h. His explanations were inadequate and unconvincing. Therefore, considering all the evidence presented during the procedures, his dismissal for gross misconduct was reasonably justifiable.

Mrs Anastassia Maari (2301732-2022)

62. Issue 9: Was Mrs Maari provided sufficient opportunity to respond and adequate disclosure during the investigation?

- a. The Tribunal finds Mrs Maari was given adequate opportunity to respond to the allegations during the investigation stage. As a more junior employee, her involvement was less extensive than Mr Maari's.
 - b. In his investigation meeting notes, Mr Tuckwell documented putting the pertinent allegations to Mrs Maari regarding her role in preparing client quote documents that contained inflated cost figures.
 - c. Mrs Maari stated in interview she was following instructions from senior colleagues like Mr Fisher and had limited oversight of the accuracy of figures (page 179).
 - d. Her interview statements indicate additional disclosure was unlikely to alter the nature of her defence centred on lack of intent and acting on others' directions.
 - e. Considering Mrs Maari's more junior role, Mr Tuckwell's investigation focused appropriately on her specific duties and involvement per principles in *British Leyland UK Ltd v Swift* [1981] IRLR 91.
 - f. While access to fuller project files may have been preferable, the key documents relating to Mrs Maari's conduct were disclosed during investigation.
 - g. Weighing the factual context and legal principles the Tribunal concludes the investigation provided Mrs Maari a reasonable and fair opportunity to respond to the allegations.
63. Issue 10: Was Mrs Maari's disciplinary hearing conducted fairly and reasonably?
- a. Reviewing the disciplinary minutes, Mr Board can be seen focusing the hearing on Mrs Maari's specific duties and involvement in preparing client documents.
 - b. Mr Board afforded Mrs Maari adequate opportunity to respond and highlight her more limited role as an administrator acting on instructions per principles in *British Home Stores v Burchell* [1978] ICR 303.
 - c. When Mrs Maari stated her reliance on cost figures provided by Mr Fisher, Mr Board explored this defence but ultimately found the evidence did not exonerate her from responsibility for participating in misrepresenting costs to clients.
 - d. While preferable to have a different chairperson from that of Mr Maari's hearing, Mr Board's conduct of Mrs Maari's disciplinary does not in itself represent a procedural flaw sufficient to render it unfair.
 - e. Weighing Mrs Maari's explanations, the allegations relating to her specific involvement, and the standards in cases like *Polkey v AE Dayton Services Ltd* [1987] IRLR 503 and *Burchill*, the Tribunal is satisfied her disciplinary hearing was reasonably conducted and procedurally fair.
64. Issue 11: Was Mrs Maari unfairly prejudiced by the investigation process?
- a. As concluded under Issue 9 following a detailed analysis, the Tribunal determined the investigation provided Mrs Maari reasonable opportunity to respond based on her more junior role.
 - b. Reviewing Mr Tuckwell's investigation report (pages 156-180), he focused on pertinent allegations relating to Mrs Maari's specific involvement in preparing client documents with inflated cost figures.
 - c. The key evidentiary documents relating to projects Mrs Maari worked on were disclosed during investigation per her interview statements.

- d. Applying legal principles, the investigation appropriately concentrated on matters concerning Mrs Maari's conduct and explanations regarding her more limited duties.
- e. While wider disclosure may have been ideal, Mrs Maari's statements indicate additional documents were unlikely to alter the substance of her defences.
- f. Weighing all the evidence regarding the investigation, the Tribunal does not find procedural deficiencies that would have unfairly disadvantaged or prejudiced Mrs Maari in presenting her case at the subsequent disciplinary hearing.

65. Issue 12: Was Mrs Maari's appeal hearing reasonable and compliant with procedure?

- a. Reviewing the appeal minutes, Mr Young can be seen methodically taking Mrs Maari through the allegations relating to her role in preparing inaccurate client documents.
- b. Mr Young afforded Mrs Maari opportunity to reiterate her defences focused on acting under instruction per legal principles from *British Home Stores Ltd v Burchell* [1978] ICR 303 on conducting fair appeal hearings.
- c. In cross-examination, Mr Young confirmed he reviewed all documentation disclosed during the disciplinary stage and was prepared to provide any additional relevant materials had a reconvened appeal occurred.
- d. While Mr Young ultimately upheld dismissal, he engaged thoroughly with Mrs Maari's specific grounds of appeal and submissions as required by the ACAS code and the Respondent's internal appeal policy.
- e. Based on the detailed focus on the pertinent issues and evidence relating to Mrs Maari's case, the Tribunal is satisfied her appeal hearing was compliant with statutory requirements and policy standards around procedural fairness and reasonableness.

66. Issue 13: Did Mrs Maari demonstrate procedural flaws rendering her dismissal unfair?

- a. Having extensively analysed each stage of the process under Issues 9-13, the Tribunal is satisfied there were no procedural flaws sufficient to render Mrs Maari's dismissal unfair.
- b. The investigation provided Mrs Maari reasonable opportunity to respond based on her more junior role and the pertinent allegations relating to her conduct.
- c. Mr Board's conduct of the disciplinary hearing was deemed procedurally fair, affording Mrs Maari adequate chance to present her defences.
- d. The appeal hearing, even though widely drawn in scope, similarly engaged properly with Mrs Maari's specific grounds of appeal and submissions in line with policy and legal requirements.
- e. The Tribunal must consider the overall fairness of the process based on the facts and circumstances specific to Mrs Maari's case. While it is always possible – in hindsight - to evince some concerns regarding substantive fairness, here no procedural flaws have been identified across the investigation, disciplinary and appeal stages that fall sufficiently below established standards to render Mrs Maari's dismissal procedurally unfair.
- f. Therefore, weighing all the evidence, the Tribunal concludes Mrs Maari has not discharged the burden of proving the existence of procedural flaws that caused substantive injustice making her dismissal unfair.

67. Issue 14: Were any procedural flaws sufficient to alter the fairness of Mrs Maari's dismissal?

- a. As no procedural flaws have been identified, this issue does not arise.

68. Issue 15: Was dismissal of Mrs Maari reasonably justifiable based on the evidence?
- a. While the overall process was deemed procedurally reasonable, the Tribunal finds that dismissal for gross misconduct was substantively outside the band of reasonable responses available in Mrs Maari's specific case.
 - b. As a more junior administrator, the evidence clearly indicates Mrs Maari was reliant on figures and information provided by senior staff which she compiled into client documents.
 - c. Based on legal principles from cases like *Sainsbury's Supermarket v Hitt* [2003] IRLR 23, dismissal must be reasonable given the employee's junior status, level of experience, and degree of personal culpability.
 - d. Given her sympathetic profile, lack of intent shown, and minimal autonomy in her role, summary dismissal was a disproportionate outcome for Mrs Maari.
 - e. Instead, a final written warning would have fallen within the band of reasonable and proportionate responses based on Mrs Maari's individual profile and more limited culpability.
 - f. A written warning, accompanied by close supervision and further training to prevent recurrence, would have been an appropriate substantive outcome.
 - g. Dismissal for gross misconduct was clearly outside the range of reasonable responses available based on the specific evidence and circumstances relating to Mrs Maari's junior role.
69. Issue 16: Was Mrs Maari employed by either J & A Pellings Limited or RSK Group Limited or both?
- a. The Tribunal finds that the sole employer of Mrs Maari at the time of her dismissal was J&A Pellings Limited, for similar reasons as concluded in Mr Maari's case.
 - b. Reviewing Mrs Maari's employment contract, it clearly names J&A Pellings Limited as the employer, with no reference to joint employment or dual contract with RSK Group Limited.
 - c. Mrs Maari's continuous service is recorded as commencing after RSK's subsequent acquisition of J&A Pellings. There is no evidence of any agreed change to the contractual arrangements.
 - d. Applying legal principles from cases like those cited by the parties, the Tribunal finds insufficient evidence of control or integration to imply an employment relationship between Mrs Maari and RSK Group Limited.
 - e. Based on its review of the contractual documents and full factual matrix, the Tribunal concludes Mrs Maari has not discharged the burden to establish she was jointly employed by RSK in addition to her contractual employer, J&A Pellings Limited.

Judge M Aspinall
Sunday, 3rd March 2024

Sent to parties on:

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