EMPLOYMENT TRIBUNALS

Claimant: **Victoria Barker**

Respondent: **Orange Care-Grange Lea Ltd**

Heard at: **Bristol Employment Tribunal (by CVP remote hearing)**

On: **27 and 28 May and 6 June 2025**

Before: **Employment Judge Hallen**

Representation

Claimant: **Mr. Brian McElderry- Executive Director- The Chefs Union**

Respondent: **Ms. Chloe Lauret- Litigation Consultant**

RESERVED JUDGMENT

The Claimants claims for unfair dismissal and wrongful dismissal are well founded and succeed. She was substantively unfairly dismissed in breach of contract. Separate directions have been sent to the parties for a remedy hearing that has been listed for 26 September 2025.

REASONS

Background and Issues

1. The Claimant was employed as a Chef by the Respondent between 25 May 2019 and 6 June 2024, at which time she was dismissed by reason of gross misconduct.

2. In her Claim Form, she claimed that she was unfairly and wrongfully dismissed by the Respondent. The Respondent in its Response Form disputed that the Claimant was unfairly or wrongfully dismissed and cited that the dismissal was by reason of gross misconduct and that it was a fair dismissal. In respect of the wrongful dismissal claim, the Respondent submitted that the Claimant was in repudiatory breach of contract and the company was entitled to dismiss the Claimant without notice or a payment in lieu of notice.

3. The issues for the tribunal in respect of the unfair dismissal claim were firstly to determine what the reason for dismissal was and whether it was by reason of conduct as asserted by the Respondent. Thereafter, the tribunal had to ascertain whether the Respondent acted reasonably in all the circumstances in dismissing the Claimant and in particular: -

(i) Did the Respondent believe that the Claimant had committed the acts of conduct relied on;

(ii) Had the Respondent reasonable grounds for that belief;

(iii) Had the Respondent conducted such investigation as was reasonable in all the circumstances of the case;

(iv) Was dismissal within the range of reasonable responses open to a reasonable employer?

4. In respect of wrongful dismissal, a dismissal without notice will be a breach of contract unless the employer can show that the employee was dismissed for a prior repudiation of contract. I would have to determine if the conduct of the Claimant amounted to a repudiatory breach of contract based on the evidence available to the Respondent at the time of dismissal and whether the Claimant actually committed the serious misconduct alleged.

5. I had an agreed bundle of documents in front of me made up of 206 pages. The Respondent also produced an additional document at the hearing marked R1 that was a record of hygiene and safety training. The Claimant produced an additional document marked C1 that was an Environmental Health Report dated 19 August 2024. These documents were allowed to be produced by me outside the time allowed by the tribunal for discovery as I decided that they were relevant to the issues.

6. At the hearing, the Respondent called two witnesses. Firstly, Ms Nicola Tucker-Stone, the Care Home Manager. Secondly, Mr Patrick Wintershoven, the Respondent's Managing Director and owner of the company. Both of these witnesses prepared written witness statements and were subject to cross examination. The Claimant presented a witness statement herself and gave oral evidence, and she was also subject to cross examination. At the end of the hearing, I reserved my judgement, and this written judgement is the outcome of my deliberations.

7. At the hearing, the Respondent sought to adduce an alleged handwritten note of a Welfare Meeting with the Claimant conducted on 23 March 2024 by Ms Tucker-Stone. I did not permit this to be disclosed. The application was not made by the Respondent at the beginning of the hearing nor was it made when Ms Tucker-Stone gave evidence as the first witness for the Respondent as the writer of the note. The application was only made by the Respondent during the cross examination of the Respondent's second witness Mr Wintershoven, the dismissing officer after he referred to the note during cross examination. I did not permit the disclosure of this note at this time as no reference to it was made in Mr Wintershoven's witness statement as it being relevant to the issues, it was not in the hearing bundle produced for the hearing and Ms Tucker-Stone, the maker of the note, confirmed in her evidence that it was very short, lacking in detail and she did not think it was relevant as the Claimant had produced a transcript of the meeting based

on her recording of the meeting itself. Ms Tucker-Stone confirmed in her evidence that the transcript was a far more accurate account of the meeting. Furthermore, the production of the note would have been highly prejudicial to the Claimant especially given the fact that Mr Wintershoven only referred to the handwritten note as containing an admission during cross examination. I also noted that the Respondent had admitted quite openly to me that it had destroyed other relevant documents in this case and did not have a good explanation for doing so. I will comment further on this in the facts section of this judgment and in my conclusions.

Facts

8. The Claimant worked as a Chef for the Respondent. She was employed from 25 May 2019 until her summary dismissal for gross misconduct on 6 June 2024 which was the effective date of dismissal.

9. The Respondent's business is that of Care Home housing elderly residents and that is owned by Mr Wintershoven who is the managing director. The home employs 40 staff one of whom is the Claimant who is described as the head Chef albeit it she is the only chef employed by the Respondent and works 24 hours a week in a part time capacity. There are approximately 40 employees employed in the home that includes healthcare assistants, team leaders, a manager and assistant manager, kitchen porters and cleaners. The full complement of residents is 34. These residents are elderly people over 65 with physical and mental health conditions.

10. One of the duties of the Claimant was completion of allergen lists with regard to food that was cooked in the care home kitchen. The importance of such allergen lists was to ensure that the food cooked in the kitchen would not have an adverse allergic reaction on the home's residents. The Respondent asserted that the Claimant was the only one responsible for the completion of the allergen lists but I find that as she only worked 24 hours per week and was not exclusively responsible for the purchase of food, other employees with managerial responsibility were also responsible for completion of the allergen lists as the Claimant asserted in her evidence. Ms Tucker-Stone also said that she completed an allergen list after the welfare meeting (see below). The Respondent was not in a position to produce the allergen lists for this tribunal as it freely admitted that the lists were destroyed after the Claimant commenced her claim for unfair dismissal. The reason given for the destruction of relevant documents by the Respondent was not satisfactory as it asserted that it was moving to a different record keeping system. I did not find that this was a satisfactory explanation and did not explain why relevant evidence for these proceedings could not have been preserved.

11. The Claimant was signed off work due to stress related sickness absence that she said was due to stress as a consequence of her work. She was signed off work from 21 March 2024 for the entire period up to and including the date of her dismissal on 5 June 2024.

12. As a consequence of her continued sickness absence, Ms Tucker-Stone conducted a telephone welfare meeting with the Claimant on 23 March 2024. She took a handwritten note which she confirmed in evidence was not produced for the purposes of this hearing as the note was short, difficult to read and the Claimant produced a typed transcript of the meeting from a recording which Ms Tucker-Stone confirmed was more accurate. Therefore, the Respondent and the Claimant agreed to rely upon this note as an accurate

reflection of what occurred at the welfare meeting. Ms Tucker-Stone confirmed that the purpose of the meeting was to ascertain the stresses that were impacting upon the Claimant at work and to reduce such stresses so that she could return to work as soon as possible. Ms Tucker-Stone asserted that the Claimant had not updated the allergen list completely. As a result, she subsequently had to update it with her own insertion into the allergen list to update it. However, as I have said above, these lists were not produced for the tribunal to consider. Furthermore, the Claimant asserted that she did not state that she had not completed the allergen's list but that she was merely reflecting that one of the stresses that she had to deal with was the completion of allergen lists when she was only in work for 24 hours per week (the kitchen being open for over 80 hours per week) and that other individuals were buying foodstuffs and were not completing allergen lists. I preferred the Claimant's evidence in this regard and find that she did not admit to failing to complete an allergen list in respect of a gateau as Ms Tucker-Stone asserted.

13. Ms Tucker-Stone sent an e-mail to the Claimant dated 15 April 2024 specifying what was dealt with at the welfare meeting and contrary to the Respondent's assertion that an admission was made by the Claimant at the welfare review meeting that she had not completed an allergen list, the e-mail to the Claimant made no reference to the Claimant's failure to complete an allergens list and/or to an allergen's list being wrongly completed. Furthermore, the e-mail did not make any reference to any admission of wrongdoing on the Claimant's part in respect of a failure to complete an allergen's list. I find that if such an admission was made by the Claimant, Ms Tucker-Stone would have reflected this in her e-mail to the Claimant dated 15 April 2024.

14. It was not until 7 May 2024 that an e-mail was sent to the Claimant specifying an investigation into disciplinary charges. This e-mail stated, that upon *'further investigation that (1) you have been not putting new allergens on allergen lists and (2) that you have been failing to report that you have not had time to be putting allergens on the allergens list'*. The Respondent gave contradictory evidence at the hearing in respect of who conducted the investigation into these disciplinary charges. Ms Tucker-Stone confirmed that she did not do so as she believed a grievance had been lodged by the Claimant against her on 9 May 2024 and she was taken off the matter by Mr Wintershoven from that date onwards. She also said that Mr. Wintershoven conducted the investigation. Mr Wintershoven stated that he did not conduct the investigation and that Ms Tucker-Stone conducted the investigation. Mr Wintershoven said that he was the dismissing officer after the nominated manager tasked with handling the disciplinary hearing, Ms Tolentino, decided that she did not wish to undertake it because it was too complicated. I prefer the evidence of Ms Tucker-Stone who confirmed that she handed the matter over to Mr Wintershoven and find that Mr Wintershoven was both the investigating officer and the dismissing officer.

15. Mr Wintershoven in his evidence confirmed that an investigation bundle had been prepared sometime between 7 May to 5 June but had not been sent to the Claimant or her representative prior to the disciplinary hearing on 5 June 2024. He said that this was due to an oversight albeit he was aware that there was a requirement to provide details of an investigation conducted to an employee prior to a disciplinary hearing so that they could respond to the charges against them at a disciplinary hearing.

16. An e-mail was sent to the Claimant on 24 May 2024 to arrange a disciplinary meeting with her in respect of the charges that she had not been putting new allergens on an allergen's list and that she had failed to report that she had not had time to be putting

allergens on such list and that such disciplinary hearing could take place either in person, remotely or on the telephone. The Claimant was advised that the disciplinary hearing would be conducted by Ms Thelma Tolentino. She was warned that she could be dismissed for gross misconduct and as I specified above, no investigation bundle was sent to her by Ms Tolentino. The Claimant was advised that she could attend with a work colleague or trade union representative and was told that she could be dismissed on the evidence obtained by the Respondent if she failed to attend without reasonable excuse.

17. The Claimant emailed the Respondent on 28 May stating that she could not attend the disciplinary hearing arranged for 31 May because she had to look after her son who was on school holidays albeit she was happy to attend a telephone disciplinary hearing.

18. On 29 May 2024, Mr Wintershoven wrote an e-mail to the Claimant confirming that she should have taken annual leave to look after her son and classified her failure to do so as an unauthorised absence and not a good reason not to attend the disciplinary hearing. Nevertheless, he rescheduled the disciplinary hearing for 5 June. He made no reference to the hearing being conducted by telephone or remotely. Nor did he say that he would be conducting the disciplinary hearing.

19. On 4 June 2024, Mr McElderry, the Claimant's trade union representative wrote to Mr Wintershoven stating that unfair and uncompassionate efforts were being made to get the Claimant to attend a disciplinary hearing despite her being on sick leave with work related stress. He said that it was contrary to the ACAS recommendations as the Claimant was in a vulnerable situation and should not suffer undue stress which would disadvantage her at such a hearing. He went on further to state that the Claimant would not be able to attend the meeting on 5 June complaining about the tone of Mr Wintershoven's previous correspondence to her. He suggested that a forceful attitude was being applied to a loyal and conscientious employee and that Mr Wintershoven should consider his position in the light of his approach.

20. On the same day, Mr Wintershoven replied to the trade union representative stating that the Claimant did not attend the disciplinary hearing on 31 May 2024 because she had to look after her son due to the fact that he was on a school holiday and that this should have been taken as annual leave and was classified as unauthorised absence by him. He stated that it was not a good reason not to attend a disciplinary meeting. He went on to say that not attending a disciplinary meeting and not providing a good reason for failing to do so could lead to the disciplinary hearing being decided on the available evidence. He did not say why being on sick leave was not a good reason for allowing a postponement of the meeting. He also did not inform the Claimant that he would be handling the disciplinary meeting. No postponement of the meeting was allowed by Mr Wintershoven.

21. In evidence, Mr Wintershoven stated that he felt he had enough evidence upon which to proceed in the absence of the Claimant and that no good reason had been given by her for her failure to attend the disciplinary hearing on 5 June. As a consequence, Mr Wintershoven confirmed that a decision was taken to dismiss the Claimant for gross misconduct and accordingly a letter was sent to her dated 6 June 2024 which was the outcome letter. The Claimant was dismissed for gross misconduct without payment in lieu of notice because Mr Wintershoven found that she was guilty of gross misconduct in not putting new allergens on the allergen list and failing to report that she did not have enough time to put on the new allergens on the allergens list.

22. Although the Claimant was given the right of appeal in the outcome letter, she confirmed that she did not exercise it because Ms Catherine Clarke, a manager of a care home in Cornwall would have conducted the appeal. She was junior to Mr Wintershoven and she felt that she would not be able to overturn the owner's decision to dismiss her.

Law

23. Section 98(1) ERA provides that it is for the employer to show the reason or principal reason for dismissal of the employee and 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. If the Respondent fails to do so the dismissal will be unfair.

24. If the tribunal decides that the reason for dismissal of the employee is a reason falling within Section 98(1) or (2) ERA it will consider whether the dismissal was fair or unfair within the meaning of Section 98(4) ERA. The burden of proof in considering Section 98(4) is neutral.

25. Section 98(4) ERA provides:-

> "the determination of the question whether the dismissal is fair or unfair (having regards 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."

26. In the case of **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439 EAT**, guidance was given that the function of the employment tribunal was to decide whether in the particular circumstances the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair. If the dismissal falls outside the band, it is unfair.

27. In the case of **Sainsburys Supermarket Ltd v Hitt [2003] IRLR 23CA**, guidance was given that the band of reasonable responses applies to both the procedures adopted by the employer and the sanction, or penalty of the dismissal.

28. The tribunal should not substitute its own factual findings about events giving rise to the dismissal for those of the dismissing officer (**London Ambulance NHS Trust v Small [2009] IRLR 563**).

29. In the case of **British Home Stores v Burchell [1978] IRLR 379 EAT**, guidance was given that, in a case where an employee is dismissed because the employer suspects or believed that he has committed an act of misconduct, in determining whether the dismissal was unfair, an employment tribunal has to decide whether the employer who discharged the employee on the grounds of misconduct in question and obtained a

reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at the time. This involved three elements. First, there must be established by the employer the fact of that belief, that the employer did believe it. Second, it must be shown that the employer had in its mind reasonable grounds upon which to sustain that belief. Third, the employer at the stage on which he formed that belief on those ground, must have carried out as much investigation into the matter as was reasonable in all of the circumstances of the case.

30. In respect of wrongful dismissal, a dismissal without notice will be a breach of contract unless the employer can show that the employee was dismissed for a prior repudiation of contract or, a prior unaffirmed repudiatory act where the act was unknown at the time of dismissal: **Williams v Leeds United Football Club [2015] EWHC 376 (QB), [2015] IRLR 383**..

31. A repudiatory breach is a breach which is serious and fundamental to the contract. **Richards v IP Solutions Group Ltd [2016] EWHC 1835 (QB), [2017] IRLR** 133[34]-[37] provides a helpful summary of the principles for determining whether a repudiatory breach has occurred:(a) What amounts to gross misconduct will vary according to the nature of the employment and the circumstances.(b) Gross misconduct will be found where the relationship of trust and confidence is wholly undermined, such that the act justifies repudiation.(c) Summary dismissal is an exceptional step to take. In Richards, this threshold was inferred into the words “material breach” within a service agreement which made summary dismissal subject to such breaches.

The Tribunal’s Conclusions

32. I shall deal with the claim for unfair dismissal first. I have to consider the test as set out section 98 of the employment rights act 1996. I have to consider firstly whether the Respondent dismissed the Claimant for a potentially fair reason. If so, I have to consider, whether the Claimant was dismissed fairly in consequence of that dismissal depending upon the Respondent’s size and administrative resources. In other words, I have to find whether the Claimant’s dismissal was within a band of reasonable responses open to a reasonable employer and was fair in all the circumstances.

33. The two-stage test set out in section 98 has been clarified by the guidance in Burchell and I have ask more specific questions to ascertain the fairness of the dismissal as follows:(a) Did the Respondent believe that the Claimant was guilty of misconduct?(b) Did the Respondent have in mind reasonable grounds upon which to sustain that belief?(c) Did the Respondent carry out as much investigation as was reasonable in the circumstances?

34. In respect of the first question namely whether the Respondent had a fair reason for dismissal, I find that the genuine reason for dismissal was the Claimant's conduct. The Claimant submitted that any errors made by her in respect of the preparation of the allergen list in question leading to her dismissal was really a performance related issue and should have been dealt with by the Respondent as such rather than an issue of misconduct. I accepted the Respondent’s assertion that misconduct was the genuine reason for dismissal as the failure to complete an allergen list correctly could lead to serious repercussions for the residents of the Respondent’s care home such as serious illness or worse. The Claimant did not dispute this when she was asked about it in cross examination. She accepted that as the Chef she was required to fill in allergen lists and

failure to do so could lead to serious repercussions for the residents of the home. Therefore, I find that the reason for dismissal was conduct in this case.

35. Moving on to the question of fairness and whether the Respondent had reasonable grounds for believing that the Claimant was guilty of misconduct having carried out as much investigation as was reasonable in the circumstances, I find that in this case, the investigation carried out by the Respondent was extremely limited, perfunctory and inconclusive. I can conclude that the investigation of the Claimant's alleged misconduct fell very short of a reasonable investigation that a reasonable employer would have conducted. Therefore, I conclude that the Respondent could not have had a reasonable belief that the Claimant was responsible for the misconduct that it concluded the Claimant was guilty of warranting the ultimate sanction of dismissal for gross misconduct. I shall set out the wholesale shortcomings in the investigation in paragraphs 36 to 42 below.

36. The reason for dismissal of the Claimant in this case was asserted to be misconduct for her alleged failure on one occasion to put an allergen update on an allergens list and her alleged failure to report this to management. Mr Wintershoven, the dismissing officer stated in his evidence that the Claimant admitted this to Ms Tucker-Stone at the welfare meeting conducted between the two on 23 March 2024. When asked to go through the transcript of the welfare meeting that was in the bundle of documents, Mr Wintershoven could not find any reference to the admission made by the Claimant at that meeting and nor did I see one. In her witness statement, Ms Tucker- Stone did not confirm that the Claimant had made any such admission to her during the course of the welfare meeting and indeed, said, in cross examination that no such admission had been made and that what she said during the welfare meeting in relation to the allergens list needed to be explored further at an investigation or disciplinary meeting. Mr Wintershoven, the dismissing officer said that Ms Tucker- Stone's handwritten note of the meeting contained the admission of guilt by the Claimant but Ms Tucker- Stone during her evidence both in her witness statement and cross examination made no such reference to this alleged admission. Furthermore, although the dismissing officer said that the handwritten note contained the alleged admission, the Respondent chose not to disclose this note during the discovery process of this litigation as was required by the tribunal case management orders. The Respondent only chose to make an application for the admission of this alleged handwritten note during the course of the hearing, not at the commencement of Ms Tucker- Stones evidence, not at the commencement of Mr Wintershoven's evidence but only during cross examination when he made reference to the admission in the handwritten note for the first time. I also noted that no reference to the admission in the handwritten note of the welfare meeting was made by Mr Wintershoven in his own witness statement. He simply said an admission was made by her but not where it was made. Furthermore, and importantly, the email sent to the Claimant by Ms Tucker-Stone on 15 April 2024 outlined what had happened at the welfare meeting made no reference to the alleged admission made by the Claimant. Given all of this, I can only conclude that no such admission was made in the handwritten note and that Mr Wintershoven made-up the admission being in the handwritten note during cross examination when he was cornered by the Claimant's representative.

37. I find that the detailed transcript of the welfare meeting produced by the Claimant was an accurate note of that welfare meeting and that it contained no such admission on her part in respect of failing to complete the allergen list as suggested by the Respondent. After reading the transcript of the meeting, I find that the concerns outlined by the Claimant were merely an account of stresses and frustrations that she was facing in

completing allergen lists as a part time chef working 24 hours a week when the kitchen was open for over 80 hours per week most of the time that she was not in attendance at work. Indeed, the Claimant confirmed this during her cross examination saying that she made no admission of guilt to the charges made against her. I believed the evidence of the Claimant in this regard.

38. As I have said above in the facts section of this judgment, the Respondent freely admitted that it destroyed all of the allergens lists prepared by the Claimant during her time as the Chef for the Respondent and was not in a position to produce any allergen lists that she prepared for the entirety of 2024 let alone the allergen list that Ms Tucker-Stone said that she had to amend as a consequence of the Claimant's alleged failure to complete one following the welfare meeting. Ms Tucker-Stone also admitted in cross-examination that the alleged missing allergens information may have been noted in a previous allergens list that the Claimant had completed earlier as the Respondent had served the food item in question (a gateau) many times before. This evidence was destroyed by the Respondent for no good reason at a time sometime in December 2024 when the Respondent knew that this evidence was relevant in respect of the Claimant's claims contained in the Claim Form which the Respondent admitted receiving from the tribunal office sometime in September 2024. The Respondent only stated that the destruction happened because it was updating its record keeping requirements. I did not find that this was a reasonable explanation for destroying evidence that was relevant evidence in these proceedings especially after knowing about the commencement of these proceedings. I find it surprising that whilst destroying relevant evidence in these proceedings, the Respondent sought to admit a handwritten note of a welfare meeting allegedly noted by Ms Tucker-Stone on 23 March 2024 when she herself said that all relevant contemporaneous documents in this case had been destroyed by the Respondent. This caused me to doubt whether the note that the Respondent sought to adduce as an accurate record of the welfare meeting on 23 March 2024 was indeed a contemporaneous document and not one that was manufactured for the purpose of the proceedings before me.

39. Even though Ms Tucker-Stone indicated that a fair interpretation of what the Claimant said to her during the welfare meeting could only be reached if the Claimant was interviewed after a disciplinary investigation meeting or at a disciplinary hearing, the Respondent in this case freely admitted that no such investigation meeting or disciplinary meeting with the Claimant took place before the decision to dismiss the Claimant was taken. I find that it could not conceivably be concluded that the Claimant was guilty of the charges for which she was dismissed until the Respondent could ascertain what she meant during the welfare meeting or ascertain whether there was any misinterpretation of what she had said during the course of that meeting by Ms Tucker-Stone. The Claimant denied making any such admission of misconduct and I prefer her evidence in this regard that was not really undermined by the Respondent in cross examination.

40. The reason why this vital examination of what the Claimant had allegedly said during the course of the welfare meeting could not take place was that Mr. Wintershoven, the dismissing officer decided not to have a disciplinary meeting with her and preceded to make the decision to dismiss her in her absence without seeking such an explanation. This was in spite of the fact that prior to the disciplinary meeting with the Claimant taking place on 5 June 2024, the Claimant's trade union representative had written to the Respondent asking for a postponement of the disciplinary meeting because the Claimant was signed off work on stress related sick leave. The dismissing officer decided not to

adjourn the meeting and preceded with it in the Claimant's absence despite the application for a postponement and despite knowing that she was off work on stress related sick leave. I find that the dismissing officer's explanation for proceeding with the meeting in the Claimants absence which was that he had already allowed one postponement and was not prepared to allow another one, incongruous with the Respondent's alleged concerns about the Claimants welfare which was the reason for the welfare call on 23 March 2024. Ms Tucker- Stone said in evidence that the purpose of that meeting was out of concern for the fact that the Claimant was on stress related sick leave and that the Respondent because of its duty of care towards her was concerned about her welfare. The reason for the welfare meeting was because the Respondent wished to alleviate her stress such that she would not be on sick leave for any continuous period of time. Mr Wintershoven's conduct in proceeding with the disciplinary hearing after a request for a postponement was made because they Claimant was on sick leave with a stress related condition due to her employment was in stark contrast with what Ms Tucker-Stone had said in evidence. I find that it was not possible for the dismissing officer to come to any conclusion as to the guilt of the Claimant without investigating further what exactly she meant during her conversation with Ms Tucker- Stone on 23 March during the course of the welfare meeting.

41. The dismissing officer said in cross examination that a bundle of documents had been prepared as part of the investigation into the alleged misconduct of the Claimant but freely admitted that it was not provided to the Claimant prior to the disciplinary meeting. His excuse for this was that it was an oversight although he was aware that in previous disciplinary hearings witness statements prepared as part of a disciplinary investigation had been provided to employees facing disciplinary charges prior to a disciplinary hearing so that they could properly answer the allegations against them. When asked where this bundle was in the trial bundle for this hearing, again, the witness confirmed it was not there. In any event, the failure of the Respondent to provide the Claimant with this information that was allegedly prepared by the Respondent in respect of the Claimant's alleged misconduct made it impossible for the Claimant to answer the charges against her before the decision to dismiss her was taken.

42. For all of the above reasons, the investigation conducted by the Respondent leading to the Claimant's dismissal was not a reasonable investigation and was outside the band of reasonable investigations that a reasonable employer would have conducted in similar circumstances. It must follow that the Respondent's belief in the Claimant's guilt based upon this investigation could not be reasonable and therefore the dismissal must be procedurally and substantively unfair.

43. In addition to the investigation being fatally flawed, I find that the disciplinary hearing held by the Respondent in the absence of the Claimant when she was signed off sick by a doctor for stress related illness was also flawed. The Claimant's trade union representative wrote to the Respondent on 4 June 2024 to attempt to delay the disciplinary meeting to a time when she was not well enough to be in attendance. The Respondent's explanation for proceeding in the Claimant's absence was that one adjournment had already been allowed for the meeting on 31 May 2024, so it was not reasonable to postpone the disciplinary hearing for a second time on 5 June 2024. I find that this was not a reasonable response. A reasonable employer when notified by the Claimant's trade union representative that the Respondent was under a duty of care to the Claimant especially if that stress was related to conditions at work had a duty to delay the disciplinary hearing. The fact that one adjournment had already been permitted did not

mean that it was reasonable to continue with the second hearing so soon after the first adjournment especially after it was brought to the Respondent's attention that the Claimant was too ill to attend. This is especially so given the Respondents own evidence that the purpose of the welfare called on 23 March 2024 was to see how the Respondent could alleviate the Claimant's work-related stress and get her back into the workplace as soon as possible. Given this admission by the Respondent, it was not reasonable for this Respondent to proceed with the disciplinary hearing in the Claimant's absence and then proceed to dismiss her following a flawed investigation as outlined above.

44. Finally, I find that the dismissing officer Mr Wintershoven was not unbiased and independent as he should have been when coming to the decision in this case. Ms Tucker-Stone gave evidence that she was not the investigating officer and that she was told to have no further part in the process by Mr Wintershoven as a grievance had allegedly been made against her by the Claimant on 9 May 2024. From then on, Ms Tucker-Stone had no further involvement in the investigation and it was handed over she said to Mr. Wintershoven. However, in his evidence, Mr Wintershoven said that Ms Tucker- Stone was the investigating officer and not himself. In his evidence, he said that Ms Thelma Tolentino was initially tasked to be the officer that handled the disciplinary hearing but that because the matter was too complex, Ms Tolentino decided that she did not wish to undertake the disciplinary hearing even though she had written to the Claimant and her representative to confirm that she would be handling the disciplinary hearing. Mr Wintershoven confirmed in evidence that he decided to become the disciplinary officer without any notification to the Claimant or her representative that he would be doing so. I find that on the basis of Ms Tucker-Stone's evidence that Mr Wintershoven was the investigating officer, as well as his own admission that he was the dismissing officer, he was not independent and unbiased. I find that he was the investigating officer as well as the dismissing officer and therefore came to the conclusion early on in the process to dismiss the Claimant. This was made clear to me during cross examination when Mr Wintershoven was asked whether he considered any other penalties other than gross misconduct and he confirmed categorically that gross misconduct was the only penalty appropriate in the circumstances. It was clear to me that Mr Wintershoven had a closed-minded attitude right from the beginning in this case and was not really interested in giving the Claimant a fair hearing.

45. I also find that if the Claimant chose to appeal against her dismissal, it would have been highly unlikely that Ms Catherine Clarke would have been able to overturn Mr Wintershoven's decision to dismiss the Claimant. I say this because Ms Clarke is an employee of the owner of the business and is junior to Mr Wintershoven. Given my conclusions above that Mr Wintershoven was biased and had made his mind up early in the process to dismiss the Claimant, I find it very unlikely that Ms Clarke would have been in any position to overturn Mr Wintershoven's decision. Furthermore, it is good practice for an appeal to arranged with an employee that is more senior to the employee making the decision to dismiss. In this case, there was no one more senior than Mr Wintershoven.

46. As a result of the conclusions that I have reached above, I do not find that had the Respondent followed a fair procedure the Claimant would still have been dismissed. The procedure followed in this case was fatally flawed from the outset as a result of a perfunctory investigation and the errors that occurred afterwards as outlined above mean that a fair dismissal could not have taken place on the facts of this case. Likewise, as I have found that the Claimant did not admit to misconduct of any sort, she did not contribute to her dismissal.

47. Turning to the claim for wrongful dismissal, I had to find whether the conduct of the Claimant amounted to a repudiatory breach of contract under the contract of employment and the Respondent's disciplinary procedure. I had to decide whether she had in fact committed the misconduct that she was dismissed for. For the reasons set out above at paragraphs 36 to 45 above I cannot conclude that the Claimant was guilty of any misconduct let alone the misconduct that this Respondent alleged that she was guilty of. Therefore, the Claimant was dismissed in breach of contract and is entitled to a payment in lieu of her statutory notice.

48. A remedy hearing is listed for 26 September 2025 and separate directions to assist the parties to prepare for such hearing have been sent to the parties in this regard. I have considered the Claimant's claim for compensation as set out in her schedule of loss that was in the tribunal bundle. I note that she has been very reasonable in her demand for compensation as set out by her in that schedule. I hope that my observation in this regard is sufficient guidance to assist the parties to resolve this outstanding issue without the need for a remedy hearing. If the matter is settled, the parties should notify the tribunal as soon as possible so that the remedy hearing can be vacated.

Public Access to Employment Tribunal Decisions

49. All judgments and reasons for the judgments are published, in full, online at *www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

_____

Employment Judge Hallen- 10 June 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON
23 June 2025 By Mr J McCormick

FOR THE TRIBUNAL OFFICE