Case Number: 3200698/16

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EMPLOYMENT TRIBUNALS

Claimant: **Ms J Lyons**

Respondent: **Hallmark Care Homes (Billericay) Ltd**

Heard at: **East London Hearing Centre** **On: 15-16 December 2016**

Before: **Employment Judge Prichard**

Representation

Claimant: In person (accompanied by her daughter Zoe Lyons)

Respondent: Mrs V Young (Consultant, instructed by Collinson Grant Ltd, London SW1)

RESERVED JUDGMENT

The judgment of the Employment Tribunal is that the claimant's claim for unfair dismissal fails and is dismissed.

REASONS

1 The respondent, Hallmark Care Homes, currently runs 15 residential care homes across England and Wales. The furthest north is in Rugby. There are 8 homes in England and 7 homes in South Wales around Cardiff and the M4 corridor. The company is divided into those two regions, England and Wales. It employs some 1,700 employees across all homes. The head office is in Billericay. It is located near the Anisha Grange Care Home where the claimant was employed as a Care Assistant.

2 Anisha Grange is a 72-bed care home divided into 3 parts. Primrose Way is a 32-bed dementia community. Autumn Way is a smaller residential community. Valentine's on the ground floor is a medium sized nursing community. The claimant worked on the dementia community as a Care Assistant at an hourly rate of £7.50 per hour. She had recently increased her hours from 24 to 33 hours per week. She worked 3 x 12-hour 8pm to 8am nightshifts per week average. The claimant took her role and her duties seriously. She worked extremely conscientiously with the resident's best interests at heart.

3 There is substantial evidence that the claimant did not have good relationships with fellow team members. She was highly critical of the standard of care shown by those members both nursing staff, senior care assistants and her colleagues as care assistants. I originally thought this was a peripheral relevance but now that I have heard all the evidence I can see it fits into a general pattern which has relevance to the main events in this case.

4 The claimant felt that when she raised concerns about fellow team members these concerns were not taken seriously enough. There is no evidence that anybody she complained about was admonished or criticised by management. The most that might have come out of any of her complaints were "learning points".

5 The claimant worked for the respondent from 2 November 2012 until 13 May 2016 when she was summarily dismissed for "gross misconduct". However, it was then the respondent's policy to pay in lieu of notice even if there had been a summary dismissal. That was done.

6 The incidents for which she was dismissed arose from a single night shift on 18/19 March 2016.

7 Wandering can be a trait with residents who are living with dementia. The case centres on a female resident then 86 years of age called SL. She was a resident with a high risk of falls. Her care plan was updated on 21 February, before this incident too place:

> "Care plan updated. SL will tend to crawl or shuffle on her bottom. SL has a floor bed and would often shuffle out of that and into the corridor and will do this quite often. The team cannot assist SL as she will do this when and if she wants to. Team to monitor."

It was also confirmed that on that date, 22 January, she was observed falling asleep in the communal lounge. Another entry on 25 February stated:

> "..puts herself on the floor mainly at night time. SL bottom shuffles around Primrose Mews because she prefers to move around in this manner. Team members to observe SL and keep line of sight. SL lacks capacity and has a DOLS [deprivation of liberty safeguards] in place as SL needs to be assisted when leaving Primrose Mews community. SL enjoys living at Anisha Grange."

8 Wanting to be on the floor and bottom shuffling are known symptoms of dementia. In a dementia community it can get out of hand if there are too many such people on the same community. SL was the only such one at this time. She was not thought to require 1:1 observation for which there would have had to have been extra care charges. Line of sight was important however. This was explained to the tribunal. If one came into a room and found a patient on the floor unsure as to how she got there, staff would have to fill out an incident report and assume the worst i.e. that she had fallen. They would have to examine her from head to toe for evidence of cuts or bruising. People of that age tend to bruise easily. It is not hard to find. That was the importance of line of sight. There are some consolations in that a resident with this mobile behaviour is less likely to get bed sores. If she was sufficiently well covered she would not get carpet burns from moving about.

9 On that evening the claimant was working with SL. She was working on a shift under the supervision of the night shift nurse Rita Dhlakama and care assistant Charlotte Burnall known as Charlie; there was Nicola Chrdiza and Evelyn Hammond. That was that is 4 care assistants. They would usually divide the community into 2, and each pair would cover the different sides of the corridor. Throughout the night it was necessary for them to do what are known as "comfort" rounds that is rounds to move the less mobile of the residents to avoid them getting bed sores.

10 The claimant was working with Charlie. Apparently SL was sitting on a low footstool shortly before 1am. She appeared to be trying to rip off her Tena incontinence pants. The claimant went to find help from Evelyn to get more pants. When she returned to SL she now says that both her and Charlie witnessed SL falling on to the top of her head from the footstool as if she had somersaulted. The claimant now says she went to get assistance from Rita, the nurse, who was in her office at the time with another nurse, Hannah from Valentines. Apparently, according to Rita, when she attended to see this resident Charlotte was simply sitting at a table doing paperwork and not attending to the resident. This might be disputed.

11 Charlie has not been a witness to this tribunal hearing although she submitted a witness statement which I have ultimately treated with grave suspicion. When Rita attended the scene SL was lying on the floor. The claimant commenced her 1-hour break. She explained to the tribunal that you have to use your breaks or lose them. Everybody is required to take a break sometime in the the night. The breaks are planned and staggered. The claimant returned from her break about 2am to see SL was asleep on the floor. She asked the three carers there why she was on the floor and they replied that nurse Rita had told them to leave SL there. It is not clear what had been said about a crash mattress (low mattress for SL to crawl on to if she wished to). At that point – 2am - the claimant took a photograph of SL with her phone. She then went with Charlie to do her comfort round which lasted for more than half an hour. At this point half an hour later she took another photograph in order to demonstrate time lapse from 1:57 to 2:33am on 19 March. Apparently then Charlie and she assisted SL into an arm chair, made her comfy and she went back to sleep.

12 The claimant stated that she was shocked. At this hearing she was closely examined about why she had taken the first of those photographs at 2am and her answers were not consistent. There are some subtle distinctions here.

13 The background evidence is that at this time the claimant's relationship with Rita was extremely poor. She resented Rita, she disagreed with her, and she disapproved of her. She was constantly trying to get evidence of her falling asleep on shift. She saw Rita as responsible for poor standards within the community.

14 Charlie had previously handed in her resignation with notice. This very shift was the last shift she was due to work for the respondent. She has since gone to work in a school setting. There is an age difference. Charlie is in her early 20s and the claimant was 58 at the time.

15 Subsequently there was an argument between Evelyn Hammond and the

claimant which became extraordinarily inflamed and argumentative. Evelyn Hammond, who is a black woman, accused the claimant of being racist because the claimant accused Evelyn of handling residents too roughly saying it might have something to do with her "culture". The claimant stated to the tribunal that she was absolutely not racist and that her own daughter was mixed race. The daughter's grandparents are Caribbean. However, when I questioned her closely what she meant about the culture, despite her protestations of not taking any notice of anyone's race she said it had to do with "where they came from". I can see why the "racist" remark was made. Referring the handling of residents to her culture was unnecessary and could reasonably be interpreted as racist.

16 That is all a diversion from the main incidents in this case. There was an undercurrent of bad feeling which probably gave rise to what later happened. The claimant says that, because of the argument, she simply wanted to leave work as soon as possible when the shift was over at 8am.

17 Before 8am the Home's hospitality manager Mr Alan Clarke came on duty. What neither the claimant nor Charlie did was to raise safeguarding concerns with a senior individual as they were obliged to. I find they must have known they were obliged to under the Safeguarding of Vulnerable Adults policy (SOVA).

18 In the light of their relationship and in the light of the fact that Rita had told everybody to leave the resident there it would not have been a good idea to raise a safeguarding concern with Rita. Both of the claimant and Charlie purported to say that the resident SL was suffering from neglect and abuse, as defined in the SOVA policy, by being allowed to sleep in the middle of the lounge floor which is a hard floor even though carpeted. The policy provides:

> "Hallmark team members will
>
> - Report in a timely manner any concerns or suspicions that a resident is being or is suspected of being abused
> - Give high priority to actions taken to protect the resident
> - Ensure the dignity, safety and wellbeing of the resident remains a priority through any actions taken."

19 The respondent's position currently at this tribunal hearing seems to be that in fact the claimant and Charlie did not have genuine concerns that SL was being neglected or abused. They may have been using this incident as a way of discrediting Hallmark generally, and Rita Dhlakama in particular. However, if they purported to have concerns then their duty was to raise a safeguarding concern. Their non-action was inconsistent with their stated beliefs.

20 It was clear from the claimant's uninhibited and open evidence to this tribunal that she bore great animosity toward Rita and felt a great sense of frustration that her previously expressed concerns had not been acted on. She had raised concerns with Rhoda Williams who is the General Manager of Anisha Grange, but it had not gone any further.

21 Another criticism of the claimant and of Charlie is that neither of them had filled out an incident form either in respect of the fall shortly before 1am or the fact that the resident was left sleeping on a hard floor in the middle of the lounge with no crash mattress provided, if they genuinely believed this was a safeguarding concern.

22 The claimant told the tribunal that SL would be awake and would bum shuffle but she would not sleep in the lounge. That was not correct. Apart from this incident, there was the incident of 22 January which was recorded in the care plan for all to see.

23 Exactly one week before this at 7am on the night shift 11/12 March 2016, the claimant had filled out an: "Accident / Near Miss - Incident Form". It states that SL was: "found on lounge floor nurse called. Examined from head to toe and no injuries noted except skin scratches". Every time such an incident form is filled in the next of kin has to be notified as a part of the procedure. It is therefore best avoided if possible.

24 Considering how shocked the claimant said she had been and how alarmed by the fall on her head it seemed to the respondent and it seemed to the tribunal extraordinary she had not filled out such an incident form. The incident on 19 March as reported by the claimant was considerably more serious than that on the 12 March where the patient was merely "found", and therefore may not have fallen.

25 The respondent has ultimately doubted whether the fall allegation is true at all. The allegation only emerged some time after the night of the incident. One would have thought it would have been paramount. The claimant did not wait to say this to Rita when she arrived. She simply disappeared and went on her break assuming that Charlie would inform Rita of the incident they had allegedly witnessed. Therefore there is no evidence before the tribunal of what was said to Rita when she was alled to the SL incident.

26 The tribunal doubts the truth of the resident falling in the way described. Rita had done her duty inasmuch as she and other members of the team had examined SL all over and found no evidence of bruising. The written report she made on the daily record sheet went into great detail. At no point did Rita mention the allegation that SL had fallen which would be astonishing, if she had truly been so informed. She had to examine SL from head to toe as would be the process if anyone had simply found SL on the floor without knowing how she had got there. If it was as described by the claimant the patient would have had bruising of the head at the very least. The claimant described how she had almost somersaulted from the footstool onto the top of her head rather than just her brow.

27 Thinking of her account and looking at the height of that footstool (in photographs of the lounge) and given the size of the resident as described I find it improbable that the incident could have physically happened as described by the claimant. The respondent was doubtful of it. They were also doubtful of the account given by Charlie too.

28 Rita in her account to says:

> "The team on B side took her by wheelchair assisting her to bed where she settled and slept for a while before she started again to fidget and coming out of her low profile bed SL didn't seem to have fallen at all."

She then handed it over to day staff hence:

> "JL declined to initiate incident form as I asked her to do one."

The claimant says that those last two lines had been added after the event to make the claimant look bad. However, her approach throughout this hearing was to say that records were gratuitously altered, changed and falsified, including minutes from disciplinary hearings.

29 She could not stand apart and see, circumstantially, how unlikely this accusation was. Some of the alterations she says were made were so inconsequential. The falsification allegations were not credible. It is only she that considers that the alterations were significant as she lacked the insight to understand the nature of what the respondent accused her of. She stated that she suffers from "fog brain" and described to the tribunal how she has for many years been taking prescribed antidepressants. It sounds like quite a high dose of Sertraline. However, this seemed to be no more than an excuse. In summary, I saw no need to doubt the accuracy of the written account of Rita Dhlakama for that night.

30 When the claimant took photographs at 2am on return from her break it seems likely that she assumed that the resident had been there the whole time she had been on her break. Apparently she did not discuss with Charlie until later whether the patient had been moved or not. Reflecting on it, it is hard to see why she took that first photograph. The second photograph she took in order to demonstrate time lapse. At that stage she knew for sure that the resident had been on the floor for at least half an hour, sleeping.

31 When they left after the shift Charlie went in to see the Hospitality Manager, Alan Clarke, now in charge. The claimant had said that she should feel free to raise any concerns she had about the Home generally or the incidents of that last evening. It appears more likely than not that Charlie did not do so, otherwise it would have come to the attention of HR. Alan Clarke would have raised it if any concerns had been brought to his attention. Claire Prince of HR who attended throughout this hearing stated that no such concerns had been brought to her attention or that of any of her colleagues. It is more likely that Charlie went to say her final goodbye as she had finished her last shift working for the respondent.

32 The short email statement of Charlie Burnall submitted for this hearing portrays the Anisha Grange home as an appalling environment. Standards of care were apparently outrageously bad and management was indifferent to it. The tribunal has not seen her resignation letter in which she purports to say that she was raising concerns about the general level of care as if they were the reason for her resignation. Again I would be very surprised if such a letter had not come to the attention of HR. If she sent such a letter it would have been inconceivable that she would have been allowed to leave without an exit interview, which, it appears, is what happened.

33 There are strict policies in the Home about staff personal mobile phones. Put simply, they are not allowed to be taken on to the community. They can be left in the staffroom where there are secure lockers (where the staff take their breaks downstairs). The claimant said as far as she was concerned everybody had their phone with them at night. This was simply not accepted by the respondent's witnesses. Doubtless one or two people have had them in the past and the present. The claimant stated that as all the clocks in the community state a different time the only way they can get reliable times to fill out attendance records and observations was from their mobile phones. I found this hard to accept although I can accept that enforcement of this strict no phones on the community rule may be lax.

34 The claimant had previously made a report of Rita sleeping on duty. This came to the attention of Claire Prince who stated the correct thing to do if some one is found sleeping is to get someone else to witness it, so it is not simply one person's word against another's. Failing that if it really was impossible to get a witness one might take a picture of the staff member asleep on one's own mobile telephone.

35 The major point at this hearing has been the use of personal mobile phones to take pictures of residents on the ward. There are particular problems on Primrose Mews because most of the patients lack mental capacity. You are not allowed to take a phone picture of any resident, who by definition cannot consent, or their next of kin. There is a team camera which is kept secure in the nurse's station, because anything on that camera is secure and not automatically uploaded to some server or cloud. The purpose of the camera is to take pictures of wounds or concerns about premises which need to be evidenced. These will be kept secure.

36 I heard that when a complaint is made to the CQC, the CQC will not accept pictures sent by email. If they need to see pictures they will come down to the home to obtain these pictures by hand. The respondent itself has a secure platform for its emails but the majority of private individuals operate on insecure cloud based mail servers. It is part of the ICT policy and it is also actually in the claimant's own contract which she signed (even if she was not given a copy of the company handbook). Clause 24 of her contract provides:

> "The use of personal mobile phones (whilst in the care homes) during normal working hours is not permitted. Personal mobile phones must not be turned on or carried whilst on duty. Texting or the use of a mobile phone camera is also not permitted at work. You are allowed to use your mobile phone during any break times provided it is used in a team room or other suitable area away from the residents."

I note that the respondent issues mobile phones with encryption, also laptops with encryption, for use by management not for care assistants.

37 After her shift the claimant went home and at 10:15am she sent a copy of the two pictures she had taken of SL in the lounge to the CQC (Care Quality Commission). The claimant never showed us the actual email which attached these although I saw the automated response. Despite asking her to have a look in the sent items on her email she did not do it. I am not sure why not.

38 Despite the strict standards for circulation of such photographs it seems that in a

brief meeting subsequently between the claimant and Rhoda Williams, Ms Williams asked the claimant to re-send one of the photographs which apparently was distorted. In fact the distortion is on the photographs so re-sending it would not have achieved anything. It was surprising that she asked the claimant to repeat what was, even then, thought to be a disciplinary offence.

39 Subsequently the claimant received a telephone call from Rhoda Williams asking her not to come in for a shift and effectively suspending her. This was confirmed to her by letter of 4 April 2016 signed by Rhoda Williams.

40 The following day after the CQC notification the claimant decided she would refer her and the Evelyn argument to the Managing Director of Hallmark to Avnish Goyal. The email is addressed to: helloAvnish@hallmarkcarehomes.co.uk, the subject heading was "Concerned Team Member". It was sent at 1:14pm on 20 March 2016. The email is 30 lines long and only two of them concerned the photographs. The rest was all about Evelyn handling patients roughly, calling her, the claimant, a racist and a "snake in the grass" (that was a common theme elsewhere). She complained that Rhoda had told another care worker be careful round the claimant because the claimant would inform on her. The last two lines of the email:

> "I have also attached two photos of events that happened during the night taken at 1:57 and 2:33am. If this is what quality care is I'm in the wrong job."

The photos were attached. Clearly both referenced has to be addressed. It seems to be the latter that led eventually to the claimant's suspension. First there had to be preliminary investigation with Rita Dhlakama to find out about the incidents of that night.

41 When the claimant was suspended there were five allegations of gross misconduct:-

1. Taking a picture of a resident and the use of a mobile phone.

2. Taking the resident's pictures without their consent.

3. Unauthorised disclosure of a resident's personal information, sharing images without consent.

4. Not reporting suspected abuse in a timely fashion.

5. Leaving a resident on the floor when you suspected abuse and not supporting them.

Although the tribunal can accept that the resident was raised after half an hour it should not have been necessary for her to have slept on the floor that long at all.

42 I had a disagreement with Mrs Young who represents the respondent as to what their stance was but I see in the end it is not that important if the claimant believed it or not. Ultimately it was her stated belief and to be consistent she would have to have

acted consistently with that belief. The charge might have been equally framed alternatively as raising a spurious complaint in order to get Rita into trouble when she really knew that there were no safeguarding issues, given the terms of SL's care plan.

43 Witnesses were interviewed. One witness was not and that was an agency worker Lisa Friday, a point the claimant raised on appeal. It seems unlikely that Lisa Friday could have added anything even on the claimant's own explanation at this hearing. She just came out in the corridor and asked what was going on. She apparently witnessed nothing significant and was not involved.

44 Diane Prince interviewed everyone else who was on shift, the care assistants and also Rita. Charlie was asked to return to the Home to be interviewed but was not co-operative. Oddly Charlie says in her witness statement she called the nurses after the alleged fall whereas the claimant says it was she who called.

45 Ms Prince was not happy to interview the claimant in connection with the incident. The claimant said that Diane Prince would be partial in her interviewing and that was because she had previously dealt with the case where the claimant reported Rita for sleeping on duty. Ms Prince therefore handed all her notes to a manager who had not had previous dealings with the claimant, Mr Daniel Roark. He was the Clinical Care Manager at Bucklesham Grange Home in Ipswich. He interviewed the claimant on 14 April.

46 Subsequently there was a disciplinary hearing conducted by Mr Aderio Rocha, he was the Regional Clinical Care Manager in the England region, supervising the 8 care homes in England.

47 Mr Rocha stated in his statement to the tribunal (paragraph 43):

> "I have to say that my overall impression was that the claimant's main concern was to create some kind of case against the nurse rather than to report abuse as she should have. Whatever her motive she delayed reporting suspected abuse and that was unacceptable."

He informed the tribunal orally that in fact he did not believe that the claimant genuinely or sincerely suspected abuse. He stated in his statement:

> "I felt that the claimant had been trying to see how long the situation would go on for rather than trying to rectify it which was her obligation."

As quoted from the safeguarding of vulnerable adults policy, the priority is the resident rather than correcting or disciplining the person perceived as responsible for abuse or neglect.

48 At the stage that this disciplinary hearing started the CQC had concluded their investigation into the incident as reported by the claimant and the outcome was that the complaint was "unsubstantiated". Both Mr Rocha and the claimant knew that at the time of the disciplinary hearing (although the claimant seemed to have forgotten that when she gave evidence at this tribunal hearing).

49 He told the tribunal that the claimant had told him that she was planning to

resign anyway. He told the tribunal he was hoping that the claimant would hand in her resignation. I find that he told the claimant he could not accept her resignation himself. He said she would need to hand it to her manager. The claimant had already addressed her resignation to her manager but, for reasons which did not hang together, she did not deliver it. She says somehow she was hoping to get an outcome that might involve criticism of Rita. Considering that the CQC, whose standards are the highest had found the complaint "unsubstantiated". It is hard to see how she could reasonably have hoped for that.

50 She had new employment lined up. She would be working outside of a team attending vulnerable people in the community, in their homes. Some would have mobility problems and some dementia. Apart from the odd double-handed visits she would not be working withinin a team. She said about her new employer wanted to have an outcome to this disciplinary hearing. I find that astonishing.

51 Mr Rocha informed the tribunal that if she had resigned he would have put the disciplinary process into abeyance. That would have been to the claimant's benefit (and everybody's). As it is she was summarily dismissed for professional misconduct charges which could affect her Disclosure & Barring Service record. The claimant said that her new employer did not mind about any of that (which is surprising for a responsible care-provider). I cannot see how her position was helped in any way by not resigning. It was perverse and weird behaviour.

52 The claimant was dismissed by letter of 13 May. At this stage there were 4 charges, all upheld.

- taking the picture of a resident
- taking a picture of a resident without consent
- sending pictures by email from an insecure server
- not reporting suspected abuse in a timely fashion (SOVA policy)

All were upheld as gross misconduct i.e. dismissal being possible without a previous written warning. Nonetheless the claimant was paid in lieu of notice.

53 I heard a lot of detailed evidence from the respondent which I accept. There are many ways in which the claimant could have reported her concerns about SL and her suspicions of abuse or neglect if they were genuine. If she had a problem with Rita she could have reported it to 2 other nurses on different communities within Anisha Grange. There was Hannah and Valentines and Deanna on Autumn Way. Failing that she should have reported it to Alan Clarke who was there in the morning before she went off shift. He was a person with even higher authority. She told the tribunal she was fed up about her argument with Evelyn. She went home and she was determined to take it to the CQC.

54 Subsequently the claimant told the tribunal that although she had originally intended to give her resignation to Rhoda, that she was contacted by telephone by Alison Whiting from HR saying that if she intended to resign (as she had heard she might), she should submit her resignation to her at HR. If that is what HR asked her to do it is hard to see why she did not.

55 The claimant subsequently appealed. Her grounds of appeal are sketchy in the extreme and read as follows:

> "Due to the nature of my whistle-blowing I felt the outcome was a little harsh. I have found some mistakes in witness statements but have not had the chance to air them plus there are a few in my final notes too. I would be grateful if you could let me know within two weeks.
>
> Kind regards"

It is not a thought –through appeal at all.

56 She was invited to an appeal meeting on 23 May which she attended. Again she had a companion with her Ms Chris Littmoden. Again the note-taker was Julia Rhodes. She raised extraordinarily peripheral points which really missed the thrust of the respondent's reasons for dismissing her. She raised that Lisa Friday was not interviewed. The appeal was conducted by Sara Gallagher. Ms Gallaher looked into the Lisa Friday point. The preponderance of evidence was that Lisa Friday could not have added anything.

57 The claimant stated she had accused Evelyn of bullying behaviour and no action had been taken in response to the accusation. Understandably, this was found to be beside the point. Further, she had already conceded to Daniel Roark that her comments could be construed as being racist.

58 Of the whistle-blowing the claimant stated that she felt unable to approach Rhoda Williams and therefore took photos as a last resort.

59 Ms Gallagher stated that during the nights there is a system whereby individual care assistants or any employees within the homes can raise concerns and issues with on call senior managers if they did not feel happy raising it with anyone within the home. She should have raised it with Alan Clarke that morning at least. She mentioned that senior managers Kieran Walsh and Sara Gallagher herself were frequent visitors to the home.

60 Commenting on the claimant's claims that the notes of the disciplinary were factually inaccurate about having to "leave the community to fetch your phone" she understandably found that that inaccuracy did not affect the outcome of the hearing. The tribunal agrees.

61 Lastly, she dealt with the claimant's point that the claimant said she had not been properly inducted. However, despite that Ms Gallajher was quite positively sure that the claimant knew the policies around the use of mobile phones in community and the sharing of photographs for any purpose. She dismissed the appeal.

62 In this tribunal hearing the claimant said, illogically, that "without wishing to be rude" Ms Gallagher was a "waste of space". It is not the function of cross-examination to become a vehicle for insults in these judicial proceedings.

63 Subsequent to the appeal hearing, for the purpose of these tribunal

proceedings, the claimant has produced a series of photographs from Facebook. There is a series from Susan Syme who she says still works in the home. Some of the pictures she states are taken in the home. The staff member works in Valentine. There are other staff members including Lorraine in Valentine. There is Christmas tree picture with 2 staff members in Autumn Way. There are 3 staff members in Autumn Way - Marie, Natalie and Lauren. There are some pictures dating from Christmas time 2013 taken on Primrose, containing pictures of residents.

64 The respondent saw these for the first time when the claimant proffered them for use in the tribunal bundle. Apparently they are still up there on Facebook. The respondent states they are shocked to see these. This involves a serious breach of their procedures, particularly the Primrose ones. They will be taking action. The claimant had never produced anything like this in either of the workplace hearings.

65 True the claimant had not posted these pictures on Facebook. She sent the pictures to responsible people - Avnish Goyal and the CQC. However, they could have been interpreted as pictures of a resident suffering from neglect and abuse, not happy Christmas snaps. So what the claimant did is not in any way mitigated by these Facebook pictures.

66 Overall on this evidence I consider I have no choice but to find this dismissal very much within the range of reasonable decisions taken after a conscientious investigation and interviewing of relevant witnesses. I consider for reasons I have tried to explain above.

67 The witness statement of Charlie was inherently suspect and her agenda was highly questionable. She never attended here to substantiate it. That was not surprising.

68 The claimant's evidence to the tribunal was unreliable and her recollection, and motivation, were both suspect. It was not an unwarranted observation of Mr Rocha to say that the claimant's predominant motive seemed to be to get Rita into trouble and that she had more interest in seeing how long the situation would last rather than in rectifying it.

69 With respect to the many appeal authorities cited by Mrs Young I will not repeat them here. I simply find that under section 98 of the Employment Rights Act 1996 this was a dismissal for misconduct. The respondent genuinely believed that there had been serious misconduct and followed a reasonable investigation. It followed a reasonable disciplinary process of which there has been no formal structural challenge.

70 The allegations of inaccuracies in the statements and record of disciplinary hearing so far as I understood them were nugatory and peripheral and the sanction was eminently a reasonable one. If the claimant was capable of doing the things she was found to have done quite deliberately purposely there was no guarantee she would not do it again. She had been raising concerns about colleagues over a long period within the team. It seems many of her colleagues, if not Charlie, found her a difficult team member. They were weary of her, and keen for her to resign.

71 In circumstances where the misconduct was likely to repeat itself and there had been an irremediable breakdown in the working relationship between employer and employee I could not possibly say that summary dismissal was not open to a reasonable employer. I would have been most surprised at a more lenient outcome in this case.

.....
Employment Judge Prichard

13 February 2017