EMPLOYMENT TRIBUNALS

Heard at: Croydon (by video) **On:** 13 and 14 November 2024

Claimant: Mr Harith Taha

Respondent: Novatek Europe Limited

Before: Employment Judge E Fowell

Representation:

Claimant Julie Duane of counsel, instructed by Clements Solicitors

Respondent Louise Simpson of counsel, instructed by Doyle Clayton Solicitors

JUDGMENT ON LIABILITY

1. The claimant was unfairly dismissed.

2. The dismissal was in breach of contract.

3. The complaints of unlawful deduction from wages and in respect of holiday pay are dismissed on withdrawal by the claimant.

4. Compensation or other remedy will be addressed at a further hearing on 3 December 2024 at 10 am.

REASONS

Introduction

1. These written reasons are provided at the request of the respondent. It appears that their request for written reasons was made on 18 November 2024 but was not passed on to me. A chasing email from the respondent's solicitors was, however, passed to me today.

2. By way of background, the respondent is a small but highly profitable firm supplying software to pharmaceutical and biotech companies. During the period

in question there were generally three employees. They were supervised by the owner and managing director, Mr Niccolo Moreno, who is based in Barcelona. They also have some self-employed or consultant staff for roles like accounting or marketing. There is also a sister company, BioMap, in which Mr Moreno has a 50% share.

3. Mr Taha worked from home and his job title was that of Technical Consultant. His email signature shows that he has a B.Eng., B.Sc. and M.Sc. together with other qualifications, but his role also involved a degree of sales, or at least developing links with potential clients, which he did by attending conferences from time to time and demonstrating the company's capabilities. At the time of his dismissal, in August 2023, he had been with the company for over 19 years and had built up many such contacts and relationships. In short, he was a key member of staff.

4. The company says that he was dismissed on grounds of his conduct. There were a range of disciplinary allegations. The main one, and the one which initiated the disciplinary process, concerned the deletion of data on the company's system. There were also allegations that he had lied about sending a couple of emails to Mr Moreno - emails about a grievance - and that his general behaviour was rude and unprofessional.

5. There had been a number of disputes by that stage. In March 2022 Mr Taha raised a grievance about his wages. By June 2022 it had not been resolved and he went off sick with stress. That absence lasted for about a year. While he was off, in November 2022, he submitted an employment tribunal claim over his wages. It concerned commission payments which he said were earned in the first six months of 2022. That claim, however, was dismissed in April 2023.

6. Shortly after submitting this first claim he raised a further grievance about commission payments and his treatment by the company. That was still outstanding when he returned to work in June 2023. However, when he returned he was immediately suspended on disciplinary grounds.

7. During his suspension he submitted a second claim to the employment tribunal, this time for commission payments due over the whole of 2022.

8. The disciplinary process took a little over a month, with a disciplinary hearing on 26 July and the outcome sent by letter on 7 August 2023. This claim was then lodged on 20 November. It overlapped with the second wages claim, which was dismissed in January 2024. Both of the wage's claims were unsuccessful for reasons that relate to the rules on earning commission and when exactly the payments fell due.

9. Mr Taha now brings claims of unfair dismissal and wrongful dismissal. He says that his dismissal was unfair generally and also that it was automatically unfair

because the reason was that he had asserted his statutory right not to suffer an unlawful deduction from wages.

Procedure and evidence

10. I heard evidence from Mr Taha, and on behalf of the company, from Mr Kane Edgeworth. Mr Edgeworth is a director of BioMap, and so was not employed by Novatek and not involved in the running of that business. Because the dispute was essentially between Mr Taha and Mr Moreno, Mr Edgeworth was brought in to hold the disciplinary hearing, and it was his decision to dismiss Mr Taha. It follows that I did not hear evidence from Mr Moreno or from the other employees at the firm. Inevitably that means that in some respects, including general or background matters, I only have first-hand evidence from Mr Taha and on many such points that account was undisputed.

11. I also had a bundle of 542 pages and a supplementary bundle of 47 pages (whose page numbers below are prefixed with an S) making 589 pages in all. Having considered that evidence and the submissions on each side I make the following findings of fact. Not every point is dealt with, only those necessary to support my conclusions.

Findings of Fact

12. The first indication of any difficulty at work came in August 2020 when the small team at Novatek was expanded by the introduction of Mr Smith. He was to be working in a similar role to Mr Taha. Mr Taha had to train him, and some of Mr Taha's clients were passed to Mr Smith. It is clear that by the end of Mr Taha's time at the company their relations became strained to the point of hostility.

13. The company has a Client Relationship Management (CRM) system called Odoo, which is used to record the names and details of client contacts, including the individuals at client firms. Previously, Mr Taha had had unrestricted access to this system, but from September 2021 onwards it became more limited and he was only able to access information about his own clients. This is evidenced by emails at the time [92] and he took this up with Mr Moreno. He was clearly concerned about the lack of trust in him that this demonstrated.

14. Some tension seems to have developed from then on about who he was allowed to contact. So, for example, in November 2021 he was criticised for contacting a long-standing client and friend of his, Dr Sandle [379, 458]. They had known each other since 2008 and exchanged Christmas cards, but Mr Moreno was concerned to hear that Mr Taha had called him [379]

> "On our last catch up call you said you called Tim Sandle. Why did you do that? And when you said that you told him about the situation at Novatek Europe, what did you mean?
>
> I am worried you are jeopardizing this account again when you get involved when you shouldn't.
>
> Please explain to me why you called him and what you have discussed."

15. Mr Taha then challenged him about where he had heard this from. At around the same time there are several emails from Mr Moreno instructing Mr Taha not to send out any more quotes without getting him to check first. This was another new restriction and the tone of them is brusque and critical. For example [381]

> "Have you organized the Demo? Can you call me? How many times do need me to ask you to call to speak about a client? A week has gone by!"

16. This is by no means untypical. It shows that Mr Taha had fallen out of favour with Mr Moreno. These accusations of not keeping Mr Moreno informed [390] or of overstepping boundaries [339] continued into the following year, and then in January 2022 some further key accounts were transferred to Mr Smith [403]. On 21 January Mr Taha emailed [S2] about this, saying:

> "Hi Niccolo
>
> I have not received no answer from you. I am being honest here, and feel you are taking away my commission from me, this is my livelihood!
>
> Having built the clients from the ground, you decide to award the reoccurring business to someone else.
>
> May I have your opinion into this?

17. The response [S1] was:

> Harith
>
> Please stop sending these types of emails playing victim. You are making ridicule (sic) of yourself to the recipients."

18. Any rudeness at this stage was certainly on Mr Moreno's side. During February, Mr Taha raised a more impassioned complaint about commission being taken off him and given to Mr Smith, including in relation to Dr Sandle's company. There were further terse exchanges in early March and Mr Taha asked Mr Moreno to stop sending rude emails [S15-16]. Then on 9 March 2022, Mr Taha noticed that he had been blocked from the invoicing section of Odoo [112] and his protests to Mr Moreno became louder [S8]:

"I am blocked from seeing anything in sales!

Why did you provide it the blocked me (sic) from seeing what's been invoiced?

19. He later sent a more measured email on 21 March 2022 [130] setting out this history, adding that Mr Smith had been contacting his clients but Mr Moreno had done nothing about it, referring to the rudeness of the emails he had received and the stress it was causing him. I should mention that Mr Taha has a serious kidney disease which is exacerbated by stress and this was becoming a problem.

28 March 2022

20. Things came to a head on 28 March 2022. An important conference had been arranged for the next day which Mr Taha was to attend. The arrangements had been made by Ms Ferreira, who is married to Mr Smith, and was helping or working in marketing for the company. Mr Taha had attended many such conferences and was exasperated to find, the day before, that very little preparation had been made. He was expected to go into central London to pick up a stand for the exhibition and then told that the exhibition itself would be in Manchester (not Birmingham as he had believed) so he needed to hire a car big enough to take him and the exhibition stand all the way there. Not only that but he was lacking basic information about the address of the exhibition centre.

21. He emailed Ms Ferreira at 1028 [417] asking her to please forward contact details, details of the conference, asking who would be there, what materials there would be, whether it was one day or two, and ending "Many thanks". It shows some stress but is not in any way rude. She responded that the brochures would be ready to pick up tomorrow but did not give him any other real information. She asked him to pick up the stand, without alluding to the journey this would involve, and asked him to take photos of the event for marketing purposes.

22. He emailed her at 15.27 [417] stating:

"Hi Thais,

Seems is a last minute's work! The show is on the 30th of Mach (sic) and you sending this one day before hand to go pick up brochures.

Where do you pick up the brochure from where? where is the registration?

No disrespect, is this serious?

Kind regards

Harith."

23. He then received a Teams chat message from Mr Smith, her husband, at 1622 [S17]

> "Harith, and you sat on your arse doing nothing for the past month and just expect everyone to run around after you! Learn to speak to women with more respect you arsehole."

24. Mr Taha replied with the comment:

> "Completely unprofessional and incredibly rude"

25. Mr Smith concluded the exchange with

> "go away you child"

26. Mr Taha followed it up with another message starting, "This is really unreasonable!" He went on to list all the things he now needed to do, like car hire and hotel booking, copying Mr Moreno [416].

27. He then submitted a formal grievance [141] and sent it to Mr Moreno by email at 16.39. It referred to his 18 years of service, his clients (which he listed) being taken away, the effect on his earnings, previous promises made about shares, the rude and unprofessional nature of the emails he received from Mr Moreno, the fact that no leads had been assigned to him, that his emails were being monitored and his calendar was being accessed.

28. The next email from Mr Moreno was a rebuke in relation to the email which Mr Taha had sent to Mr Smith:

> "Harith you cannot speak to people like that.
>
> People don't [want] to work with you.
>
> Stephen will be going to the show, you don't need to go. But this attitude is not acceptable.
>
> No point in you complaining about not going to show."

29. So, Mr Taha did not attend the conference. No response was provided to the grievance. On 5 April Mr Taha had some training cancelled, and on 18 May Mr Smith went to another conference instead of Mr Taha. More training took place at BioMap on 21 May which he was not invited to, although Mr Smith and Ms Ferreira were. On 16 June one of Mr Taha's clients came in for a visit and he was not notified [161]. Finally, on 20 June 2022, he was signed off with stress [168]. Initially this was for three weeks. He went to see his Trade Union representative as well, who prompted him to follow up his grievance, which he also did that day [140], having heard nothing for three months.

30. I have emphasised those earlier events, although they did not feature particularly in the submissions from either side, to emphasise the extent to which relations had already broken down by this point, and the clear and systematic exclusion of Mr

Taha from the business before any question of disciplinary proceedings arose. Mr Taha was in fact seriously unwell as a result of the combination of stress and kidney disease.

31. In his absence it seems that a new member of staff was recruited, Mr Iakupov. They never met, but It seems that Mr Iakupov joined on 27 or 28 June 2022. There is an email from him to Mr Moreno on 6 July, about Mr Taha, and its formal nature indicates that it was prepared on request.

> Hello Niccolo,
>
> I would like to inform you that on the 29th of June 2022 I have been adding new contact (Jakub Borodiuk) to our account (Polpharma) in the Odoo system.
>
> I realised that after I added a contact information to the Odoo system (to the Polpharma company), it was deleted after couple of minutes. Because I try to check all my steps couple of times. I came back to the same account (Polpharma company) and found that contact (Jakub Borodiuk) that I added was deleted.
>
> I thought it was a mistake from my side and I did all the same one more time with an extra care to the details and a process adding the same contact (Jakub Borodiuk) to the account(Polpharma company). After 15 mints I came back to the account and checked that the contact information was deleted again.
>
> After that it was a 3rd time I added this contact to the account and information stayed in place and was not deleted.
>
> I also checked that the salesperson was set as Harith Taha in the Odoo system.

32. There is no mention of the fact that this was his second or third day in the job and that the system was new to him. Following this email it appears that Mr Taha's access to the computer system was entirely removed and he was suspended. A letter was sent to him that day by Mr Edgeworth to inform him of this. (It had clearly already been decided that he would deal with any disciplinary action.) Apart from informing him that he was suspended pending an investigation into an allegation of misconduct, the only detail of the alleged misconduct was that it was for:

> "Interfering with the CRM system and removing information without permission, intimidating colleagues, rude and unprofessional behaviour and refusing to carry out your duties as required."

33. Unsurprisingly perhaps, this did nothing to hasten Mr Taha's return to work and he remained signed off sick for the best part of the next year. Although suspended, his pay did not continue and he was soon only in receipt of statutory sick pay.

34. Subsequent events can be taken more briefly. In November 2022 he brought his first claim for unlawful deduction from wages in respect of commission payments,

and as already noted, that was dismissed the following April. Then, after about ten months' absence, he was invited on 14 April 2023 to a capability hearing [237] to take place on 26 April. That letter did come from Mr Moreno and stated that one possible outcome could be dismissal.

35. When he attended the meeting, Mr Taha made clear that he felt he would be able to return to work soon, and so he was allowed to do so. The company was in receipt of legal advice throughout about how best to proceed and no doubt that was thought best.

36. In the meantime, between the invitation and the capability meeting, Mr Taha sent a further grievance to Mr Moreno, no response ever having been received to the initial grievance. He sent two emails, one on 17 April and one on 20 April. Then, on 16 June 2023 he attempted to return to work. Since he was working from home that presented no organisational difficulty but he received that morning a second suspension letter, again from Mr Edgeworth. It reiterated the previous disciplinary allegations and added a further accusation, namely that:

> "… you falsely claim to have sent emails on 17 April 20[23] and 20 April 2023 to Niccolo Moreno, Director, and Penny Hever, Company Secretary, which neither Niccolo nor Penny have any record of receiving and have been unable to provide evidence that would allow verification that the emails were sent despite being asked to do so on two occasions."

37. Those two emails were the revised or resubmitted grievance. By this stage Mr Taha had submitted his second employment tribunal claim but it was only on 14 July 2023 that the respondent became aware of those proceedings.

38. Mr Edgeworth then commenced or completed his disciplinary investigation and in due course Mr Taha was invited to a disciplinary hearing, which took place on 24 July 2023. Mr Edgeworth, of course, had not been involved in many of the previous events and was not aware of the extent of the disharmony between Mr Taha and Mr Smith, or perhaps the extent to which relations had broken down between Mr Taha and Mr Moreno. Clearly, most of his information about the alleged disciplinary actions came from Mr Moreno, and he was kept informed by email of developments [293]. Mr Edgeworth made clear in his witness statement that he was informed by Mr Moreno of the further allegation relating to the emails on 17 and 20 April. Given the relatively few members of staff available, Mr Edgeworth set about acting as the investigating officer as well as the decision maker.

39. The information he was provided with from Mr Moreno was very broad in scope and went back some time. By this stage Ms Ferreira had left the business but Mr Moreno was able to obtain an email from her describing the events in connection with the conference, in which she described Mr Taha as extremely rude and

unprofessional. That email was obtained on 6 July 2022, the same day as Mr Taha's suspension, and indeed after he was notified of it. [171]

40. After that, Mr Edgeworth himself had some meetings with Mr Smith and Mr Iakupov, on 14 July 2023. In the meeting with Mr Smith, [295] he described or stated that on one occasion Mr Taha had randomly opened a conversation with him by suggesting that Mr Smith would be better off working for Novotec International, which is a separate company in the group, a conversation from early 2021. Mr Smith said he felt uncomfortable about this as it indicated that Mr Taha wanted him out of the business. He also said that Mr Taha was often rude and challenging in meetings, including in sales meetings with him, Mr Moreno and Mr Iakupov, although in fact it is now clear that Mr Taha never attended a meeting with Mr Iakupov.

41. In his interview, Mr Iakupov [294] described again the incident on 29 June 2022 when contact information kept disappearing and said that he had had no further issues with the system since then.

42. There was also a meeting with Ms Cerezo [298], who is married to Mr Moreno. She too described Mr Taha as rude and said that he would raise his voice on calls and sometimes hang up.

43. Following these inquiries Mr Edgeworth sent a further letter inviting Mr Taha to a disciplinary hearing [300]. (There was no investigation meeting with him). This letter provided further information about the various allegations. They were set out in a list from one to five. The first was interfering with the CRM system. The second was attempting persuade colleagues to work for other businesses, which was founded entirely on the account given by Mr Smith. The third was unacceptable behaviour towards women, which was also based on criticisms from Mr Smith. It seems clear in fact that this is a reference to the dispute between Mr Taha and Mr Smith's wife over arrangements for the conference. The letter then mentioned some incidents in 2013 and 2014 about such matters as inappropriate behaviour towards women in restaurants and inappropriately asking for phone numbers, information which presumably came from Mr Moreno). The fourth was of rude, confrontational and unprofessional behaviour generally, including towards colleagues, directors and suppliers, and in support of that allegation there was a list of seven email chains and statements from Mr Smith and Ms Cerezo. The fifth and final allegation was a refusal to follow reasonable management instructions, which concerned sending emails to third parties, i.e. clients, without approval, not changing contacts on the database and not using company templates. Again, a long list of emails was identified in support of these criticisms.

The disciplinary hearing

44. Mr Taha was accompanied at the disciplinary hearing by his trade union representative, Mr Williams and Mr Edgeworth was accompanied by the company secretary, Mrs Hever, as a notetaker.

45. They discussed the various allegations in turn. Mr Taha said that he had been having difficulties accessing CRM before he went off sick and emphasised that he was sick at the time and was doing no work. He firmly denied accessing the system, as he did the other allegations. Rather than describe the hearing in detail it will be easier to focus on the outcome letter which followed on 7 August. It is at pages 454 to 468.

46. Although by that time Mr Taha had written to Mr Edgeworth asking for audit trails for the Odoo system to show that he had not accessed it, the allegation about accessing client data was upheld. Weight was placed on the fact that Mr Smith also supported this allegation and said that information had disappeared in the past and that this stopped when Mr Taha was not involved in the business. That alone was said to amount to gross misconduct.

47. The second allegation about trying to persuade Mr Smith to work elsewhere was not upheld since it was one person’s word against another. Similarly it was felt that there was not enough evidence to uphold the allegation about unacceptable behaviour towards women.

48. The allegation of rude and unprofessional behaviour towards colleagues et cetera was upheld, however. Mr Edgeworth emphasised the exchanges with Ms Ferreira in the run up to the conference. Other emails were identified including, for example, Mr Taha’s objection to the criticism about him contacting Dr Sandle. His conclusion was that this showed a serious breakdown in the working relationship between Mr Taha and colleagues and would, taken alone, merit a written warning.

49. He also found Mr Taha had refused to obey reasonable management instructions in the context of replying promptly to Mr Moreno or sending out quotes without his approval. His view was that, taken alone, this would merit a final written warning.

50. The final allegations concerned the two emails on 17 and 20 April 2023. Again, the suggestion is that he had lied about sending these as neither Mr Moreno nor Ms Hever had any record of receiving them. They had then asked him to forward the emails again as email attachments and instead of doing that he had sent the “alleged emails” as pdf attachments. He had explained at the time that he did not know how to attach them as emails from his Hotmail account and had asked for IT help to do this but that suggestion was not acted on by the company.

51. It seems to be far more likely on the balance of probability that these emails were sent. Mr Taha’s experience in IT and with computers does not mean that he was necessarily able to attach these two emails as embedded emails. He asked for IT

help to do so and this was ignored. That seems to me a complete answer to any suggestion of dishonesty. It has to be remembered that the context of these emails was him advancing a grievance. It is not suggested that the company was keen to learn the details and certainly no steps were taken on receipt of the PDF version of these emails, to address his concerns, just as no attempts were made to address the earlier grievance from 2022 which was about substantially the same matters. The inference I draw is that Mr Taha was simply being blamed for raising a complaint and it is not at all clear to me how this could ever have been considered an allegation of dishonesty on his part. The possibility of an innocent explanation, that the emails had perhaps gone into junk folders, or that he had unintentionally failed to send them correctly, does not appear to have been considered. Nor is it clear how this was regarded as an allegation of gross misconduct, since Mr Taha could have no possible incentive for pretending to have sent a grievance, save possibly to show the company in a bad light; if that was the intention he could already point to the failure to take any action in connection with his grievance of 26 March 2022.

52. He submitted an appeal against this decision on 11 August 2023 but heard nothing in response and so, on 25 September 2023, he wrote again to withdraw his appeal. By then had found a new job.

Applicable Law

Unfair Dismissal

53. This important right is set out in s.94 Employment Rights Act 1996, and by s.98 the employer has first to show a fair reason for the dismissal, in this case conduct. If that is shown, then by s.98(4):

> "… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) —
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case."

54. As already mentioned, this is very small or micro business. However it was able to access legal advice, and so was at least able to make the best use of the resources available.

55. That question can be broken down further as follows:

(a) was there a genuine belief on the part of the decision-maker that Mr Taha did what he is alleged to have done,

(b) was that belief reached on reasonable grounds,

(c) was it formed after as much investigation as was reasonable in the circumstances, and

(d) was the decision to dismiss within the range of reasonable responses open to an employer in the circumstances?

56. This “range of reasonable responses” test reflects the fact that there is no single standard of fairness to be applied, and tribunals are cautioned very strictly against substituting their own view for that of the decision maker. Different approaches apply in different industries and in different types of workplaces.

57. The same broad approach applies to the process followed. If the disciplinary process is criticised I also have to ask whether the approach taken was outside that range of reasonable responses.

58. In **Polkey v AE Dayton Services Ltd** [1987] UKHL 8 the House of Lords also confirmed that procedural fairness is an integral part of the test of fairness, and that where an employer strays outside the range of reasonable responses, such as by not holding an appeal, the tribunal should not ask whether it would have made any difference to the outcome: that may be relevant to the issue of compensation but not to whether the dismissal was fair.

59. If the dismissal was unfair, I also have to consider whether Mr Taha contributed to his dismissal by his conduct? That requires the company to prove, on the balance of probabilities, that he actually committed the alleged misconduct.

60. Mr Taha also says that his dismissal was unfair for another reason. By s.104 Employment Rights Act 1996:

> “An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –
>
> (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right …”

61. Mr Taha did bring such proceedings against the company, on 8 November 2022. Any claim for unlawful deduction from wages is a relevant statutory right.

62. For such an automatically unfair dismissal it is not necessary to have two years’ qualifying service. Those with two years’ service, like Mr Taha, do not have any particular burden of proof. As the Court of Appeal explained in **Kuzel v Roche**

Products Ltd [2008] IRLR 530, he just has to provide some evidence to show this reason; the tribunal may then agree with it or may agree with the respondent that it was for misconduct, or find that it was for another reason altogether, in which case the respondent has not made out a fair reason for the dismissal.

Breach of contract in relation to notice pay

63. Wrongful dismissal which simply a dismissal without being paid for the contractual notice period. That is only permissible if Mr Taha was in fact guilty of gross misconduct. Conduct of that sort is a fundamental breach of contract. There was in fact no written contract of employment here but there is a statutory minimum notice period of 12 weeks, and in order to justify not giving that notice the company has to prove, on the balance of probabilities, that he was actually guilty of such a fundamental breach.

Conclusions

64. For the reasons already given, the working relationship between Mr Taha and Mr Moreno had largely broken down before he went off sick, and indeed his sickness absence was in my view a direct response to the treatment he received from Mr Moreno at that time. Mr Taha has been criticised for the tone and even rudeness of his emails but they are much more restrained than those from Mr Moreno. He, of course, is the owner and managing director of the business and therefore has greater latitude in taking employees to task and giving them instructions. However, there seems nothing out of place in the emails that Mr Taha sent to him or in which he raised his concerns, particularly bearing in mind that he was a long-standing employee of such a small business and someone with a strong track record of delivering substantial revenue. He had, I accept, received earlier promises or assurances of a shareholding in due course, and so was not at such a distant remove from Mr Moreno that any expression of dissatisfaction or challenge ought to have been regarded as insubordination. Nor do I see any particular rudeness in the exchanges with Ms Ferreira at around the time of the conference. It is not clear to me whether she had a formal role in the company but no evidence was led by the respondent to suggest that it was Mr Taha's responsibility to make the arrangements for this conference. He had of course attended many similar events, and so there is no reason to believe that his concerns about the lateness of these arrangements were unfair or unfounded.

65. I bear in mind that this also took place at a time when Mr Taha had been suffering from increased levels of stress and was suddenly confronted with a deadlift effort to get material and equipment from London, take it to Manchester, with little or no idea about who he was to be meeting and how things were going to turn out. Even in those circumstances, all he did was to complain that this was all very last minute. Mr Smith may have felt defensive towards his wife, but there is nothing to justify

his language towards Mr Taha, which was very much sharper than anything Mr Taha was accused of.

66. Things had clearly changed since the arrival of Mr Smith. From Mr Moreno's point of view it may have seemed perfectly reasonable to recruit an additional member of staff and then to assign them enough clients and leads to enable them to make an equivalent level of earnings. That is how companies grow. But that obviously comes at a cost to Mr Taha. He was equally entitled to raise his concerns, especially when it was handled without any consideration or consultation, when clients are simply removed from him, when his access to the computer system was unilaterally restricted or when he was told not to attend conferences. None of this was an appropriate way of dealing with an employee, let alone such a long serving and valuable member of staff.

67. It appears all too likely that from the time he went off sick, the company, or Mr Moreno in particular, had no particular interest in him returning to work. He was simply left alone until the position was reached when he could be invited to a meeting and dismissed for his lengthy absence. When that approach failed, the alternative of disciplinary proceedings was put in train. I conclude, given that background and the way those proceedings were then handled, that the only acceptable outcome from Mr Moreno's point of view was dismissal. It is clear that he was largely responsible for driving that process.

68. Mr Edgeworth was placed in an unenviable position in that he was brought in as an impartial person, but he clearly did not feel that it was part of his role to challenge or question any of the evidence put before him from Mr Moreno. Some of the points raised, such as events in restaurants in 2013 were historic. Others were taken from comments or opinions of Mr Smith. The fact that so many different criticisms was gathered together to justify dismissal also indicates that this was the desired outcome. The basis for many of the allegations was extremely flimsy, such as the sudden concern about his behaviour towards women – particularly as he worked from home - or the suggestion that he wanted Mr Smith to join a different company, or finally the missing grievance emails.

69. Then there is the allegation that Mr Taha accessed the CRM system and deleted client information. This was the first and most significant accusation levelled at him but even now it is difficult to understand the true nature of the alleged misconduct. In the first place it is somewhat unlikely that Mr Taha would have been logged into the computer system on the day in question, while he was off sick, let alone that he then observed someone typing information onto the system and then decided to delete it. Not only that, but apparently on seeing the information being typed in again he deleted it again, oblivious to the risk of detection. And then when he saw it typed in a third time he decided to leave it alone. The details in question were those of a new employee in the purchasing department at a client company. CRM systems depend on being kept up to date

and include, for example, the telephone numbers and email addresses of people the company may want to contact. It has not been explained why Mr Taha would want to remove such details. Then there is the undisputed fact that Mr Iakupov was new to the business and unfamiliar with the system.

70. Given the absence of any motive, the unlikelihood of Mr Taha acting as he did and there being an obvious alternative explanation - that Mr Iakupov was simply making mistakes in entering the information - I have no hesitation in concluding that this allegation is unfounded, and that applies to the other allegations too. It follows that I am not satisfied that Mr Taha committed any fundamental breach of contract and so he is entitled to succeed in the claim of wrongful dismissal.

71. Nevertheless, as already explained, the fairness of a dismissal does not turn on whether the allegations are subsequently shown to be unsubstantiated. It depends on the evidence available at the time and the approach taken to it by Mr Edgeworth.

72. Taking the usual issues in turn, I am satisfied that Mr Edgeworth had an honest or genuine belief that misconduct had occurred. That was not challenged, and it is not necessary to show that he had an honest belief that *gross misconduct* had taken place.

73. Was that belief on reasonable grounds? On this aspect I do have to make a number of criticisms. In my view, Mr Edgeworth did not enquire very far into the points mentioned above, such as what motive Mr Taha would have had for pretending to send a grievance, or to delete contact information from Odoo. The fact that so many types of allegations had arisen, apparently spontaneously, is not mentioned in his outcome letter, nor the age of the allegations, or the fact that some are simply based on comments by Mr Smith, with whom he already had strained relations. The circumstances in which Mr Taha found himself shortly before the conference were not explored, or the question of whose responsibility it had been to make the arrangements in question. Without establishing who was to blame, it is difficult to understand how he reached the view that Mr Taha acted inappropriately.

74. Nor does the dismissal letter take into consideration Mr Taha's length of service. Although some division is made between the more serious and the less serious allegations, some of which merit only a warning, overall I cannot see that there was any real attention given to the gravity of the alleged offences that were found to be gross misconduct.

75. These are serious shortcomings, and in the circumstances I cannot accept that there were reasonable grounds for his conclusion that Mr Taha was guilty of serious misconduct.

76. Similar criticisms apply to the adequacy of the investigation. Each of those points could have been explored further. To break them down:

    (a) There was no investigation meeting with Mr Taha before the disciplinary hearing. That would have helped Mr Edgeworth to understand better the situation on 22 March 2022.

    (b) Ms Ferreira could have been spoken to, since she was willing to provide an email statement.

    (c) Mr Taha also asked for help from the IT Department in sending the email attachments in the format requested and this was not acted on.

    (d) Similarly, there was a surprising lack of any follow up to the access to the CRM system. There was some evidence from the respondent at this hearing to show that it was not possible to find out if anyone had deleted a particular entry, but that was not done at the time. And there was no exploration, then or now, as to whether the system could reveal when, for example, Mr Taha had last accessed the system.

    (e) Instead, the decision was taken entirely on the basis of the account of Mr Iakupov, without reference to the fact that he had just joined. His knowledge of the system was not explored.

77. I can understand that in such a small company the failure to have a separate investigation meeting is not necessarily outside the range of reasonable responses, but the other failures are not, in my view, justifiable on any view.

78. In those circumstances it must follow that the dismissal was unfair, but for completeness these failings mean that the ultimate decision was outside the range of reasonable responses.

79. In case I am wrong in that conclusion, I shall go on to consider briefly the alternative claim that this was an automatically unfair dismissal because Mr Taha had asserted a statutory right.

80. It is clear that Mr Taha had brought proceedings long before the decision to dismiss him. I find on balance that Mr Edgeworth would have been aware of those proceedings if not the detail. And again, Mr Moreno was behind the disciplinary process and was looking to dismiss Mr Taha.

81. It may be thought that the grievance or wages claim animated Mr Moreno to initiate these disciplinary proceedings, but in fact their relations had already deteriorated significantly by then. From about September 2021 onwards there were tensions at work and he was giving Mr Taha increasingly short shrift. Nothing changed from that point onwards, and in fact the grievance was simply ignored. On those

fact it is not possible for me to conclude that it was Mr Taha's action in bringing those proceedings that acted as the principal reason for dismissal, so the complaint of automatically unfair dismissal does not succeed.

82. Given my conclusions that Mr Taha was not in fact guilty of any serious misconduct, and that the allegations were in fact spurious, there is no question of any deduction on *Polkey* grounds. There is no prospect that a fair investigation, giving proper consideration to the concerns set out above, would have concluded that this was conduct deserving of dismissal.

83. Similarly, having found that the decision was outside the range of reasonable responses, I cannot see any basis for a deduction for contributory fault. Mr Taha raised issues about his commission, the loss of his clients, his exclusion, and even took those concerns as far as the employment tribunal. At times his exchanges with Mr Moreno became tense. But I can see no reason to characterise any of that as misconduct, let alone as serious misconduct.

84. More generally, I note that there was no effort to achieve a reconciliation between him and Mr Smith, and to address these concerns. It is impossible to say whether that would have worked, given the state of their relations in March 2022, but Mr Taha clearly wanted to continue at work, where he had been for nearly 20 years.

85. There is a final issue regarding compliance with the ACAS Code of Practice. That relates to the lack of an effective appeal. It was not addressed in closing submissions, and given a lack of any further time today, I will hear further argument about that at the remedy hearing.

Employment Judge Fowell

Date 26 November 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

16 January 2025

For the Tribunal Office

P Wing

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