



EMPLOYMENT TRIBUNALS

Claimant: Ms N Baron

Respondent: Capita Business Services Limited

HELD AT: Manchester

ON: 29 January 2021

BEFORE: Employment Judge Barker

REPRESENTATION:

Claimant: In person

Respondent: Ms Ayre, solicitor

JUDGMENT

1. The claimant was not unfairly dismissed by the respondent. The claimant's unfair dismissal claim fails and is dismissed.
2. The respondent made no unlawful deduction of wages by failing to pay the claimant company sick pay during a period of self-isolation due to Covid.

REASONS

Preliminary Matters and Issues for the Tribunal to Decide

1. This was a remote hearing which was not objected to by the parties. The form of remote hearing was a code "V" hearing, being conducted entirely by CVP video platform. A face to face hearing was not held because it was not practicable and no-one requested the same. The documents that I was referred to are in a bundle of 236 pages, the contents of which I have recorded. I was also provided with four further documents by the respondent

during the hearing, which I label "R1" to "R4", which consisted of the claimant's pay slips for April, May and June 2020 and a document provided by the respondent entitled "*COVID-19 Pay Policy FAQ 19 March*". The claimant and the tribunal took time to consider these further documents, which were admitted in evidence. The claimant gave evidence on her own behalf, and Ms Woods and Mr Lennard provided witness statements and oral evidence for the respondent.

2. The claimant brings a claim of unfair dismissal. In her ET1 claim form she also indicated that there were further claims concerned with arrears of pay. At the outset of the hearing it was identified that the claimant wished the Tribunal to consider a claim for unlawful deduction from wages based on the fact that she had been paid statutory sick pay for a 14 day period of isolation due to COVID-19. Her period of isolation took place between 29 April 2020 and 13 May 2020. It is the claimant's case that she had not exhausted her contractual sick pay entitlement and she therefore could not understand why her period of self-isolation had been paid at the lower statutory sick pay rate.
3. The respondent's representative indicated that at no point between the claimant lodging her claim form with the Tribunal and the date of this hearing had the claimant raised the issue of non-payment of contractual sick pay. The Tribunal accepts that this is the case. It is also noted that the claimant had provided a Schedule of Loss on 24 December 2020, a copy of which is in the bundle, which does not include any sums for sick pay.
4. However, the claimant did indicate that she sought arrears of pay in her claim form and the Tribunal has taken account of the fact that the claimant is without legal representation. In the interests of finality in the proceedings, enquiries were made by the Tribunal as to whether the respondent could provide respond during the course of the hearing to the claimant's claims for sick pay. The respondent's representative was able, by the afternoon of the hearing, to provide the claimant's payslips, its COVID-19 pay policy statement of 19 March 2020 (that is, documents R1 to R4 referred to above) and also provide Mr Lucas, an HR advisor employed by the respondent, to give evidence in chief to the Tribunal and answer questions from the claimant and the Tribunal in order to address the issue of the claimant's sick pay entitlement, for which the Tribunal was grateful.
5. The claimant's claim before the Tribunal is that she has been unfairly dismissed as a consequence of her repeated requests to the respondent that she be provided with a company van to perform her duties. The claimant told the Tribunal that she had been claiming mileage rates for her car that did not adequately cover the cost of her petrol and that had she been provided with a van, she would have been in a better financial position. It is the claimant's case that she was only investigated in relation to the incidents of 7 April 2020 because she was repeatedly asking to be provided with a van.
6. It is the respondent's case that the claimant was summarily dismissed for falsifying visit reports and negligence in the performance of her duties and that this amounted to gross misconduct. In particular, the respondent will say that the claimant failed to visit two subjects on 6 and 7 April 2020, misled a

manager in relation to telephone calls she claimed to have carried out and recorded false information within visit reports that she submitted in relation to these two subjects.

7. Where an individual has been dismissed for misconduct, the issues for the Tribunal to decide are:
 - a. Was misconduct the reason for the claimant's dismissal? The claimant told the Tribunal that she did not accept that this was the reason for her dismissal. She told the Tribunal that she believed that she was being "punished" for having repeatedly asked that her company car be swapped for a van;
 - b. Did the respondent have a genuine belief that the claimant was guilty of the misconduct alleged?
 - c. Was the belief in misconduct arrived at having carried out as much investigation into the matter as was reasonable in all the circumstances of the case?
 - d. Was the procedure within the band of reasonable responses, in other words, would a reasonable employer have carried out the procedure the respondent did?
 - e. Was the sanction within the band of reasonable responses, in other words, would a reasonable employer have imposed the sanction that the respondent did?
8. The claimant will say that the respondent did not follow a fair procedure in relation to her disciplinary investigation and in particular, she was not provided with the statement of Donna Slater, which she alleges made a material difference to the facts found by respondent and ought therefore to have been available for her to consider during the disciplinary process.
9. The respondent's case in relation to these allegations of procedural irregularity is that the claimant was provided with Ms Slater's statement during the process and that in any event, the contents of it were such that they did not form part of the facts taken into account by the decision-makers in reaching the decisions that they did in relation to the claimant's dismissal.
10. The parties put forward evidence which the Tribunal has considered. However, if the following findings of fact are silent in relation to some of that evidence, it is not that it has not been considered, but that it was insufficiently relevant to the issues that the Tribunal had to decide.

Findings of Fact

11. The claimant was employed by the respondent as a Field Monitoring Officer from 21 November 2016 until her dismissal on 22 June 2020. It was clarified by the respondent's representative at the outset of the hearing that the respondent's correct business name was Capita Business Services Limited and the Tribunal record was corrected in this regard.
12. The respondent provides services to the Ministry of Justice via a commercial agreement which outsources to the respondent the installation, monitoring

and removal of curfew orders. The claimant's day-to-day role was field based and involved her attending the home premises of individuals who were the subject of curfew orders to carry out tasks such as installing or removing electronic tags. The claimant was therefore not able to work from home when the country began the first coronavirus lockdown at the end of March 2020.

13. The evidence before me in the bundle, which the parties broadly agreed on, was that from the end of March 2020 as the Coronavirus lockdown unfolded, those employees of the respondent (such as the claimant) who were field based were advised to join daily COVID-19 conference calls at the start of their shift to discuss the unfolding situation and to establish best practice regarding carrying out their duties in a COVID-secure way.
14. Given that field monitoring officers such as the claimant regularly drive long distances to visit subjects, the lack of availability of public toilets during the first lockdown was a significant issue that was the subject of some discussion by the respondent's staff during these COVID-19 daily conference calls. In the bundle before me, I note, and this was not disputed by the claimant, that the issue of the availability of toilets was raised by the claimant as a problem on at least two occasions on 31 March 2020 and 7 April 2020. Other colleagues also raised the issue on other calls and the respondent's response was to compile a list of public toilets that were available for their staff to use in the area that they covered.
15. On 6 April 2020, the claimant was tasked with going to Barrow, Cumbria, to visit two subjects. She did not carry out those visits on 6 April. On the evening of 6 April the claimant spoke to the field line manager on duty at the time, Phil Crook, and told him that she had not carried out the visits in Barrow. During the call, they discussed the availability of toilets or otherwise in the Barrow area, the lack of which was the reason given by the claimant for not carrying out the visits.
16. During the team COVID-19 conference call on 7 April 2020 at 18:10, the claimant repeated that she would not be carrying out the visits in Barrow as there were no toilet facilities, but was told by a colleague (Russ) that a petrol station nearby in Ulverston allowed use of its toilet facilities for key workers, if she showed her ID badge and key worker letter.
17. After the conference call had finished, it is accepted by the claimant that she spoke on the telephone to Phil Crook and Cassie Mills. Ms Mills is also a line manager. Miss Mills gave a statement the same day by email in which she reported that she called the claimant after the conference call and advised her that an email was sent out with an Ulverston address for the toilet, which was the one mentioned in the call by Russ. She also told the claimant that she had located a Barrow toilet facility and had called them to confirm that they were open 24 hours a day, so this ought not to be a problem in the future.
18. It is accepted by the claimant that shortly after the conference call finished, she telephoned the two subjects in Barrow and that each call lasted approximately one minute.

19. The claimant recorded in the master visit report for the first Barrow subject, number 1273536, a call on 7 April 2020 at 18:33. The individual responded as follows:

"Called subject on his mobile. Subject states that he is in the at risk group and does not want to be visited during the Corona outbreak"

20. She noted in the master visit report for the second Barrow subject, number 1260687, who she called at 18:34:

"Called subject who stated she is self isolating due to being in the at risk group and does not want to be visited during the Corona outbreak."

21. The Tribunal was then shown a statement from first line manager Phil Crook from 7 April 2020 which states that he noticed a missed call from the claimant at 18:30 and called her back at 18:37. The claimant informed him that she had called both of the subjects in Barrow and that both were in the at risk group and self-isolating and so did not want any visits while the Coronavirus was ongoing. She said that she thought non-essential visits were not being tasked out at the moment.

22. She also told Mr Crook that the first of the visits, to subject 1273536, was to change the strap on his electronic tag to a larger one and that she couldn't go anyway because she did not have the size required. The claimant, according to Mr Crook, went on to ask him about when she could swap to using a company van instead of a car. The claimant told Mr Crook that it was proving very expensive to cover the cost of the fuel that she was using for her car and she did not understand why colleagues who had joined the respondent after she had, had been given a van, but that she had not.

23. When Mr Crook checked on the two subjects who the claimant reported were self-isolating, both were shown by the monitoring equipment to have moved around that day and so he telephoned both of them. Both subjects were asked whether they had been asked about Covid symptoms by the claimant or whether anyone in their home was self-isolating or whether they had told the claimant that they didn't want a visit. Both subjects said that they had not been asked about Covid and had not said that they did not want someone to visit.

24. The claimant was then informed that day that she had been suspended by a letter dated 7 April 2020. The letter is from Mr Crook and states:

"We have concerns around allegations made in relation to visit reports you submitted that if proven would amount to gross misconduct. As a consequence of this, as discussed, you have been suspended pending the outcome of this investigation."

25. The claimant was informed that an investigatory meeting would take place on 9 April 2020. She was interviewed by Steve Ball, a first line manager.

26. Following Mr Ball's initial investigation, an issue arose with a third subject, number 1271987, who the claimant telephoned on 6 April. However, the respondent's evidence was that when Martine Ashton, the claimant's usual manager, telephoned this subject on 15 April to investigate the call (as part of the investigation into the claimant's actions), Ms Ashton was unable to speak to 1271987 because the subject spoke no English whatsoever. It was subsequently put to the claimant in a separate meeting that she had failed to establish whether the subject required a translator to communicate with her and that the claimant had therefore failed to communicate with the subject as required.
27. Mr Ball concluded that there was a case to take forward to a disciplinary hearing. He concluded that the claimant misled management over calls to the subjects, including whether one subject required a translator to communicate effectively.
28. The claimant's disciplinary hearing was chaired by Judith Woods. At the hearing, the claimant raised several issues with Ms Woods. These were:
- a. She said that she assumed that subject 1271987 spoke English because the subject answered "yes" to questions put to her;
 - b. She said that subject 1273536 had asked her not to visit because he was self-isolating due to Covid, and that she could not have completed the visit in any event because he had requested a different strap size, which she did not have (a size 18);
 - c. She said that her conversation with Phil Crook had been about her van, not about the subjects; and
 - d. When it was put to her that the subjects 1260687 and 1273536 had not, when subsequently questioned, told her that they were self-isolating, the claimant implied that the two subjects may have known one another and may have collaborated to provide a false account to the investigation.
29. After the disciplinary hearing with the claimant, Ms Woods spoke to Phil Crook, Gareth Daniel and Martine Ashton, and reviewed the claimant's phone records and visit report history. She also considered evidence provided by Cassie Mills, Helen Smilie, Phil Crook, Martine Ashton, Gareth Daniel and Donna Slater and the claimant's task sheets and visit reports.
30. Ms Woods concluded that, considering the conflicting evidence from the claimant and others involved in the investigation, that the claimant's account lacked credibility. In particular she noted:
- a. The evidence provided to the investigation by Cassie Mills, Helen Smilie, Phil Crook, Martine Ashton, Gareth Daniel and Donna Slater and the claimant's task sheets and visit reports together indicated that the claimant raised the lack of toilet facilities in Barrow on a number of occasions and therefore had something to gain from not carrying out visits there. The subjects, on the other hand, had nothing to gain from being untruthful and there was no evidence they had colluded with one another;

- b. Martine Ashton confirmed that the claimant already had two size 18 straps in her kit. Furthermore, she only asked Gareth Daniel for a strap after she had already informed Phil Crook that she was not carrying out the visits;
 - c. The claimant's conversation with subject 1271987 was a failure by her claimant to carry out her duties properly. She did not arrange a translator, even when the subject requested one. As a result, there was miscommunication and the subject did not have her electronic tag removed at the appropriate time.
31. Ms Woods concluded that the claimant had misled management, included false information in visit reports and been negligent in the performance of her duties. The claimant was dismissed for gross misconduct by letter dated 19 June 2020.
32. The claimant appealed against her dismissal in an email to Ms Woods dated 24 June 2020. Her grounds of appeal were:
- a. That there were discrepancies in visit reports of two other named individual employees of the respondent but they were not dismissed;
 - b. There was no transcript of what the subjects (1260687 and 1273536) said to Mr Crook and "*...they might have panicked with a manager ringing them after I had and thought they might be in trouble*";
 - c. "*The word of two individuals of questionable morals is being taken over mine.*";
 - d. She called Gareth Daniels on her personal mobile to ask if he had size 18 straps;
 - e. The purpose of her phone call to Phil Crook was to ask if she could have her car swapped for a van;
 - f. She would not have been able to visit one of the subjects anyway because she did not have the correct size strap for him, in that she had been told that a size "18.5" strap "does not exist" by colleagues in the stores;
 - g. She had visited this subject previously and she had refused to fit him with a larger strap when he had demanded one;
 - h. Steven Ball had told her that she could not have her union representative with her at the investigation meeting, only a work colleague, but this was contrary to what was stated in the company handbook;
 - i. Her companion at the investigation meeting had been told they were not allowed to speak during the investigation meeting, which was contrary to what was stated in the company handbook;
 - j. She did not know who the respondent's witnesses were and was not given the opportunity to question them; and
 - k. She did not have a copy of the respondent's staff handbook because she had been asked to give back her tablet before the first investigation meeting.
33. David Lennard, who is the respondent's head of Business Assurance, conducted the claimant's appeal. I accepted the evidence of Mr Lennard that

he was provided with and reviewed all of the documentation generated by the investigation and disciplinary process, as is set out in his witness statement.

34. He conducted an appeal hearing with the claimant and her union representative on 14 July 2020. The grounds of appeal listed above were discussed and the claimant reiterated to Mr Lennard that she felt that dismissal was a disproportionate penalty given that she was aware of other colleagues who had acted in a similar way to her but who had not been dismissed. Mr Lennard notes in his statement

"I thought it odd that Natasha said this given that she denied the allegations in any event."

35. Following the appeal hearing, Mr Lennard investigated the claimant's allegations that other colleagues had acted in a similar way to her but had not been dismissed. He found, which I accept, that in fact both circumstances were different from those of the claimant, in that in one situation CCTV footage corroborated the colleague's version of events, and in the second situation, the colleague did not falsely state that he had knocked on the door but there was no answer, but that instead he had rejected the visit request and called the police, as the subject had been observed fighting in the street. Mr Lennard was satisfied that there was no inequality of treatment in the claimant's circumstances.
36. In relation to the visits to the two subjects in Barrow, Mr Lennard concluded that there was no advantage for them to gain by delaying the visits, as one was a general welfare visit and the other was because the subject had complained that his strap was too tight. Furthermore, the visit records of both subjects before and after the weekend in question contained no mention that they were shielding due to Covid. There was also no evidence that the two subjects knew one another.
37. Mr Lennard also reviewed the respondent's disciplinary procedure and noted that it did not provide for employees to have a workplace representative accompany them to an investigation meeting. Therefore, the claimant's investigation meeting, at which she had been accompanied by a colleague, but at which the colleague had not been allowed to speak, did not breach the respondent's procedures. The claimant alleged to the Tribunal that her version of the company handbook did not say this, but I accept that the most recent version, and therefore the correct version on this occasion, was that referred to by Mr Lennard.
38. Furthermore, Mr Lennard discussed with Ms Ashton and concluded that prior to the disciplinary hearing the claimant had been provided with a copy of all the investigation documents and the correct disciplinary procedure prior to the disciplinary hearing. He concluded that the procedural complaints by the claimant were not substantiated.
39. In relation to the other issues raised by the claimant, Mr Lennard concluded that the issue of the availability of the straps or otherwise did not have a material impact on the fairness of the decision to dismiss the claimant, and

that Mr Crook's statement sufficiently recorded the conversation with the two subjects.

40. Mr Lennard therefore wrote to the claimant on 28 July 2020 to confirm that her appeal was not upheld and her dismissal for gross misconduct stood.

41. The claimant raised a number of issues before the Tribunal that she considered undermined the fairness of the disciplinary procedure, and the decision taken by Ms Woods. Those issues were:

- a. That she had not received Donna Slater's statement in the original pack of documents when she was suspended and she was therefore not able to challenge its contents;
- b. That Ms Woods ought not to have relied on the information provided by the two subjects that she was due to have visited on 6/7 April, because they were not trustworthy, knew one another and were likely to have colluded over what she had said about their visits on 6/7 April;
- c. That she was investigated over her behaviour on 6/7 April because she requested a van from the respondent in which to carry out her duties;
- d. Another employee of the respondent was not dismissed, despite having also falsified a visit report, and therefore her treatment was inconsistent and unfair;
- e. The respondent did not follow its own disciplinary procedure in relation to her investigation, hearings and dismissal.

42. I have considered the evidence before me in relation to these points and note that, bar the issue of Donna Slater's statement, these were all considered by Mr Lennard in relation to the claimant's appeal in July 2020. In relation to Ms Slater's statement, I accept Ms Woods' evidence that this was not directly relevant to the respondent's decision to dismiss the claimant and would not have made a material difference to any decision that was taken in this regard.

43. In relation to the allegation that the respondent did not follow its own disciplinary procedure in relation to her investigation, hearings and dismissal, the claimant provided the Tribunal with an extract from what was said to be the respondent's company handbook. However, the extract contains no notification on the face of it that would establish it as the respondent's company handbook. Neither of the respondent's witnesses were familiar with the document. On balance I find that this extract was not the respondent's company handbook and certainly not the version of the company handbook in use at the time to which these proceedings relate. A copy of the current version of the respondent's company handbook, which is clearly marked as such, was in the bundle of documents before the Tribunal and I accept that this was the version correctly used by the respondent in relation to the claimant's disciplinary procedure and dismissal. The version in use by the respondent was complied with in relation to the claimant's procedures and dismissal.

The Claimant's Entitlement to Contractual Sick Pay

44. The Tribunal was provided with the evidence of the respondent's HR officer, Mr Lucas, the claimant's payslips for April-June 2020 and the respondent's document of 19 March 2020 entitled "*Covid 19 FAQs*".
45. Mr Lucas' evidence to the Tribunal was that the "*Covid 19 FAQs*" document was written in accordance with government guidance at the time, in March 2020. As the claimant's job did not allow her to work from home, during her period of self-isolation from 29 April to 13 May 2020, the respondent's policy was that she was only entitled to Statutory Sick Pay at the time.
46. The claimant's complaint to the Tribunal is that she was not aware of this policy at the time and that a conversation with Martine Ashton at the time did not inform her that she would only be receiving SSP during her self-isolation. She asserts that she had not exhausted her contractual sick pay entitlement at the time and should be entitled to be paid her normal salary and not SSP for that period of isolation.
47. It is the respondent's case that its policy at the time was that individuals who could not work from home but who were required to self-isolate due to Covid were entitled to be paid SSP and not company sick pay, and that the claimant had been paid SSP for 14 days as appropriate.

The Law

48. It is well established law that determination of an unfair dismissal complaint is to be done, in the first instance, in accordance with section 98 of the Employment Rights Act 1996.
49. A respondent employer must show on the balance of probabilities that it had a fair reason for dismissal. In this the respondent's reason is that of misconduct.
50. Where the potentially fair reason given by the employer is misconduct, the Tribunal is to have regard to the guidance set down in the case of ***British Home Stores v Burchell [1978] IRLR 379*** which is:
- a. Did the respondent have an honest belief that the claimant had committed an act of misconduct?
 - b. Did the respondent have reasonable grounds for holding that belief?
 - c. At the time that that belief was formed on those grounds, had the respondent carried out as much of an investigation as was reasonable in the circumstances?
51. Although the ACAS Code of Practice on Disciplinary and Grievance Procedures is not legally binding, the Tribunal must have regard to it when assessing both the substantive and procedural fairness of an employer's decision to dismiss. However, it is a well-established feature of the law of unfair dismissal that the investigation and procedure need only be within a range of reasonable actions. For example, the investigation need only be a

reasonable one and need not be a forensic examination of all possible evidence.

52. The respondent must show that the reason to dismiss was within a range of reasonable responses that a respondent could have taken in that situation. There must be a fair investigation in all the circumstances, and the decision to dismiss must take into account equity and the substantive merits of the case
53. Furthermore, the Tribunal is expressly cautioned against substituting its view for that of the respondent in reaching the decision to dismiss. The Tribunal must not decide the case on the basis of what it considers to be the correct action in the circumstances, but instead must decide whether the respondent's actions, including the decision to dismiss, were the actions of a reasonable employer in the circumstances.
54. The claimant has raised the issue of disparity of treatment and complains that colleagues in a similar situation were treated differently and more leniently than she was.
55. The case of *Paul v East Surrey District Health Authority [1995] IRLR 305 CA* considered the case of *Hadjoannou v Coral Casinos Limited [1981] IRLR 352 EAT*. The *Hadjoannou* case, which was followed in the case of *Paul* states that the emphasis in a decision to dismiss taken by a respondent must be on the individual circumstances of each particular employee's case. The courts caution against Tribunals adopting a "tariff" or rule of thumb approach where broadly similar cases are given uniform regular sanctions.
56. The case of *Paul v East Surrey District Health Authority* also refers to the case of *Securicor Limited v Smith [1989] CA*, which established the principle that if an employer distinguishes between two employees in terms of the sanction given, the employer can only be challenged on the difference in treatment between two employees if there was no rational basis for the distinction made.
57. In relation to an employee's right to sick pay, the Statutory Sick Pay (General) Regulations 1982 have been amended at Regulation 2 to extend the definition of "persons deemed incapable of work" to include those obliged to self-isolate due to a potential exposure to Covid-19. Therefore, persons obliged to self-isolate are entitled to SSP during their period of isolation, including the first three days of that period, which would under the usual SSP regime not be payable.
58. The provisions of an employer's company sick pay scheme are determined by the employer's policies in this regard, subject to any element of the scheme being a term of the employee's contract.

Application of the Law to the Facts Found

59. It is for the respondent to establish on the balance of probabilities that they had a potentially fair reason for the dismissal. I find that the respondent has established such a reason on the evidence, that being misconduct. There was no evidence whatsoever, beyond the claimant's assertions, that her request

for a van played any part in the decision to dismiss. On the contrary, there was evidence before the Tribunal that the claimant did not accurately represent the content of her phone calls with the two subjects on 7 April in her reports and that the respondent therefore had reason to believe that she had carried out acts of gross misconduct.

60. It is for the respondent to show that the decision-maker had a genuine belief in the claimant's culpability. I find that Ms Woods has demonstrated such a genuine belief in the claimant having not completed visit reports accurately in relation to 7 April, and in not having properly communicated with subject 1271987, including obtaining an interpreter for her.
61. The question for the Tribunal to consider next is whether such a genuine belief was reasonably held. Was that belief held on reasonable grounds as a result of an investigation that was a reasonable one in the circumstances?
62. I find that the respondent's investigation was a reasonable one in the circumstances. The investigation meeting established the scope of the investigation itself, and relevant individuals then provided evidence which was supplied evidence to Ms Woods. Where further enquiries were required, these were carried out and the results shared with the claimant. A complaint is made before this hearing about the availability of Donna Slater's statement, but I find that the evidence of Ms Slater did not have a material influence on the decision taken by Ms Woods and so any omission by the respondent in providing the statement to the claimant was not a factor that categorises the respondent's procedure as one that no reasonable employer would have carried out.
63. I find that on balance, the respondent has carried out a thorough investigation which was reasonable in the circumstances of the case. The inability of the claimant's companion to speak during the investigation meeting, or an invitation at the end of the meeting for her companion to make comments, was not unreasonable conduct by the respondent.
64. As well as making relevant documents and information available to the claimant and her representative, they were given appropriate notice of meetings which were properly conducted. Appropriate reasons were given at each stage by the respondent for decisions taken.
65. Was the action by Ms Woods (upheld by Mr Lennard), to dismiss the claimant on the basis of the investigation carried out, a reasonable response to the investigation? I find that it was. Gross misconduct is stated in the respondent's company handbook as an available sanction in the circumstances. Dismissal was a reasonable sanction to apply in the circumstances of the claimant's case. Ms Woods found that the claimant falsified company records and was negligent in the performance of her duties.
66. In relation to the complaints made by the claimant in relation to the other two employees in similar circumstances to her who were not dismissed, I find that the difference in circumstances means that neither of the other two employees were in a similar situation to the claimant and therefore a failure by the

respondent to sanction them does not affect the fairness of the claimant's dismissal.

67. The claimant told the Tribunal that Ms Woods ought not to have relied on the information provided by the two subjects that she was due to have visited on 6/7 April, because they were not trustworthy, knew one another and were likely to have colluded over what she had said about their visits on 6/7 April. However, this point was considered by Ms Woods, who concluded that there was no evidence that the subjects knew one another or had colluded. She also took into account that the subjects had nothing to gain from not having a visit from the claimant and therefore had no incentive to collude or lie about the circumstances on that day.
68. The claimant alleged that the respondent did not follow its own disciplinary procedure in relation to her investigation, hearings and dismissal. There was no evidence before the Tribunal that the respondent was required as a matter of contract to follow its own procedures. Where the claimant alleged that the respondent failed to follow its own procedures, such as in relation to her companion at the investigation hearing, I did not accept the claimant's allegations in that regard – the respondent did not, for example, need to allow the claimant to be accompanied by her union representative at the investigation stage of the procedure according to the most recent version of the company handbook and it was not unreasonable that they did not allow a union representative at the investigation meeting.
69. Furthermore, as is specified by the ACAS Code of Practice, an employer's investigation and procedure need only be within a range of reasonable actions, that is, one that a reasonable employer would follow. The respondent here has shown that it followed a reasonable procedure in relation to the claimant's investigation, dismissal and appeal.
70. Taking all the circumstances of the claimant's dismissal into account, on the balance of probabilities it has been shown that the respondent has established a fair reason for the dismissal, namely misconduct, and has established that the dismissing officer Ms Woods formed a genuine belief on reasonable grounds that the claimant committed the gross misconduct alleged, following a reasonable investigation, and that the respondent followed a fair and reasonable procedure. The claimant's claim for unfair dismissal therefore fails.
71. Finally, the claimant alleges that she had the right to be paid company sick pay for her period of isolation for Covid-19 and not SSP as was paid by the respondent. The claimant has not made out on the facts before me that she was entitled to company sick pay. The respondent's evidence was that it issued a note to vary and clarify the employees' entitlement to pay in the early stages of the pandemic. The Tribunal was provided with a copy of this note. There was no evidence provided by the claimant to counter this. Company sick pay is provided by an employer in circumstances set down by that employer. In this situation, the employer determined that only SSP was payable and the claimant has not established that her entitlement was to more than that. Her claim for additional pay fails.

Employment Judge Barker

Date: 15 April 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON 20 APRIL 2021

FOR THE TRIBUNAL OFFICE