



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MR G THOMAS

AND

Respondent
ECOTRICITY GROUP LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 10TH / 11TH / 12TH / 13TH FEBRUARY 2025

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANT:- MS K EDDY (COUNSEL)

FOR THE RESPONDENT:- MR R LEIPER KC (COUNSEL)
 MS K TAUNTON (COUNSEL)

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim that he was unfairly dismissed is not well founded and is dismissed.

Reasons

1. By this claim the claimant brings a sole claim of unfair dismissal.

2. The tribunal has heard evidence from the claimant on his own behalf; and for the respondent from Ms Adele Kendall (People Director Ecotricity Group Ltd) , Mr Tom Cowling (Consultant to Ecotricity Group Ltd), Mr Asif Rehmanwala (CEO of Ecotricity Group Ltd and Green Britain Group Ltd)), and Mr Alistair Harrison (Chief Financial Officer of Ecotricity Group Ltd). In addition there is a bundle of 363 pages to which I have been taken and considered.
3. Ms Kate Vince – The respondent obtained a witness order for Ms Vince’s attendance, on Friday 7th February 2025 she provided a witness statement, and she attended at the commencement of the hearing. In fact neither party wished to call her or tender her witness statement in evidence. In the circumstances she did not give evidence and was released, and I have not read her witness statement.
4. In her opening remarks Ms Eddy suggested that she may invite the tribunal to draw inferences from the respondent’s decision not to call Ms Vince. This was not repeated in her closing submissions. Mr Leiper KC has provided an explanation of the decision; and even without it, given that I have not read her witness statement, and do not know what evidence she proposed to give I do not believe that I could properly draw any inference adverse to either party, given that neither wished to call her to give evidence.

Background

5. The respondent is a wholly owned subsidiary of the Green Britain Group Ltd, of which the founder and sole or main shareholder was Mr Dale Vince. His wife Ms Kate Vince was employed by one or more of the companies within the group, and appears from the documentation in the bundle to have been a director of more than one, including the parent company Green Britain Group Ltd. In or about the latter part of 2022 Mr and Mrs Vince separated and divorce / financial remedy proceedings commenced, which were ongoing at the times relevant to this claim, and which concluded in or about December 2024. The claimant is married to Ms Vince’s sister, and is her brother- in- law. He joined the respondent in 2008, becoming by June 2018 the Sustainability Lead for the Group.
6. A number of events occurred in the summer of at 2023 on which both parties place some reliance. The claimant contends that Mr Vince's attitude towards him changed around that time. Specifically he was chastised for attending an online webinar for the United Nations on the topic of sustainability, and operating measures that had been taken up by Forest Green Rovers FC (FGR), a football club also owned by Mr Vince. Mr Vince overruled a planned a visit by Mr Thomas to a relationship building visit with Borussia Dortmund FC planned for December 2023. At the start of October 2023 Mr Vince told the claimant not to attend an international sport positive conference in London, and criticised him for attending an associated BBC event. The claimant contends that these were, and would previously have been regarded as ordinary parts of his role as Sustainability Lead, and contends that they are these are evidence of a level of acrimony felt by Mr Vince towards him given his family relationship with Ms Kate Vince. In addition it had been proposed to recruit an assistant for the claimant, but he was informed by Mr Rehmanwala that Mr Vince had

- determined that the role was not going to be created. He relies in support of this on the evidence of Mr Rehmanwala that he had become suspicious in the twelve to six months prior to the events which led to the claimant's dismissal, as to the claimant's conversations with him about financial matters concerning at the group, and that he had conveyed his suspicions as to why the claimant was seeking at this information to Mr Vince. In addition Mr Harrison accepted in evidence that his team were assisting in preparing financial information relevant to the divorce proceedings and that the claimant had been working closely with them; and that he had warned his team specifically about sharing information with him.
7. The claimant submits that it is apparent that, at the latest, by the summer/early autumn of 2023 that he was regarded with considerable suspicion within the upper echelons of the respondent's management generally, and particularly by Mr Vince personally.
 8. Redundancy – The evidence of the respondent, in particular of Mr Rehmanwala is that the claimant's role originally focused on managing the Environmental Management System (EMS) however in the course of the last year of his employment the claimant himself expanded the scope of his role to take on wider sustainability activities within the group. Around the autumn of 2023 the board determined that they needed a more specific narrowly focused EMS coordination role which could be carried out by a more junior employee at a lower rate of pay. He accepted in evidence that the reference to the board in his witness statement was in fact a reference to himself and Mr Vince.
 9. The claimant's evidence it is that his role was far from being redundant the suggestion, at least until the autumn of 2023, being that an assistant would be recruited to assist him. On 19th September 2023 he had a one to one meeting with Mr Rehmanwala at which he raised the issue of whether an assistant would be recruited for him. The next meeting was on the 18th October 2023 when he was informed that the responsibilities of his role were to be reduced and a job created at a significantly lower salary. As a result if a decision had been made to make him redundant or consider making him redundant, the decision must have been made between the 19th September and the 18th October 2023. At a meeting with Ms Kendall on 20th October 2023 he agreed to consider a proposed settlement agreement and had until the 31st October 2023 in which to do so.
 10. Suspension - In fact on 25th October 2023 he was notified that he was being suspended pending further investigation.
 11. The suspension and subsequent investigation were prompted by inquiries made by Ms Vince's solicitors in the divorce proceedings on 25th September 2023 and 20th October 2023, which appeared to suggest that Ms Vince was being provided with information from somebody within the company, who was suspected of being the claimant.
 12. Investigation - The investigation was conducted by Mr Cowling who was a former General Counsel to the respondent, and who at that point was working as a

- consultant. By a letter dated 30th October 2023 the claimant was invited to an investigatory meeting at to investigate allegations of misconduct relating to: *“sharing company information without permission... Specifically...the allegations relate to the passing of confidential information directly or indirectly to Kate Vince or to her friends family or associates in relation to her and Dale's divorce / financial relief proceedings”*.
13. The specific allegations were of a breach of disciplinary policy 1.8 (m) – *“Serious unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure specifically the passing of confidential information directly or indirectly to Kate Vince or to her friends family or associates in relation to her and Dale's divorce / financial relief proceedings.*
14. The meeting took place on the 1st November 2023. During the meeting the claimant did not dispute passing the information in the emails set out below to Ms Vince. He was asked whether: *“Knowingly or unknowingly could you have passed on information regarding this site that ultimately somehow ended up with Kate's legal team?”*, to which he replied: *“Yes, Kate approached me with a list of all sites and wanted to know if they were operated with GBG, Lion, Merrywalks, Imperial, Unicorn, and Q-Park. I pointed out that some were potentially missing and I listed Louth Service Centre, Forest Green Rovers, Nympsfield, land at Junction 13, land at Snowdonia. She did not come back with further questions and has not asked other questions around the business or Dale of me. This was 17th September 2023 at which point Kate was still a director of the GBG. She came to me herself not through solicitors. She emailed me to ask, to my personal e-mail which is not unusual.... We have had no other conversations around this in her capacity as a director. She just asked, I established that she was a director, and went through due diligence and I checked Companies House. I felt I had done my due diligence, checked she was a director, I had not been told she was not a director and so I obliged under my remit. She was still listed on WD as a director last I checked, and a call I made on 30th October to Companies House confirms that Kate was listed as a director on Companies House confirms that Kate was listed as a director on Companies House until it was updated on 18th of September 2023 which was after my e-mail exchange with Kate”*.
15. After the meeting the claimant initially sent Mr Cowling copies of his emails to Ms Vince, and subsequently her emails to him in the chain. On 17th September 2023 Ms Vince sent three emails to the claimant. In the first, she attached a letter of instruction for an expert valuation of four properties that had been disclosed in the divorce proceedings and asked, *“Are you aware of any other properties or land owned by the group apart from these and Junction 13. Thank you.”* She later forwarded an e-mail from Mr Vince she had received on the 3rd September and then an e-mail that she had received on the 13th September 2023. The claimant replied later that day saying:

*Is there a defined boundary to what should and shouldn't be included or is it just everything that falls under the Green Britain group?
The ones that I know of that don't appear to be included as part of the four site list attached are:*

Louth Service Centre

Axiom car park in Stroud (might be included in the land for Merrywalks House)

Forest Green Rovers

Nympsfield party field and the adjoining woodland

Nympsfield turbine site (I think that's owned by Eco)

Junction 13 sites

Is the Green Gas Mill site owned by Green Britain GP or has it been built on leased land?

Is Dale's house owned by the company (or purchased via a company loan?), he's also looking to buy a farm in Somerset which might slip through the net as the divorce continues

There's a mountain top in Snowdonia that might be owned by the Green Britain Group unless he's donated that to the Green Britain Foundation.

Is he providing info on charitable donations as part of this disclosure as that could be a way of syphoning cash for other projects such as rewilding (the foundation has purchased woodland in I think Sussex? (or Surrey or somewhere beginning at with an S).

Not property but do you know if the Good Energy shares have been accounted for in any listings there's millions tied up there? If you want to send me a list of companies included in the evaluation I can see if there's anything that might have been missed out (like New Venture things that might have value- the water project, Ecojet, Green Code, Carbon Bank etc)

I've not noticed any large scale panic in the office recently regarding finances but will have a subtle dig when I'm in Stroud this week to see what I can unearth, there are a few higher up finance folk who like to talk - will let you know what turns up.

16. Miss Vince replied thanking the claimant to which he responded:

"No probs glad to be able to help I'll see what I can find out about the financial predictions for this financial year over the next few days and let you know what turns up.

17. On the 26th of September 2023 Ms Vince sent him a copy of a spreadsheet of the group structure and asking whether anything was missing. The claimant replied (in part) :

The only one that jumps out at me that's missing is Ecojet Airlines Limited. Might also be worth checking that Heckington Fen wind farm is the same company that would develop the site as a solar farm as that's potentially huge. Good Energy shares? Good Energy isn't listed on there anywhere and there's a significant shareholding in that company (although shares might be held as an asset of one of the others)

....

Give me a shout if you need to check anything else.

18. The investigation report was concluded on 10th November 2023 and Mr Cowling found that there was a case to answer in respect of the following disciplinary allegations:

GT has a case to answer in respect of the allegation.

On the balance of probabilities and having regard to the information disclosed to me during this investigation I find as a fact the following:

- i) GT exploited his status and access rights as a company employee to proactively obtain and share with KV confidential information relating to the company's financial performance and assets as well as to the company's broader group and to DV personally and that he did willingly and with an element of actual or intended subterfuge.*
- ii) GT provided KV with confidential information knowing and believing it was to be used solely by her in relation to her divorce and not in relation to any proper business of the company and that at all relevant times he was acting for what he considered to be in the best personal interests of KV his sister-in-law.*

19. He recommended disciplinary action under three parts of the respondent's Disciplinary Policy (as was confirmed in writing to the claimant by a letter of the same date):

- Disciplinary policy 1.8 (gross misconduct) (m) Serious unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure.*
- Disciplinary policy 1.2 (misconduct) (f) Act at all times in good faith and in the best interests of the company, its customers and staff.*
- Disciplinary policy 1.7 Gross misconduct is a serious breach of contract and includes misconduct which, in our opinion is likely to prejudice our business or reputation or irreparably damage the working relationship and trust between employer and employee. Particularly with reference to the potentially irreparable damage to the working relationship and trust between employer and employee.*

20. Disciplinary Hearing – By a letter dated On 10th November 2023 the claimant was invited to a disciplinary meeting on 17th November 2023 to be held by Mr Rehmanwala in respect of the alleged breaches of the disciplinary policy as identified by Mr Cowling.

21. During the disciplinary meeting the claimant advanced the same explanation that he had given during the investigatory meeting:

- i) *He had been entirely open and frank with Mr Cowling about the information he had disclosed to Ms Vince;*
- ii) *He believed, and had checked on the Companies House website on 17th September 2023 that she was still a director, which he described as due diligence on his part;*
- iii) *He did not believe that he did anything wrong or inappropriate; and the information was information Mr Vince should himself have disclosed during the divorce proceedings , and to which Ms Vince was entitled as a director;*
- iv) *He did not believe that he had breached any contractual condition;*
- v) *In the situation he did not believe that it was necessary for him to raise the issue with Mr Rehmanwala as his line manager before disclosing the information;*
- vi) *The material disclosed on 17th September was internal to the company, but there was no need to re-check on 26th September to see whether Ms Vince was still recorded as a director as all he supplied was publicly available information;*
- vii) *He accepted that “it’s quite clear that I was supporting her (KV) case..”, but that “it was common knowledge and accessible stuff that she should have been allowed to access”;*
- viii) *In summary, he concluded saying that Ms Vince had a right to the material as a director; that he had not damaged the respondent or its reputation; and that the case was not linked to the business but the private dispute between Mr and Mrs Vince.*

22. After a break of some twenty five minutes Mr Rehmanwala set out his conclusions which were that :

Allegation 1- That the information the claimant procured and shared “is clearly commercially sensitive and confidential . I believe it is serious unauthorised use of the information...at all times you knew you were procuring and sharing as your sister-in-law in relation to personal matters and not as a director or employee. You failed to seek permission from your line manager who is the CEO and Board member, myself.

Allegation 2 That the claimant acted not in the best interests of the company but in the best interests of Ms Vince, and that he put his personal relationship ahead of the company.

Allegation 3 “You have in my view stepped into responsibilities you do not have in your role as sustainable lead. I come to this conclusion from you saying Kate Vince has never asked you for information or worked with you closely. I believe those things have irreparably damaged the working relationship between you and the employer.

I'm left with the belief you have acted with covert subterfuge and for these reasons my decision is to summarily dismiss you with immediate effect.

23. These conclusions were confirmed in a letter of the same date by which the claimant was summarily dismissed.

Appeal

24. On 23rd November 2023 the claim submitted an appeal. The five grounds were (in summary):

- i) That he had not disclosed any information to which Ms Vince was not entitled to as a director, and that it was not his place to judge how or to what use she would put that information;*
- ii) He had not been informed that Ms Vince was no longer a director;*
- iii) That he had not worked against or damaged the respondent;*
- iv) The information he was asked to review was not outside the scope of his role;*
- v) There had been a lack of proper consideration, given the short time it had taken to reach the conclusions.*

25. The appeal was heard on 29th November by Mr Harrison. During the appeal the claimant essentially repeated the points set out during the investigatory and disciplinary meetings, and as summarised in his grounds of appeal. Mr Harrison set out his conclusions at the end of the meeting dismissing the appeal, which were repeated in a letter dated 4th December 2023, and are (in summary):

- i) Ground 1- That the claimant had made his own assessment of the material KV was entitled to but had not sought to obtain any advice from his line manager or the in house legal team, and had concluded that it was not for him to question the use to which the information would be put. In doing so he had not acted as any reasonable employee would have done, let alone one of his seniority and tenure.*
- ii) Ground 2 – Conducting his own due diligence was insufficient and it was not the action of a reasonable employee to fail to consult his line manager who would be the first point of clarification.*
- iii) Ground 3- That whilst some of the information was in the public domain some was “without doubt” confidential, and the claimant knew this to be the case. By circulating it without permission and without taking legal advice may have exposed the business to ongoing risk. That the end purpose was in no way business related.*
- iv) Ground 4 – He had never been asked to provide business information to KV before; never provided an asset list to anyone in the business before; and a reasonable*

employee would not have concluded that he had the remit to source the information as part of his role. He had therefore acted beyond the scope of his role.

- v) *Ground 5 – The assertion that the shortness of time for consideration meant that the disciplinary allegations were not properly considered was rejected following further enquiries Mr Harrison had made of Mr Rehmanwala.*

26. Mr Harrison concluded that there were no valid grounds for the appeal which was rejected.

Mr Vince's Involvement

27. As is set out below one of the claimant's primary submissions is that either the decision to dismiss was predetermined by Mr Vince, or alternatively that those who did take the decisions understood full well that his dismissal was Mr Vince's objective, and that they acted on his actual or perceived instructions. He relies on a number of pieces of evidence in support of that contention which are set out below in relation to the claimant's submissions.

28. The claimant contends that looked at overall there is a clear pattern that a decision had been taken by Mr Vince as early as 6th October 2023 that by one means or another that the claimant's employment would be terminated, which is precisely what occurred.

Conclusions

Principles

29. The principles I am required to apply are not in dispute. As this is a misconduct dismissal, which is a potentially fair reason for dismissal within s98(2) ERA 1996 there are four questions the tribunal must answer:

- a) Has the respondent satisfied the burden of proof in demonstrating that the genuine reason for dismissal was a belief that the employee had committed the misconduct alleged?

If it does the tribunal must ask whether:

- b) The respondent carried out a reasonable investigation into the allegations;
c) Drew reasonable conclusions as to the fact of the misconduct having occurred;
d) Reasonably concluded that dismissal was the appropriate sanction.

30. In answering those questions the tribunal must not substitute its own view or opinion for that of the respondent; and in determining what is reasonable must at each stage apply the range of reasonable responses test (see *J Sainsbury plc v Hitt* [2003 ICR 111]).

31. Overarching Submissions -before dealing with the specific questions, and with due respect to the subtleties and sophistication of the parties submissions, each party's case in my judgment rests on one central proposition.
32. Claimant – The claimant submits that the evidence of the background to the dismissal and of Mr Vince's communications with Mr Cowling and Mr Rehmanwala and Ms Kendal in particular, demonstrate clearly that he was in fact the guiding force behind the decision to dismiss the claimant. The process was simply a facade to disguise the fact that the decision had already been, or was being, taken by Mr Vince; and the respondent's evidence is a simply an attempt to obscure and distract the tribunal's attention from the elephant in the room of Mr Vince's involvement. .
33. Respondent – The respondent submits that despite all the heat and noise, that this is at heart a straightforward conduct dismissal, in which the conduct alleged is not essentially in dispute. The claimant has admitted the conduct, and does not dispute that he was using his position within the respondent to act as Ms Vince's source of information, and eyes and ears within the company, for an entirely ulterior purpose completely unconnected with his work. In fact the attempt to focus the tribunal's attention on everything but the misconduct itself is an attempt to obscure and distract from the simplicity of the issues at the heart of the case.
34. Credibility – Each party submits that its witnesses' evidence should be preferred.
35. The claimant submits that the evidence of all of the respondents witnesses was vague and opaque, with the obvious purpose of seeking to obscure or downplay the influence and involvement of Mr Vince in the process. By way of example:
- i) Ms Kendall repeatedly referred to and used phrases such as "senior management" when she meant Mr Vince and/or Mr Rehmanwala;
 - ii) Mr Cowling attempted to establish some form of equivalence between his personal friendship with Mr Vince with whom he socialised, and the claimant with whom he may have had a friendly working relationship, but no friendship outside of work,
 - iii) Mr Rehmanwala depicted and referred to minutes of a board meeting at which decisions were taken, when in fact no such meeting a taken place, and in order to obscure the fact that the decision was taken by himself and Mr Vince;
 - iv) Mr Harrison had initially attempted to suggest that he had warned his team about disclosures to a group of people with whom they had contact, but in the end agreed that it applied only to the claimant;
 - v) Looked at overall there was a consistent pattern of attempting to obscure Mr Vince's involvement in the events.
36. The respondent submits that it is the claimant's credibility which should be carefully scrutinised. By way of example:

- i) One of the claimant's complaints as to the fairness of the investigatory process was that Mr Cowling originally sought to obtain evidence from Ms Vince, who was too unwell to attend at the time. The claimant suggests that it was unfair to him that Mr Cowling produced his report without waiting for Ms Vince to recover. However, it is apparent from the Whatsapp messages between them (which the claimant originally contended were irrelevant and not disclosable), that he knew from the outset that Ms Vince had received legal advice not to participate in the investigation. The inference he invited the tribunal to draw that Ms Vince could and would have given evidence had Mr Cowling waited was factually untrue, as knew, and the inference he invited the tribunal to draw that Mr Cowling's failure to pursue Ms Vince had caused him some prejudice was at best wholly misleading. His evidence should be regarded with considerable scepticism.
- ii) In the course of cross examination he revealed that following his dismissal he had received from Ms Vince a monthly sum equivalent to his net salary, and has arguably at least, suffered no loss. This fact is in and of itself extraordinary, as is the fact that it was not revealed until cross-examination.

37. Conclusions – In my judgement there is considerable merit in the suggestions from both parties that the evidence of the other has been somewhat economical. In my judgement it is highly likely that by the point of the investigation and disciplinary hearings that the respondent's witnesses were under no illusion as to Mr Vince's view of the claimant. Equally the claimant's insistence that his actions were wholly consistent with his position as employee and Ms Vince's as director is distinctly unpersuasive. It is hard to avoid the conclusion that this employment tribunal litigation at least began life as a second front or proxy war, and that the evidence of both parties has attempted to minimise the participation of the main protagonists. Where that leaves my overall conclusions will be set out in the discussion.

38. Reason For Dismissal - The first question is the reason for dismissal. The claimant contends that the decision to dismiss was in fact pre-determined, and therefore not a genuine response to the allegations. The claimant relies on the following submissions:

- i) Ms Vince was herself dismissed on 4th August 2023 without any process and/or her being given any right of appeal. She was dismissed simply at the behest of Mr Vince.
- ii) Mr Vince's attitude to the claimant had changed in or about the summer of 2023 which was caused by his family relationship to Ms Vince;
- iii) Prior to the misconduct allegations Mr Vince had already determined to dismiss the claimant by one of the two routes set out in his email of 6th October 2023.

- iv) The “numbers” requested by Mr Vince had been provided on 13th October 2023 from Ms Kendall to Mr Rehmanwala, and then to Mr Vince to allow him to make a decision as to which route he wished to pursue.
 - v) A decision was taken to pursue the redundancy route and discussions held with the claimant on 19th and 20th October at which point he was given until 31st October to consider the settlement proposal. In fact, the proposed redundancy was itself a sham. There is no contemporaneous evidence of any discussion or analysis of the claimant’s role and why or how it was or had become redundant. Indeed a review as to the ongoing requirement for the role, which concluded that it was required and a recruitment exercise undertaken, began the day after the claimant’s dismissal.
 - vi) That the initial proposal for the disciplinary process was that Mr Vince should take an “executive decision” as to dismissal and the appeal. He would therefore be the sole decision maker at both stages. Whilst he may have been persuaded from overt involvement the suggestion that he relinquished decision making completely is an improbable one.
 - vii) That in fact, and contrary to the evidence of Mr Cowling, Mr Rehmanwala and Mr Harrison; that Mr Vince either directed the process leading to dismissal from behind the scenes; or let it be understood what his wishes were; or that all three understood what was required of them from the beginning and that the disciplinary process was itself a sham (the basis for this submission is set out more fully in the discussion of the substantive and/or procedural fairness of the dismissal below).
 - viii) That the evidence of the respondents witnesses should not be accepted.
39. It follows, the claimant submits, that before any disciplinary process began the decision had been taken either by Mr Vince alone, or by Mr Vince and Mr Rehmanwala, and perhaps others, that the claimant’s employment would by one route or another be terminated. The fact that the route ultimately chosen was the disciplinary route, and not one of the two options originally proposed by Mr Vince does not alter that fact.
40. Pretext - The claimant also submits that even if on the face of it the conduct is at least capable of justifying the dismissal, that if in fact the reason given is a pretext for some other reason, then the reason for dismissal will not be conduct (See *ASLEF v Brady* [2006] IRLR 576). In this case the alleged misconduct was clearly a pretext; the true reason being the claimant’s family ties to Ms Vince.
41. The respondent submits that the opposite conclusions should be drawn;
- i) There is no evidence that Mr Vince’s decisions in the summer or early autumn of 2023 did not genuinely reflect the view that the claimant was overreaching and that his attendance at the events in question was unnecessary;

- ii) The conclusion that the claimant's role was redundant and that he could be replaced by a more junior employee at a significantly lower salary is entirely consistent with this view;
 - iii) That whatever was said in the email of 6th October 2023, in fact the respondent sought to agree a termination settlement on terms that both parties agreed and were in the process of doing so when the disciplinary allegations arose. The evidence in fact demonstrates that the respondent was entirely properly engaged in termination negotiations on a proper basis; and that but for the disciplinary allegations arising there is no reason to suppose, or basis for concluding, that the claimant's employment would not have come to an end via mutually satisfactory settlement terms;
 - iv) It follows that the evidence in fact demonstrates that the pausing of the settlement negotiations, and commencement of the disciplinary proceedings was prompted entirely by the allegations themselves having arisen;
 - v) This in and of itself demonstrates that the decision to dismiss the claimant for misconduct was necessarily not pre-determined;
 - vi) The respondent's witnesses were credible and should be believed in giving evidence on oath that Mr Vince did not interfere in the process, and did not determine the outcome.
 - vii) In the final analysis, however much the claimant may attempt to divert attention from it, the contention that his dismissal was pre-determined or in fact based on his family relationship with Ms Vince is essentially a smokescreen to avoid the obvious conclusion that he was dismissed for gross misconduct which he did not factually dispute, even if he disagreed with the outcome.
42. Conclusions- Having heard the evidence of the respondents witnesses, and despite having some reservations, as set out above, I have no doubt that Mr Cowling, Mr Rehmanwala, and Mr Harrison genuinely formed the view that the claimant's admitted conduct amounted to gross misconduct for which the appropriate sanction was dismissal as it involved a fundamental breach of trust.
43. On that basis I am satisfied on the balance of probabilities that a belief in the misconduct was the genuine reason for dismissal and that the respondent has satisfied the burden on it.
44. Investigation -The claimant contends that the investigation was flawed for a number of reasons;
- i) It was inappropriate for Mr Cowling to have conducted it as he was a personal friend of Mr Vince and had been intimately involved from the outset, and had apparently

expressed the view that there were “strong grounds for GM” before embarking on the investigation, and was not genuinely impartial.

- ii) That he had shared his questions for Mr Rehmanwala in advance and had suggested answers to some of the questions;
- iii) That the question of why the respondent considered the information confidential was never addressed, but was in fact one of the central points in issue. (This will be addressed in more detail in the discussion of Mr Rehmanwala’s conclusions below)

45. The respondent submits that these points are at best too atomistic, and at worst serve to obscure the fundamental simplicity of the investigation:

- i) The principal object of the investigation was to discover whether there was a case to answer that there had been an internal leak of information to Ms Vince, and if so whether the claimant was responsible.
- ii) The answer to both those factual questions was provided by the claimant himself in both the investigation and the subsequent provision of the emails. Once he had done so there was nothing more to investigate and no question of any unfairness arose, as there is and was no factual dispute as to what he had done. All that remained was interpretation.
- iii) An investigation which establishes all the relevant facts is by definition a reasonable investigation, and none of the points made by the claimant can obscure that basic truth.

46. Conclusions- In my judgement the respondent is correct in this submission. The investigation established all the necessary facts and therefore, necessarily fell within the range reasonably open to the respondent.

47. Misconduct – The claimant submits that it was not reasonably open to the respondent to conclude that the information disclosed was a) serious b) unauthorised, or c) confidential.

48. Confidentiality – The claimant contends that firstly that the respondent at no point during the investigation, disciplinary hearing or appeal defined precisely what was meant by “confidential”, and submits that unless and until it had done so it could not form any rational conclusion as to whether the claimant had disclosed any confidential information. The conclusions of Mr Rehmanwala that the information shared “is clearly commercially sensitive and confidential”; and Mr Harrison’s that “the information was not freely available outside the company and therefore, to my mind, it was confidential and commercially sensitive” are essentially untenable.

49. In fact the information disclosed was either already in the public domain, via Companies House or Land Registry records, or was information that Ms Vince was entitled to as a director; and the question of a breach of confidentiality in disclosing the information to Ms Vince simply did not arise.

50. Unauthorised – Secondly there is no question of the disclosure being unauthorised, in that it was specifically requested by a director of the company who by reason of her status was entitled to it.
51. Purpose- One of the central disputes between the parties is the issue of purpose. The claimant submits that if and to the extent that Ms Vince was entitled to the information disclosed as a director, or at very least to the extent that he reasonably believed that she was entitled to it and that he was obliged to provide it to her; that the purpose for which she wanted to use the information is irrelevant.
52. The respondent submits that effectively these elements cannot be separated out as distinct considerations, as the purpose of the disclosure is the whole point, and determines the other issues. A director has no right to access to company information other than for a legitimate business purpose. The claimant knew, and does not dispute that he knew, that in fact she wanted the information for the purpose of the divorce proceedings, and explicitly to be able to check from a source within the company whether the material provided during the divorce proceedings was complete. There is self-evidently no business purpose engaged.
53. The information the claimant disclosed had been acquired by him in the course of his employment, and was by definition therefore confidential, and he only had the right to disclose it for business purposes. In addition, whilst some of the information was in the public domain, some was not, including plans for the potential purchase of a farm which had not yet taken place. It is not therefore true either that all of the information was already in the public domain or that Ms Vince was entitled to receive it simply by dint of her status as a director, unless she had some business reason to see it. Moreover one of the questions asked by Mr Rehmanwala was why the claimant had not approached him as his line manager to seek approval. The claimant obfuscated in his answer in the disciplinary hearing, but the true answer was that he knew firstly that he would not be given permission, and secondly that Mr Vince would be informed, which would defeat the whole purpose of the exercise. Since the claimant knew he was not disclosing the information for any legitimate business purpose, and that he would not be given permission if he asked, the conclusion that the disclosure was of confidential information was inevitably correct, as was the conclusion that it was unauthorised, as was the conclusion that it was serious, as it was a deliberate breach of confidentiality.
54. It follows that the conclusions of Mr Rehmanwala that it constituted gross misconduct, and of Mr Harrison that none of the grounds of appeal were sufficient to disturb that conclusion, were reasonably open to them and on any analysis fall well within the range of conclusions they could reasonably have drawn.
55. Conclusion – Again in my judgment the respondent's submission is correct; and it was rationally open to Mr Rehmanwala and Mr Harrison to reach the conclusions they did, which again therefore necessarily fall within the range reasonably open to them.

56. Sanction. - Put simply, the respondent submits that if the conclusions as to the misconduct were reasonably open to it that dismissal inevitably falls within the range of sanctions reasonably open to them. The claimant had, essentially on his own admission decided to use his position within the company for an ulterior purpose, to provide information to Ms Vince in the divorce proceedings. That is a paradigm breach of the implied term of mutual trust and confidence and goes to the heart of the employment relationship.
57. In my judgement this is correct and dismissal clearly fell within the range of sanctions open to the respondent for the misconduct it had found to have occurred.
58. It follows that having answered all of the Burchell questions in the respondent's favour, that the claim of unfair dismissal must be dismissed.

EMPLOYMENT JUDGE CADNEY

Dated: 11th April 2025

**Reasons entered into Register
And copies sent to the parties on
30 April 2025 By Mr J McCormick**

for the Tribunal Office