Case Number: 2300411/2017

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	and	**Respondent**
Ms R Riley		Swale Properties (Kent) Ltd t/a Belvoir Swale

Held at Ashford on 22 May 2017

Representation	**Claimant**	Mr D Morris, solicitor
	Respondent:	Mr J Lewis, solicitor

Employment Judge J Pritchard (sitting alone)

RESERVED JUDGMENT

1 The Claimant's claim that she was unfairly dismissed is well-founded and accordingly succeeds. The Tribunal makes no award of compensation.

2 The Claimant's claim that she was dismissed in breach of contract is not well-founded and her claim for notice pay is accordingly dismissed.

REASONS

1 The Claimant claimed unfair dismissal under:

1.1 section 101A (1)(a) and/or (b) of the Employment Rights Act 1996; alternatively

1.2 section 104 upon reliance of the statutory right in subsection (4)(d); alternatively

1.3 section 98.

2 The Claimant withdrew her claim that she had been dismissed by reason of a TUPE transfer under Regulation 7 of the 2006 Regulations.

3 The Claimant also claimed breach of contract (notice pay).

4 The Respondent resisted the claims and submitted that the Claimant's dismissal was for a reason relating to her conduct, alternatively for some other substantial reason. The Respondent submitted that the Claimant was guilty of gross misconduct and that notice pay was not therefore payable.

5 At the outset of the hearing, the Claimant applied for a postponement of the hearing on the basis that one day would be insufficient for the Tribunal to hear evidence, consider the documents, deliberate and deliver judgment. The Respondent opposed the application and suggested that the hearing could proceed on the basis that the parties be permitted to make written submissions and judgment reserved. The Tribunal had regard to the overriding objective, in particular the requirements, so far as practicable, to avoid delay and save expense. The Tribunal determined that the hearing should proceed but that only liability, together with evidence relating to Polkey and contribution, would be considered at this stage; the parties would be permitted to make written submissions; judgment on liability, Polkey and contribution would be reserved. In this way the parties had sufficient time to adduce relevant evidence.

6 On the Respondent's behalf, the Tribunal heard evidence from Karen Huane (the Respondent's Branch Manager), Peter Huane (the Respondent's Managing Director) and Carolyne Jones (Business Development Manager for Belvoir Property Management (UK) Limited. On the Claimant's behalf, the Tribunal heard evidence from the Claimant; the Tribunal was also provided with the witness statement of Tim Harris (the Respondent's former Lettings Manager) but who was not called to give evidence. The Tribunal thus gave Mr Harris's evidence very limited weight. The Tribunal was provided with a bundle of documents to which the parties variously referred. The parties subsequently provided written submissions to which the Tribunal has had regard.

Issues

7 The issues were discussed with the parties at the outset of the hearing. They can be described as follows:

7.1 Whether the reason for the Claimant's dismissal, or if more than one the principal reason, was because she:

7.1.1 refused (or proposed to refuse) to comply with a requirement which the Respondent imposed (or proposed to impose) in contravention of the Working Time Regulations 1998; or

7.1.2 refused (or proposed to refuse) to forgo a right conferred on her by those Regulations.

7.2 Whether the reason for the Claimant's dismissal, or if more than one the principal reason, was because she alleged that the Respondent infringed a statutory right under the Working Time Regulations 1998.

8 If none of the above apply, and the Claimant had not been "automatically" dismissed:

8.1 Whether the Respondent can show the reason, or if more than one the principal reason, for the Claimant's dismissal and that it was for a reason relating to the Claimant's conduct and/or for some other substantial reason. If conduct, this would require the Respondent to show a genuine belief in the Claimant's guilt;

8.2 If the Respondent could show a genuine belief, whether the Respondent had reasonable grounds to sustain that belief and whether, at the stage that belief was formed on those grounds, the Respondent had carried out as much investigation into the matter as was reasonable in the circumstances;

8.3 Whether the decision to dismiss fell within the band of reasonable responses which reasonable employer might have adopted;

8.4 Whether the procedure was fair;

8.5 If the Tribunal were to conclude that the dismissal was unfair by reason of procedural defects, whether the Respondent would or might have dismissed the Claimant in any event and whether any compensation should be reduced accordingly;

8.6 Whether the Claimant caused or contributed to her dismissal such that any compensation should be reduced;

9 Whether the Respondent can show that it was entitled to dismiss the Claimant without notice by reason of her gross misconduct.

10 Notwithstanding the issues set out above, the Tribunal would have to determine which party was truthful as to certain events surrounding the Claimant's employment and dismissal. Among other things, there was a dispute as to whether the Claimant had been issued with a disciplinary warning prior to her dismissal, whether she was invited to attend a disciplinary hearing, and whether a disciplinary hearing had been held at all.

Findings of fact

11 Having considered the evidence, the Tribunal finds on the balance of probabilities that the Respondent's version of events is more likely to be true.

11.1 The Tribunal does not recognise the portrait painted in Mr Morris's submissions of the demeanour of the Respondent's witnesses. The Tribunal found the Respondent's witnesses to be wholly credible. This is not to say however that the Claimant did not appear to be giving credible evidence.

11.2 The meta data shows that the invitations to the disciplinary meetings were created when the Respondent says they were created. The Tribunal is unable to accept the Claimant's contention that the documents were created for the purposes of this litigation which had not been commenced

at the time. Even if the Respondent had litigation in mind when preparing the invitation to the final disciplinary meeting, the Tribunal does not accept that the Respondent would have had litigation in mind when the first disciplinary meeting was to be held. The Tribunal finds that there was nothing in Peter Huane's explanation about using different machines to create the documents that was inconsistent or unbelievable. As for the omission from the meta data of the dates on which the documents were printed, the Tribunal finds that omission irrelevant since the documents must have been printed at some stage for them to have appeared in the bundle.

11.3 The letters themselves are consistent with the approach of a small employer unfamiliar with HR practices (such as the invitation to the second disciplinary hearing referring to the possibility of a final written warning, which on the Respondent's case had already been issued). Had the letters been fabricated for the purposes of litigation, it might be thought that they would have been perfected for the purpose.

11.4 The Tribunal reaches the same conclusion with regard to Karen Huane's diary: if she had fabricated its entries for the purposes of this litigation as the Claimant alleges it might reasonably be thought that they would dovetail precisely with events.

11.5 As for Peter Huane's dated manuscript note on the disciplinary warning to the effect that the Claimant refused to sign it (the original copy of which Mr Huane showed the Tribunal), that would be a most curious fabrication for Mr Huane to have made, not least because there is no requirement for a disciplinary warning to be signed at all. In the Tribunal's view, the document is genuine and the Claimant refused to sign it as Peter Huane asserts.

11.6 The Tribunal found Karen Huane, who answered questions in cross examination in direct way, to be a particularly credible witness. Her explanation for having created her diary notes was entirely credible. The content of the diary does not appear to relate solely to the Claimant's alleged failings as she contends. The content of the diary is consistent with many material aspects of the Respondent's version of events. Karen Huane's explanation for the friendly tone of her various text messages with the Claimant as a "coping mechanism" was credible and understandable. It is neither uncommon nor unusual for a manager to give an unsatisfactory employee encouragement in the hope that they improve.

11.7 As for the telephone recording/video, this was not adduced in evidence and no conclusions can be drawn from it. The Tribunal is not prepared to accept Mr Morris's attempt to adduce evidence in his submissions that the telephone was positioned in a handbag (which in any event appears inconsistent with what the Claimant herself says in her witness statement).

11.8 Carolyne Jones gave clear and consistent evidence that she attended the disciplinary meeting of 8 December 2016. This corroborated the evidence

of Karen and Peter Huane both to the fact that the disciplinary meeting took place and that the meeting had been planned. Although arguably she was not an entirely independent witness, there was no credible evidence to suggest that Carolyne Jones had any reason to fabricate her evidence or that she had entered into a conspiracy with Karen and Peter Huane to do so. The Tribunal notes that it was by chance that Carolyne Jones happened to be at the premises the same day for a pre-arranged visit relating to the Respondent's business.

12 Having found that the Respondent's version events is to be preferred, the Tribunal makes the following further findings:

12.1 The Respondent is a lettings and estate agency operating in Swale. The Claimant commenced employment with the Respondent in July 2006. Karen and Peter Huane (husband and wife) acquired the Respondent company in July 2016 by way of a share purchase and entered into a franchise agreement with Belvoir Property Management (UK) Limited. Carolyne Jones provides business development support for franchisees such as the Respondent.

12.2 At that time there were four members of staff working for the Respondent including the Claimant. Karen Huane became the Respondent's branch manager. Two of these staff members left shortly after Mr and Mrs Huane acquired the business.

12.3 From July 2016 Karen Huane, who was suffering from depression, kept a manuscript diary as a "dumping ground" recording issues with the business.

12.4 There were clearly tensions between Karen Huane and members of the Respondent's staff who had hitherto worked in their own ways with less direction and control from former management.

12.5 On 28 July 2016 the Claimant signed a new contract of employment. However, this was only after discussions during which the Claimant told Karen Huane that if the Respondent brought in anyone else to do the Senior Negotiator role she would tell Karen Huane to "shove her job up her arse".

12.6 A number of issues arose relating to the Claimant's conduct. Karen Huane handed the Claimant a letter dated 28 September 2016, which had been prepared by Peter Huane, inviting the Claimant to a disciplinary meeting the following day. The disciplinary allegations included:

- Procedures/instructions not followed. Not recognising authority
- Serious insubordination.
- Bringing the company into disrepute

The letter includes the following:

Since taking over the business in July 2016, both Karen and I have tried to bring you on board with the changes that are required to make the company more professional and efficient. We've promoted you from Sales Administrator to Senior Property Sales Consultant and reflected this in your Salary and Commission Structure.

Despite this, we have had to have informal sessions with you on numerous occasions regards your conduct and lack of respect for authority. As a result of the more serious issues above, we have now had to formalise this and give you this notice of a formal disciplinary meeting

12.7 Following the disciplinary meeting, the Claimant was issued with a Final Written Warning. Peter Huane handed a copy of a document recording the warning to the Claimant but she refused to sign it. Nevertheless, the Claimant appeared apologetic and purchased flowers for Karen Huane. Despite the Claimant saying she wanted to move on, her behaviour continued.

12.8 In November 2016 the Respondent instructed staff to book all outstanding holiday before the end of December or it would be lost. The Claimant did so.

12.9 On 2 December 2016, the Claimant told Karen Huane that she needed time off on 15 December 2016 to attend her son's nativity play and that she was not prepared to miss it. The Claimant wanted this time off in addition to her booked holiday. Karen Huane told the Claimant that one member of staff was already on holiday on 15 December and that Matthew Brown, the new lettings manager, would be taking his day off. Therefore, there would be no one in the office to provide cover. Nevertheless, Karen Huane said she should leave the matter with her and that she would speak to her husband.

12.10 Later that day, Karen Huane was told by Sarah Boyle, an employee from the Rochester office providing cover, that the Claimant had told her that if she were not permitted to attend her son's nativity play she would tell Karen Huane to "shove her job up her arse" (the Tribunal notes that Sarah Boyle subsequently confirmed this in a letter date 1 March 2017). Sarah Boyle also said that the Claimant had referred to Peter and Karen Huane as "bastards". Both Sarah Boyle and Matthew Brown told Karen Huane that the Claimant had called her a "bitch".

12.11 Peter Huane was angry that the Claimant, who had booked her remaining holiday, was now demanding more time off to which she had no entitlement. Nevertheless, Karen Huane told the Claimant that she should leave the matter with her to see if cover could be arranged.

12.12 Peter Huane prepared a letter inviting the Claimant to a disciplinary meeting to take place at noon on 8 December 2016. The letter dated 2 December 2016 was handed to the Claimant on 6 December 2016.

12.13 The disciplinary allegations were described as follows:

- *You are currently on a Disciplinary from 29th September 2016 which was a Final warning and you were warned as to your future conduct.*
- *After being told on Friday 2nd December 2016 that your request to take additional time off work for your Son's school Nativity play was in hand, and that the matter would be dealt with in the following week, you made arrangements with another member of staff to switch days off to accommodate this. This was against the explicit instructions of your Line Manager, Karen Huane.*
- *It has come to my attention that you have stated to two members of staff that if you weren't allowed time off for your Son's Nativity play that you would tell Karen & I to "shove our job up our…"*

The Claimant was informed that these issues were considered to be Gross Misconduct and therefore the possible consequences might be the issue of a Written Warning, a Final Written Warning, temporary probation, or dismissal. The Claimant was advised that she was entitled to be accompanied by a work colleague or trade union representative.

12.14 On 8 December 2016, Carolyne Jones, together with a colleague, attended the Respondent's business premises to discuss business matters. Peter Huane informed them that a disciplinary meeting had been arranged to take place at noon that day with the Claimant. Carolyne Jones, who had been providing support to the Respondent's business and to Karen Huane in particular, was already aware of the issues concerning the Claimant.

12.15 Carolyne Jones, Karen Huane and the Claimant held a discussion in the main office about marketing opportunities. Karen Huane's evidence, which the Tribunal accepts, was that she was concerned for her safety when the Claimant became aggressive and started shouting. Carolyne Jones' evidence, which the Tribunal also accepts, was that the Claimant became very aggressive towards Karen Huane so she stood between them. This took place shortly before noon when Peter Huane was in the back office preparing it for the disciplinary meeting. Upon hearing the shouting through the open door he entered the main office to see the Claimant wide-eyed, leaning towards his wife with Carolyne Jones in between them.

12.16 This took place shortly before noon. Peter Huane decided to bring the disciplinary meeting forward and he invited the Claimant to attend his office for that purpose. Karen Huane was upset and wanted Carolyne Jones to attend the meeting for support. The meeting lasted between 5 and 10 minutes. Neither Karen Huane nor Carolyne Jones said anything: the discussion was held between the Claimant and Peter Huane. Peter Huane took the decision to dismiss the Claimant.

12.17 The following day, Karen Huane prepared a brief note of the meeting. By letter dated 9 December 2016, Peter Huane sent a letter to the Claimant

confirming her dismissal. In essence, Peter Huane found the allegations proven. In evidence, Peter Huane told the Tribunal that it was his belief that the comments attributed to the Claimant by members of staff had been true, that the Claimant had not been willing to swap her days off and that she had badgered Matthew Brown to authorise her to have the time off which was against Karen Huane's instructions. It is also clear that his decision to dismiss was strongly influenced by the Claimant's aggression towards his wife immediately before the disciplinary hearing.

12.18 Peter Huane's letter of 9 December 2016 made no reference to the Claimant's right to appeal and this was drawn to his attention by Karen Huane. The following day Peter Huane sent a similar letter but this time informing the Claimant of her right to appeal. The Claimant did not appeal.

Applicable law

"Automatic" unfair dismissal

13 Insofar as relevant to this case, section 101A(1) of the Employment Rights Act 1996 provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason, (or if more than one the principal reason) is that the employee–

(a) refused (or proposed to refuse) to comply with a requirement which the Respondent imposed (or proposed to impose) in contravention of the Working Time Regulations 1998;

(b) refused (or proposed to refuse) to forgo a right conferred on her by those Regulations.

14 Insofar as relevant to this case, section 104 of the Employment Rights Act 1996 provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason, (or if more than one the principal reason) is that the employee alleged that the employer had infringed a right which is a relevant statutory right. Subsection (4)(d) provides that the rights conferred by the Working Time Regulations 1998 are relevant statutory rights. Subsection (2) provides that it is immaterial whether or not the employee has the right or whether or not the right has been infringed provided the claim to the right has been made in good faith. Subsection (3) provides that it is sufficient that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

15 In Kuzel v Roche Products Ltd [2008] IRLR 530 the Court of Appeal held that when an employee positively asserts that there was a different and inadmissible reason for his dismissal, she must adduce some evidence supporting the positive case. That does not mean that the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by her for the dismissal and to produce some evidence of a different reason. Having heard evidence from both sides relating to the reason for dismissal, it will be for the Tribunal to

consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence. The Tribunal must then decide what was the reason or principal reason for the dismissal of the Claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the Tribunal that the reason was what he asserted it was, it is open to the Tribunal to find that the reason was what the employee asserted it was. This is not to say that the Tribunal must find that if the reason was not that asserted by the employer then it must be that asserted by the employee. It may be open for the Tribunal to find that the true reason for dismissal was not that advanced by either side. It is for the employer to show the reason for the dismissal; an employer who dismisses an employee has a reason for doing so. He knows what it is. He must prove what it is.

"Ordinary" unfair dismissal

16 Under section 98(1) of the Employment Rights Act 1996, it is for the employer to show the reason for the dismissal (or if more than one the principal reason) and that it is either a reason falling within section 98(2) or for some other substantial reason of a kind such as to justify the dismissal of the employee holding the position he held. A reason relating to conduct is a potentially fair reason falling within section 98(2).

17 The reason for the dismissal is the set of facts or the beliefs held by the employee which caused the employer to dismiss the employee. In determining the reason for the dismissal, the Tribunal may only take account of those facts or beliefs that were known to the employer at the time of the dismissal; see W Devis and Sons Ltd v Atkins 1977 ICR 662.

18 Under section 98(4) of the Employment Rights Act 1996, where the employer has shown the reason for the dismissal and that it is a potentially fair reason, the determination of the question whether the dismissal was fair or unfair 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 must be determined in accordance with equity and substantial merits of the case.

19 When determining the fairness of conduct dismissals, according to the Employment Appeal Tribunal in British Home Stores v Burchell 1980 ICR 303, as explained in Sheffield Health & Social Care NHS Foundation Trust v Crabtree [2009] UKEAT 0331, the Tribunal must consider a threefold test:

19.1 The employer must show that he believed the employee was guilty of misconduct;

19.2 The Tribunal must be satisfied that he had in his mind reasonable grounds upon which to sustain that belief; and

19.3 The Tribunal must be satisfied that at the stage at which the employer formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.

20 However, it is not for the Tribunal to substitute its own decision as to the reasonableness of the investigation. In Sainsburys Supermarkets v Hitt [2003] IRLR 23 the Court of Appeal ruled that the relevant question is whether the investigation fell within the range of reasonable responses that a reasonable employer might have adopted.

21 Nor is it for the Tribunal to substitute its own decision as to the reasonableness of the action taken by the employer. The Tribunal's function is to determine whether, in the particular circumstances of the case, the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. See: Iceland Frozen Foods v Jones [1982] IRLR 430; Post Office v Foley [2000] IRLR 827.

22 The requirement for procedural fairness is an integral part of the fairness test under section 98(4) of the Employment Rights Act 1996. When determining the question of reasonableness, the Tribunal will have regard to the ACAS Code of Practice of 2015 on Disciplinary and Grievance Procedures. That Code sets out the basic requirements of fairness that will be applicable in most cases. Under section 207 of the Trade Union & Labour Relations (Consolidation) Act 1992, in any proceedings before an Employment Tribunal any Code of Practice issued by ACAS shall be admissible in evidence and any provision of the Code which appears to the Tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

23 In Polkey v Dayton Services Ltd [1988] ICR 142, it was stated that if an employer could reasonably have concluded that a proper procedure would be "utterly useless" or "futile", he might be acting reasonably in ignoring it.

24 In Taylor v OCS Group Ltd [2006] IRLR 613, the Court of Appeal stressed that the Tribunal's task under section 98(4) of the Employment Rights Act 1996 is not only to assess the fairness of the disciplinary process as a whole but also to consider the employer's reason for the dismissal as the two impact on each other. It stated that where an employee is dismissed for serious misconduct, a Tribunal might well decide that, notwithstanding some procedural imperfections, the employer acted reasonably in treating the reason as sufficient to dismiss the employee. Conversely, the Court considered that where the misconduct is of a less serious nature, so the decision to dismiss is near the borderline, the Tribunal might well conclude that a procedural deficiency had such impact that the employer did not act reasonably in dismissing the employee.

Deductions from compensation

25 The Polkey principle established by the House of Lords is that if a dismissal is found unfair by reason of procedural defects then the fact that the employer

would or might have dismissed the employee anyway goes to the question of remedy and compensation reduced to reflect that fact.

26 Section 122(2) of the Employment Rights Act 1996 provides that where the Tribunal finds that any conduct of a Claimant before the dismissal was such that it would be just and equitable to reduce the amount of the Basic Award, the Tribunal must reduce that amount accordingly. Section 123(6) of the Employment Rights Act 1996 provides that where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the Claimant, it must reduce the amount of the compensatory award by such proportion as it considers just and equitable. Before making such a deduction, the Tribunal must make three findings:

26.1 That there was conduct on the part of the Claimant in connection with his unfair dismissal which was culpable or blameworthy to the extent that it was perverse, foolish, bloody-minded or unreasonable in the circumstances;

26.2 That the matters to which the unfair dismissal complaint relates were caused or contributed to some extent by the Claimant's action (or inaction) that was culpable or blameworthy;

26.3 That it is just and equitable to reduce the assessment of the Claimant's loss to a specified extent.

See: Nelson v BBC (No.2) [1979] IRLR 346, CA

27 The Tribunal must award compensation that is just and equitable. Even if the loss arising from the dismissal is substantial, the Tribunal can still award no compensation if it would be unjust or in equitable for the employee to receive it. This might be the case where acts of misconduct discovered after the dismissal means that it would not be just and equitable to award compensation; see W Devis & Sons Ltd v Atkins [1977] IRLR 314.

Breach of contract/notice pay

28 A claim for notice pay is a claim for breach of contract; see Delaney v Staples 1992 ICR 483 HL. In Neary v Dean of Westminster [1999] IRLR 288, it was held that conduct amounting to gross misconduct justifying summary dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment. It is necessary for the Respondent to show that the Claimant had actually committed a repudiatory breach of contract; see Shaw v B & W Group UKEAT/0583/11.

Conclusion

29 The Tribunal is satisfied that Peter Huane has shown that the principal reason for the Claimant's dismissal was by reason of the allegations set out in the letter inviting the Claimant to the disciplinary meeting which he found proven and recorded in his letter to the Claimant confirming her dismissal together with the Claimant's aggression towards Karen Huane on 8 December 2016.

30 There was no credible evidence before the Tribunal from which it could conclude that the principal reason for the Claimant's dismissal was her refusal (or proposed refusal) to comply with a requirement which the Respondent imposed (or proposed to impose) in contravention of the Working Time Regulations 1998 or because the Claimant refused (or proposed to refuse) to forgo a right conferred on her by those regulations. Nor was there evidence before the Tribunal that the Claimant had made it reasonably clear to the Respondent that it had infringed a right conferred by the Working Time Regulations. Indeed, there was no evidence before the Tribunal at all to suggest that the Claimant had asserted any statutory right whatsoever. The Claimant was not "automatically" unfairly dismissed.

31 Peter Huane clearly held a genuine belief in the Claimant's misconduct and thus the Respondent has shown the reason for the dismissal as one relating to conduct.

32 The belief was held on reasonable grounds: two members of staff had informed the Respondent of the Claimant's comments about shoving the Respondent's job up their arse; Karen Huane was able to describe to her husband the circumstances surrounding the Claimant's insistence on taking time off for her son's nativity play in circumstances in which, having booked outstanding holiday, she had no accrued holiday left. As for the Claimant's aggressive behaviour towards Karen Huane shortly before the disciplinary meeting, he observed this with his own eyes.

33 Even if it can be said that the investigation fell inside the band of reasonable responses, the Tribunal has been troubled by its procedural aspects. Although Karen Huane told the Tribunal that Matthew Brown and Sarah Boyle were asked to provide statements, they did not do so. The ACAS Code of Practice 1 of 2015 makes it clear that it would normally be appropriate to provide copies of any written evidence to employees in advance of a disciplinary meeting. In this case, there was simply no written evidence for the Respondent to provide. Especially in circumstances in which an employee's long-standing employment is at risk, no reasonable employer would fail to require statements to be provided by staff making allegations of this kind or, at the very least, make notes of investigative discussions and disclosed them to the employee in advance of a disciplinary meeting. As for the aggressive behaviour of 8 December 2016, this did not form the subject matter of the allegations yet clearly influenced Peter Huane's decision to dismiss. This is not a case in which it can be said that it would have been "utterly useless" or "futile" for fair procedural steps to have been taken. Although the law allows some flexibility for small employers, the basic principles of procedural fairness still apply.

34 Making such a comment to other members of staff was highly inappropriate and disrespectful; making arrangements behind Karen Huane's back to take time off was insubordination. Dismissal because of an employee's aggressive

behaviour is highly likely to be a reasonable response. The Tribunal finds that the decision to dismiss fell inside the band of reasonable responses.

35 Because of the procedural failings in the investigation and the additional allegation of aggression not having been subject to a fair procedure, the Tribunal concludes that the Claimant was unfairly dismissed.

36 Having accepted the Respondent's version of events, the Tribunal accepts that the Claimant, amongst other things:

- Told Karen Huane that if she did not get the Senior Negotiator role she would tell her to shove her job up her arse
- Told the Respondent, with regard to referrals to be made in line with Belvoir policies, that she would not "sell this shit" and that she "didn't give a shit" what Karen Huane thought
- Created a bad atmosphere in the office
- Became aggressive and shouted at Karen Huane on 15 November 2016
- Called Karen Huane "a bitch"
- Was aggressive and shouted at Karen Huane on 8 December 2016 immediately prior to the disciplinary meeting

37 As Karen Huane said in evidence, the Claimant's aggressive behaviour on 8 December was the straw that broke the camel's back. The Tribunal has no hesitation in concluding that there was conduct on the Claimant's part in connection with her unfair dismissal which was blameworthy and that the matters to which the unfair dismissal complaint relates were wholly caused by the Claimant's own blameworthy conduct. In the Tribunal's view, it is just and equitable to reduce both the basic award and the compensatory award by 100%.

38 The Respondent has shown that the Claimant committed a repudiatory breach of contract gross misconduct justifying summary dismissal, in particular the aggressive behaviour of 8 December 2016. Such behaviour on the Claimant's part undermined the trust and confidence inherent in her contract of employment. The Respondent was entitled to dismiss the Claimant without notice. The Claimant was not wrongfully dismissed in breach of contract.

39 In the circumstances, there is no requirement for a further hearing for the Tribunal to consider remedy.

Employment Judge Pritchard
2 June 2017