RM

EMPLOYMENT TRIBUNALS

Claimant: **Mrs B Curtis**

Respondent: **The Beacon Health Group**

Heard at: **East London Hearing Centre**

On: **13 & 14 June 2017**

Before: **Employment Judge M Warren**

Representation:

Claimant: Mr J Curtis (Husband)

Respondent: Mr J England (Counsel)

RESERVED JUDGMENT

1. The Claimant's claims that she was unfairly dismissed, for breach of contract and for unpaid wages each fail and are dismissed.

2. The Respondent's counterclaim succeeds; the Claimant shall pay the Respondent the sum of **£4,653.51.**

REASONS

Background

1 Mrs Curtis had been employed as a Practice Manager for a predecessor GP's surgery which merged with another practice to form the Respondent practice in April 2015. She was dismissed for gross misconduct on 30 September 2016. She brings a claim of unfair dismissal in relation to the termination of her employment. She also claims that she was due a productivity bonus at the time that her employment was terminated, (her wages claim) and that she is due a payment in lieu of notice, (a breach of contract claim).

The Issues

2 I discussed and identified the issues with the parties at the outset of the case.

3 With regard to the claim for a productivity bonus, the Respondent says that Mrs Curtis was not entitled to a productivity bonus and that in any event, her claim in this respect is out of time. Mr Curtis told me that the Respondent had discussed a bonus with Mrs Curtis, but that it was not, "agreed". He agreed with me when I suggested that it would appear therefore that there was no contractual obligation to make such a payment. However, he then went on to say that Mrs Curtis has an email from the Respondent which said that she would get a bonus.

4 The breach of contract claim for a payment in lieu of notice will turn on whether or not I find that Mrs Curtis acted in fundamental breach of her contract of employment, such as to entitle the Respondent to terminate her employment without notice.

5 With regard to the claim for unfair dismissal, Mrs Curtis agrees that the reason that she was dismissed was, "conduct". However, she says that her dismissal was unfair for the following reasons:

5.1 The notice of the meeting at which in due course, Mrs Curtis was dismissed, did not identify with sufficient clarity what was going to be discussed at that meeting;

5.2 The decision to dismiss was rushed and predetermined;

5.3 The Respondent did not disclose to Mrs Curtis relevant documents in the letter inviting her to the hearing at which she was dismissed, as it should have done.

5.4 The Respondent did not wait for further information that it had requested of Mrs Curtis at the disciplinary hearing, before reaching the decision to dismiss her.

5.5 The Respondent did not fully and adequately investigate the allegations of misconduct.

6 The Respondent counterclaims the sum of £6,506.97, (the original claim had been for £7,749.69 but the Respondent says that part of that has been paid). The counterclaim is in relation to the alleged unauthorised use of the Respondent's business credit card by Mrs Curtis and alleged false claims for overtime payments.

Evidence

7 The Claimant called no witnesses other than herself. She relied upon a 17 page witness statement.

8 The Respondent called three witnesses, from each of whom I had witness statements: Mrs Lindsey Hunt, (a non medical partner of the Respondent practice) Dr Samantha Bhima, (a GP and partner in the practice) and Mrs Lynn Watkinson, an HR Consultant who heard Mrs Curtis' appeal.

9 I had before me a properly paginated and indexed bundle of documents originally running to page 374. To that we added one document, a photocopy of the business credit card in question, document number 374A.

10 Mr Curtis also produced a further bundle of documents, which commenced at page number 373 (confusingly creating some duplication for the numbering) through to page 442. None of the documents in the supplemental bundle produced by Mr Curtis were referred to during the hearing.

11 During an adjournment at the outset of the hearing, I read the witness statements and read all the documents referred to by page number in the statements. I made it clear to the parties that they should appreciate that I have not read the bundle from beginning to end, nor should they assume that I have read and taken on board all the relevant passages in the documents which they have referred to; they must make sure they take me to what they considered to be the relevant passages during cross-examination of each other's witnesses.

The Law

12 Section 94 of the Employment Rights Act 1996 contains the right not to be unfairly dismissed. Section 98 at subsections (1) and (2) set out five potentially fair reasons for dismissal, one of which at subsection (2)(b) is the conduct of the employee. Section 98(4) then sets out the test of fairness to be applied if the employer is able to show that the reason for dismissal was one of those potentially fair reasons. The test of fairness reads:

> "*Where the employer has fulfilled the requirement of subsection (1) the determination of the question whether the dismissal was 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."*

13 We have guidance from the appeal courts on how to apply that test where the grounds for dismissal relied upon by the employer is misconduct. The first is the test set out in the case of British Home Stores v Burchell [1980] ICR 303. The Tribunal must be satisfied that the employer holds a genuine belief, based upon reasonable grounds and reached after a reasonable investigation. It is for the employer to show the genuine belief, the burden of proof in respect of the reasonable grounds and the investigation is neutral.

14 If the employer is able to satisfy that test, the Employment Tribunal must go on to apply the test set out in Iceland Frozen Foods Ltd v Jones [1982] IRLR 439*.* The function of the Tribunal is to determine whether in the particular circumstances a decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. If a dismissal falls within the band the dismissal is fair, if the dismissal falls outside the band it is unfair. In judging the reasonableness of the employer's conduct, the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer.

15 The band of reasonable responses test also applies to the question of whether or not the employer's investigation into the alleged misconduct was reasonable in all the circumstances. See Sainsbury v Hitt [2003] IRLR 23.

16 The investigation should be into what the employee wishes to say in mitigation as well as in defence or explanation of the alleged misconduct.

17 Mitigation must be actively considered by the decision maker.

18 We should look at the overall fairness of the process and not be distracted by questions such as whether an appeal is a rehearing or a review, see Taylor v OCS [2006] IRLR 613.

19 In this case, the Respondents say that Mrs Curtis was guilty of gross misconduct justifying dismissal without warning. The test for gross misconduct, or repudiation, is that the conduct 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 its employment, see Neary v Dean of Westminster Special Commissions [1999] IRLR 288.

20 More serious allegations, which might have more serious consequences if upheld, call for a more thorough an investigation. The ACAS 2014 Guide to Discipline and Grievances at Work, (not the code of practice) advises as such and the EAT confirmed as such in A v B [2003] IRLR 405.

21 In cases where a dismissal could blight an employees career, Tribunals should scrutinise the employers' procedures all the more carefully, see the Court of Appeal decision in Salford Royal NHS Foundation Trust v Roland [2010] IRLR 721.

22 Section 207(2) of the Trade Union & Labour Relations Act 1992 provides that any Code of Practice produced by ACAS under that Act which appears to an Employment Tribunal to be relevant shall be admissible in evidence and shall be taken into account.

23 One such code of practice is the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2009). I have taken the provisions of that code into account.

Findings of Fact

24 The Respondent is a medical practice, consisting of two surgeries which merged on 1 April 2015; the Danbury Medical Centre, (Danbury) and the Mount Batten House

Surgery, (Mount Batten House).

25 Mrs Curtis was employed by the Mount Batten House surgery as Practice Manager from 1 June 1998.

26 In a letter dated 12 April 2016 from the senior partner at the time, (Dr Freed) her salary and hours of work were confirmed and then it was stated that:

> "*Any hours you feel it necessary to work over and above your basic hours will be left to your own jurisdiction but will not be paid as overtime."*

27 The relevant disciplinary policy which applied at the relevant time, the parties agreed, is that which started in the bundle at page 76. At page 81, Section 31 of the disciplinary procedure, examples were given of the circumstances in which, where there may have been gross dereliction of duty or some action giving rise to the employer losing trust and confidence in the employee, such as to justify summary dismissal without notice. Such non-exclusive examples included theft, fraud, dishonesty and falsification of practice records.

28 Mrs Hunt was Business Manager of Danbury and a partner in the merged practice, the Beacon Health Group Partnership. Her husband is a doctor and partner in the same practice.

29 At a meeting of the partners of the two practices before they merge, including accountants for both practices and Mrs Curtis, on a date not known, mention was made that there may be a bonus for Mrs Curtis, in acknowledgement of the extra work that she was going to have to do to help with the merger. This was mentioned as a possibility by Dr Freed of Mount Batten House, who was due to retire following the merger.

30 On 18 September 2016, Mrs Curtis wrote the following by email to Mrs Hunt:

> "*Just to confirm our conversation this morning; I have paid myself 41 hours OT from the hours that I have accrued."*

To which Mrs Hunt replied:

> *"Yep – I like everything to be transparent, particularly when it comes to payroll!!"*

31 Mrs Hunt tells us that she would not have sent the above quoted email had she been aware of the content of the letter dated 12 April 2006, making it clear that Mrs Curtis was not entitled to overtime.

32 In October 2015, Mrs Curtis was away from work unwell with stress. She began a phased return to work in January 2016.

33 In respect of her phased return to work, Mrs Hunt wrote a letter to Mrs Curtis in which she confirmed that it was to commence on 7 December and that her working week was to be Monday to Thursday 8.30am to 4.00pm with a 30 minute lunch break but that

notwithstanding her reduction in hours, her annual salary was to remain the same. She goes on to say:

> *"Unfortunately, we are not in a position, as you know, to pay additional overtime certainly if it was to offset the decrease in hours you propose. Any overtime would still need to be at the discretion of the partners."*

34 The point is that Mrs Curtis' weekly hours had been reduced from 37 to 28 per week, but her salary was to remain the same. The letter refers to a, "new contract" but that was never sent.

35 Mrs Curtis had in her possession for use in the purchase of goods and services for the benefit of the Respondent, a credit card in respect of a credit card account in the Respondent's name.

36 Mrs Curtis says that in March 2016 she had noticed three entries on the Respondent's business credit card statements for personal items which she had bought, as follows:

36.1 The security deposit on a car hire in Orlando Florida in the sum of £99.99;

36.2 A vets bill in the sum of £243.04, and

36.3 Another car hire payment in Europe.

37 Mrs Curtis says that she told Mrs Hunt about this straight away, saying that she had used the card accidentally and that she would repay it. She says that Mrs Hunt told her not to get upset about it, reassured her that she herself had made a mistake in the past by using a business credit card for personal purchases and that she had told her a story about how she had got somebody else in the practice to witness her paying the money back.

38 Mrs Hunt says that the above is not true.

39 Mrs Curtis never did repay the above sums, (not until after the termination of her employment). She says the reason is that she forgot, she overlooked the repayment because she was so busy.

40 On 30 June 2016, Mrs Hunt sent an email to Mrs Curtis in which she wrote the following remark:

> "*Once BHG accounts are finalised you will get a percentage amount (not sure yet what) for the work undertaken in the first year of merge. You will know this once accounts are finalised."*

41 On 26 September 2016, Mrs Hunt says, (and I accept) that she discovered the above mentioned entries on the Respondents credit card statements. She says that she did not want to upset Mr Curtis as she was going to have to continue working with her, so

in writing to her for an explanation, she pretended that the accountants to had raised the query, (see page 174).

42 Mrs Curtis replied:

> *"Oh God!! they are probably mine!!*
>
> *If you let me know what the value is I'll reimburse the group – sorry!!!! [two sad face emoji's]."*

43 By a letter dated 27 September 2016, Mrs Curtis wrote a letter to Mrs Hunt in which she said:

> *"I apologised unreservedly for accidently using the card for personal purchases."*

44 Mrs Curtis also wrote on an instant messaging system:

> *"I am SO sorry about the CC – let me know what I owe please and I will reimburse!"*

45 That evening Mrs Curtis was suspended by Dr McAllister.

46 The following day, Dr Bhima investigated these matters, which had been reported to the partnership by Mrs Hunt. She reviewed all of the credit card statement that she was able to find and found further unaccounted for payments to JD Sports for £18, to the Lion Inn for £85.05 and £33.99 to Next Directory.

47 At 16:20 on 28 September, Dr McAllister sent Mrs Curtis a letter by email headed, "notice of disciplinary meeting". The letter confirms the decision to suspend at a meeting of the partners to discuss financial discrepancies on the credit card statements. Dr McAllister asked Mrs Curtis to deliver to the practice by the end of the day, all credit card statements for the year 2015 onwards, (as they had been unable to find them all) together with written confirmation of all other expenditure relating to petty cash or the credit cards, which are not practice expenses, whether accidental or not. The letter also informed Mrs Curtis that she was to attend a disciplinary meeting on 29 September at 6.00pm.

48 At six o'clock that evening, Mrs Curtis attended the Respondent's premises in Banbury and Dr Bhima handed to her copies of the credit card statements that she had been looking at, on which she had highlighted the transactions, (as noted above) which she thought looked suspicious and for which an explanation was required. She explained that to Mrs Curtis.

49 At 12:49 on 29 September, Dr Bhima wrote an email to Mrs Curtis asking her if she need more time to prepare. Mrs Curtis replied at 14:31 to say:

> *"I have reviewed the statements given to me last night when we met. I am therefore in a position to discuss these accordingly… it might be best to meeting this evening."*

50 During the course of the day, Mrs Hunt had found more credit card statements and gave them to Dr Bhima, who examined them and found more apparent non business use expenditure; a deposit for a Villa in Italy in the sum of £318.85 and two more payments for car hire. Dr Bhima decided to show these additional apparent items of private expenditure to Mrs Curtis during the hearing that evening and give her the option of either dealing with them there and then or doing so at a later date. The disciplinary hearing that evening was conducted by Drs McAllister and Bhima. The hearing was recorded and a transcript is available, but has not been included in the bundle. The minutes of the meeting are in the bundle at page 1 and 5. The minutes showed that Dr Bhima explained to Mrs Curtis that the intention was to deal with the entries on the credit card statements which had been given to her initially on 26 September and again on 28 September, with the specific entries that were queried, highlighted. Mrs Curtis alleged that she had told Mrs Hunt when she returned from sick leave in January 2016, that she had made this mistake i.e. had made accidental use of the card and she asserted that Mrs Hunt had told her it was not a problem, just a mistake. She gave the example she gave in her witness statement, of Mrs Hunt saying that she herself had made a mistake, accidentally purchasing a trampoline for her daughter in error.

51 Mrs Curtis is recorded as asserting that the payment for the Italian villa in March 2016 was something she had reported to Mrs Hunt at the time, she said that she was trying to secure the property and the owner had required an immediate deposit, so she just grabbed the first card that came to hand.

52 She was asked about payment of £160 to a retail outlet called, “not on the high street” and Mrs Curtis explained this was Mr Freed’s retirement gift, covered by £160 cash collected from the staff. She acknowledged that this cash had not been paid into the Respondent’s account. She said that she still had the money in her bag.

53 Dr Bhima asked Mrs Curtis to take away the 2016 credit card statements, (that is those postdating March 2016, which had been reviewed by Dr Bhima the day before but had not been handed to Mrs Curtis until the disciplinary hearing itself). He asked her to provide evidence for the transactions on those latest statements, which had been marked as a query.

54 For clarity, during the disciplinary hearing, Mrs Curtis admitted using her credit card for the following items of personal expenditure which had been highlighted on the credit statement handed to her on 28 September:

54.1 £102.93 Euro car USA car hire (including £2.94 non-sterling transaction fee) which had been a transaction initially discovered by Mrs Hunt.

54.2 £243.04 for a vets bill, which had been originally discovered by Mrs Hunt.

54.3 £18 JD Sports identified by Dr Bhima on 28th.

54.4 £85.05 the Lion Inn identified by Dr Bhima on 28th.

54.5 £33.99 next directory discovered on 28th

54.6 £332.11 for the Italian Villa, (including £9.25 non-sterling transaction fee) discovered on 29th September.

55 Mrs Curtis had also confirmed that she had not reimbursed the Respondent for any of these purchases.

56 After the hearing in the evening of 29th September, Dr McAllister emailed the retired Dr Freed and asked him whether he had authorised credit card payments to Europa Car in April 2015 for a damage waiver deposit. Dr Freed replied on 30 September to say that he did not have any clear recollection. He acknowledged he could recall Mrs Curtis once having a problem with car hire and he considered it plausible that he would have agreed to her using the Practice credit card under the given circumstances and on the basis that any monies would be paid back.

57 On 30 September 2016, Dr McAllister and Dr Bhima conferred and decided that Mrs Curtis should be dismissed. The letter of dismissal is at page 194. It refers to the partnership having met and decided that her conduct was such that she should be summarily dismissed. I accept the evidence of Dr Bhima that in fact, this was not a partnership decision, but the decision of Dr McAllister and her alone.

58 I also accept the evidence of Dr Bhima that the decision to dismiss was founded upon Mrs Curtis' admission that she had used the partnership credit card for the purchase of personal items without reimbursement and upon the credit card statements that had been provided to Mrs Curtis prior to the disciplinary hearing and not upon the post March 2016 entries, for which the Respondent had asked Mrs Curtis to provide an explanation and supporting documentation.

59 The letter of dismissal is short, the key passages are:

> *"Panel have now met and decided that your conduct was grossly unsatisfactory and you will be summarily dismissed with immediate effect.*
>
> *The reasons for your dismissal are fraud, theft and negligence.*
>
> *I am therefore writing to you to confirm the decision that you be dismissed and that your last day of service with the practice will be Friday 3 September 2016."*

60 Mrs Curtis received the letter of dismissal on 3 October. On that day, she paid the Respondent £160 in cash, (representing the collection from staff for the purchase of Dr Freed's leaving present in March 2016).

61 In an email of 3 October from Mrs Curtis to Dr Bhima, she stated that she had made a payment into the bank account of the Respondent of £687.16. She went on to dispute a couple of the figures claimed, namely:

61.1 £85.05 paid to the Lion Inn, she said that this had been authorised by Mrs Hunt;

61.2 £33.99 to Next Directory, which she said was to purchase flowers for an employee absent from work through illness.

62 By an email dated 5 October 2016, Mrs Curtis appealed against her dismissal. She listed eight reasons for her appeal:

62.1 The decision was too hasty;

62.2 Not all the evidence was considered;

62.3 The decision was too harsh;

62.4 She had insufficient notice;

62.5 Her performance had not been considered;

62.6 The workload at the time had not been considered;

62.7 Her state of health had not been considered;

62.8 The absence of procedures to prevent such alleged conduct have not been considered.

63 In her letter of appeal, she requested certain documents and these were in due course provided.

64 The appeal hearing was rearranged a number of times in order to accommodate Mrs Curtis.

65 The appeal hearing finally took place on 11 November 2016 chaired by Ms Watkinson, an HR Consultant who had no previous dealings with the Respondent. She was to be accompanied in the appeal by Dr Hunt however, Mrs Curtis objected and so Dr Hunt left the hearing and took no part in it. The hearing was again recorded, there is a transcript but the transcript is not in the bundle and nor are there any minutes that I was taken to. What was said during the hearing was summarised in the outcome letter and I presume that if in any way that was inaccurate, Mr and Mrs Curtis would have said so and they have not.

66 The outcome was that the dismissal was upheld. Mrs Watkinson made the following points: -

66.1 That Mrs Curtis apologised to Mrs Hunt for using the business credit card for personal purchases, on 27 September 2016. Mrs Curtis clearly understood that the credit card was not meant to be used for personal purchases.

66.2 Mrs Curtis admitted that the JD Sports transaction in August 2015 had been a mistake.

66.3 With regard to the Lion Inn transaction in August 2015, Mrs Watkinson said she had not been able to verify Mrs Curtis's assertion that this transaction had been authorised and such authorisation would have been contrary to usual practice.

66.4 Mrs Curtis had admitted that the veterinary surgery transaction in November 2015 had been a mistake.

66.5 Mrs Curtis had admitted the villa deposit paid in February 2016 had been a mistake, she had asserted that her sister had made this transaction over the phone, that she had handed the credit card to her sister without realising which one it was. Mrs Watkinson made the point that the company credit card should not have been handed over to a non employee for non business use and that if the sister had read the credit card details out over the telephone, it is difficult to understand how the fact that it was a business card had not been flagged up.

66.6 With regard to the car hire transactions, Mrs Curtis had admitted that she had been aware that there would have been a charge for the late return of a hire vehicle to the business credit card, but she had taken no steps to inform the Respondent or remedy the situation. Mrs Curtis admitted that she had knowingly used the business card as a deposit on a hire car, so as not to tie up the available credit in her own credit card.

66.7 Mrs Curtis had admitted that in March 2016 she had been aware of a number of personal transactions and yet between March and October 2016, had taken no action to repay those monies. She admitted in the hearing that her actions could not go punished but argued that dismissal was too harsh. She acknowledged that what she had done was wrong.

66.8 With regard to the staff collection of £160, that money had not been returned to the Respondent until Mrs Curtis was prompted to do so in the disciplinary process.

66.9 With regard to the offered mitigation of health issues and high workload, Mrs Watkinson made the point that Mrs Curtis had been supported with a phased return to work and reduced hours and she noted that there had been no other mistakes or errors in Mrs Curtis's work outside of these unauthorised transactions.

66.10 Mrs Watkinson's conclusion was that there were repeated issues with practice finances that had not been rectified when Mrs Curtis became aware of them, (if they were by accident) and that this could breach mutual trust and confidence.

67 After the dismissal, in November 2016, the Respondent discovered that Mrs Curtis, who was responsible for payroll, was including claims for overtime that she had not obtained approval for. I see in the payslips in the bundle at page 305 onwards, overtime payments which coincide with the figures listed at paragraph 24 of Mrs Hunt's witness

statement as follows:

January 2016	£195.89
February 2016	£821.95
March 2016	£787.67
April 2016	£547.94
May 2016	£136.99
June 2016	£273.97
July 2016	£237.97
August 2016	£273.97
September2016	£424.66
Total:	£4,637.01

68 The way that the Respondent's payroll system worked, was that a third party payroll provider sent to Mrs Curtis a spreadsheet listing the employees names and their contracted hours, their hourly rates and their contractual monthly pay. Mrs Curtis' role was to add any overtime information and then return that to the payroll provider, so that the payslips could be generated.

69 Mrs Curtis' case is that Mrs Hunt had agreed with her that she had accrued 110 hours overtime which was to be paid, spread over a number of months. She says that the first 41 hours approved was represented by the email referred to above dated 18 September 2015. She says that the overtime claimed in January and February 2016, 40 hours and 30 hours respectively, (appearing in the spreadsheet described as "TIL" - Time in Lieu) and that thereafter the overtime payments were approved. She says that she would take the payroll spreadsheets to Mrs Hunt to initial, so as to approve the payments to her and that she kept those hard copies in a physical folder, which the Respondent now says it cannot find. Or rather, the Respondent says it has a folder but the folder is empty. The Respondent says that the electronic folder in which the electronic versions of these payroll spreadsheets were kept, is also empty.

70 The Respondent also discovered post dismissal, many other examples of expenditure in credit card statements, which it says were not authorised. 40 such items appear listed at paragraph 40 of Dr Bhima's witness statement. During the hearing the Respondent indicated that it now only relied upon numbers 15, 16, 28 and 29 from that list.

71 Mrs Curtis did not know the details of this aspect of the counterclaim until witness statements were exchanged on 2 June, nine days before the hearing started.

72 Mrs Curtis explains items 15 and 16, which are for parking at Westminster and a Central London congestion charge (£36 and £11.50 each). By explaining that her son Chris, (who was the Respondent's Office Manager) had collected office furniture from a source in Oxford Circus on a Sunday. The parking charge and congestion charge was paid the next day, which sounds plausible. With regard to a second set of identical charges which appear a few days later, Mrs Curtis said that there was duplication which had been raised with her son Chris. He had said that these were duplications to the Respondent's cashier, who had said that she would investigate and he had heard nothing further about it. In the circumstances, I accept that evidence. It sounds plausible.

73 The explanation which Mrs Curtis gave for items 28 and 29 relate to her sons use of the credit card, so that he could buy lunch whilst attending a course at London ExCel. Mrs Curtis claims that Mrs Hunt approved of her doing that. The amount is £5.85 at a Costa coffee and £10.65 to Prima Burger. This is denied. I do not believe that Mrs Hunt would have approved that transaction, I do not believe that she would have approved Mrs Curtis handing the business credit card to her son.

Conclusions

74 Mrs Curtis's case is that she had not noticed the vetinary charge appearing on the Respondent's account for 3 December 2015, incurred on or about 16 November 2015, until March 2016 when she told Mrs Hunt about it. That is not credible. I do not believe that she would not have noticed the bill of £243.04 was missing from her own credit card, which she would have received in December 2015.

75 It is not credible for Mrs Curtis to assert, having discovered her error as she alleged in March 2016 and having told Mrs Hunt about it, that she thereafter forgot to make the promised repayments. She is after all, the practice manager responsible for such matters. One would have thought any person in her situation, if they were honest, would make that repayment straightaway. In fact, Mrs Curtis did not make that repayment until after she was dismissed.

76 Furthermore, it is not credible that Mrs Curtis continued to make the same mistakes time and again.

77 When she is told in September 2016 that the accountants have queried the vetinary bill and the two car rental payments, her response is not to say words to the effect, "these are what I told you about in March, sorry I forgot to make the repayment". Her response is to say that, "they are probably" hers. It is a response which is completely inconsistent with the Claimant's case. The same point applies with regard to the instant messaging remark of 26 September.

78 Further, Mrs Curtis wrote a letter of apology dated 27 September. In this letter, she makes no reference to having previously brought these matters to Mrs Hunt's attention. If that assertion were true, she would most certainly have done so.

79 With regard to the explanation offered for the deposit paid on the villa in Italy, it is difficult to believe that she accidentally gave her sister the wrong credit card, given the card's distinguishing feature of a large black horse printed on its upper surface, in contrast to her other credit cards, which were with Barclays and Santander.

80 The fact that Mrs Curtis did not use this excuse in the disciplinary hearing and first mentions giving the credit card to her sister to use over the telephone in her appeal, renders that explanation all the less credible.

81 Indeed, Mrs Curtis' claim to have made the mistake of using the Respondent's credit card on other occasions without intending to, is very difficult to believe, given its distinguishing features; the large horse printed on its surface, writing on the top right which says, "Business Credit" and the Respondent's name on the bottom left.

82 I was taken to an email of 19 July from Mrs Hunt to Mrs Curtis, in which she says that the accountants have asked for bank statements and credit card statements. If it were the case that Mrs Curtis had noticed her mistakes in March and told Mrs Hunt about them at that time, this would have immediately prompted her that she had yet to make the repayment. This renders all the more incredible her version of events.

83 The fact that Mrs Curtis would not answer questions about her use of the business card for personal expenses before the practice merger, after I had warned her about self incrimination, to my mind indicated that it is likely that she had done so before and undermined her argument that this was all just a mistake and a misunderstanding.

84 Mrs Curtis acknowledged that she knew that she had returned a hire car one day late and that she had used the business credit card as a deposit, yet she took no steps to make sure that a charge for that did not appear on the Respondent's credit card statements, which is quite remarkable.

85 Mrs Curtis said that she had a post-it sticker at home on which she had noted the money that she had owed in March, page 193 purports to be a photograph of this. The photograph was taken on 29 September 2016; it is more damaging to Mrs Curtis' case than of assistance; if she had indeed made such a note in March 2016, it is all the more incredible that she had simply forgotten to make the repayment.

86 In the circumstances, I am afraid that I have to conclude that the Claimant's evidence with regard to the allegations of gross misconduct entirely lacks credibility. I find on the balance of probability that she had used the Respondent's credit card for the purchase of personal goods, that she had done so knowingly and that she had failed to make any repayments. Mrs Curtis admitted such to the Respondent in the disciplinary hearing and the Respondent was entitled to rely on that admission. In the circumstances, no amount of procedural errors, (that I can think of) could have rendered this particular dismissal unfair. However, I do not think that there were any procedural shortcomings:

86.1 Mrs Curtis well knew what the charges were against her and what it was that she would have to explain; credit card statements with the problems highlighted were handed to her the day before the disciplinary hearing.

86.2 Mrs Curtis agreed that she was happy to proceed and declined an offer to postpone, so she was not rushed into it. The decision to dismiss was not rushed either.

86.3 Mrs Curtis has not been able to identify documents that were disclosed to her that could have made any difference to this process and render the dismissal unfair. I cannot think of any.

86.4 Although the Respondent did ask Mrs Curtis to provide further information at the end of the disciplinary hearing, this related to transactions after March 2016. On reflection, Drs McAllister and Bhima identified that they had already information on personal purchases made with the company's business's credit card before and including March 2016, on which they already had Mrs Curtis' response and in respect of which she had made admissions.

86.5 The Respondent had fully investigated; it had identified payments which had been made apparently for personal purchases, the Claimant had admitted some of them and had admitted that she had known of some them since March and had made no repayments.

86.6 There was no evidence that the decision to dismiss was predetermined and I find that it was not predetermined.

87 The dismissal was fair and the Respondents were entitled to dismiss Mrs Curtis for gross misconduct, without notice. Their decision was within the range of reasonable responses.

88 I find that Mrs Curtis was guilty of gross misconduct, she is not therefore entitled to notice pay.

89 The was no contractual agreement that Mrs Curtis would receive a bonus. Although there was discussion about it, a contractual term requires certainty. No figure or method of calculation was identified, no date for payment was set.

90 With regard to the counter claim, I deal with the overtime issue first. I note the email exchange, page 141 dated 18 September 2015 referred to above, where Mrs Curtis goes to the trouble of expressly obtaining written approval by email from Mrs Hunt for a claim of 41 hours in overtime. She does not do that again with regard to any of the subsequent claims for overtime.

91 I note that Mrs Curtis has on other occasions, taken care to obtain written approval or made written notes of approval. Thus at page 144, on 3 October 2016, she made a note of meeting Dr Hunt in the surgery car park when he handed to her certain possessions and at page 200, obtained a receipt from Dr Hunt for £160 in cash which she handed over.

92 In view of the overwhelming examples given above about the unreliability of Mrs Curtis' evidence, I am afraid I cannot accept her evidence in contrast to the contradictory evidence of Mrs Hunt, that she went to Mrs Hunt with the payroll spreadsheets and obtained her initialled approval to the overtime claims. Nor do I accept her assertion that she had an agreement with Mrs Hunt that she could claim 110 hours in overtime, spread over a number of months.

93 The documentary evidence is clear that the terms of Mrs Curtis' employment are that overtime is not ordinarily payable and may only be claimed if approved. I therefore find that the overtime claim in the sum of £4,637.01 as itemised above was falsely claimed, without contractual entitlement. In that respect, the counter claim succeeds.

94 With regard to the small items of expenditure that remained an issue, notwithstanding my general criticism as to the reliability of Mrs Curtis's evidence, I did think that the evidence relating to the car parking and congestion charge sounded credible. I was unimpressed with the Respondent serving details of this claim at such a late hour and in the absence of any other documentary evidence, the counter claim in that respect fails.

95 Contrast with that, the, sum of £16.50 for coffee and a burger. I find it wholly without credibility that Ms Hunt would have approved Mrs Curtis giving to her son the company credit card and pin number so that he could use that card to buy himself lunch whilst attending a course. The counter claim succeeds in the sum of £16.50.

96 In summary, the reason for dismissal was a potentially fair reason, namely conduct. Dr Bhima genuinely believed that Mrs Curtis was guilty of the misconduct alleged, namely making use of the Respondent's business credit card for her own personal purposes. She had reasonable grounds for that belief and the investigation conducted had been within the range of that of a reasonable employer. The Respondent acted reasonably in treating Mrs Curtis' misconduct as a reason for dismissal and the decision to dismiss was in the range of reasonable responses of a reasonable employer.

97 Mrs Curtis is not entitled to notice pay as the Respondent was entitled to terminate her contract of employment without notice, as she was guilty of gross misconduct which placed her in fundamental breach.

98 There was no contractual entitlement to a bonus.

99 Although it was not disputed that Mrs Curtis had worked more than her contractual hours from time to time, no concession was made as to precisely what hours she had worked. In breach of the terms of her contract of employment, which precluded the payment of overtime unless approved, Mrs Curtis procured payment in respect of overtime without approval by submitting to the Respondent's payroll service information which suggested that she was entitled to a payment for overtime, when she was not.

100 In breach of the implied term in her contract to behave in a manner which maintained mutual trust and confidence and her duty of fidelity, she gave the Respondent's credit card to her son in order to enable him to purchase lunch and refreshment whilst attending a course, an action which had not been approved by the Respondent.

Employment Judge M Warren

4 July 2017