



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr E Parker

v

**Respondent:**  
BC Software Ltd

**Heard at:** Reading

**On:** 8 and 9 February 2017

**Before:** Employment Judge Gumbiti-Zimuto

## Appearances

**For the Claimant:** Mr L Talalay (Counsel)

**For the Respondent:** Mr R Moore (Counsel)

## RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is not well founded and is dismissed.

## REASONS

1. In a claim form presented on 13 May 2016, the claimant made a complaint of unfair dismissal. The respondent denies the claimant's complaint. The issues to be decided in this case are set out in an agreed list of issues as follows:-

1.1 Was the respondent in breach of the claimant's contract of employment by:

- (a) Falsely alleging that he had committed a fraud?
- (b) Informing his colleagues and/or family friends that he had committed a fraud?
- (c) Failing to set out the allegations in writing and carry out a formal investigation into the allegations of fraud?
- (d) Failing to acknowledge the extension of his sabbatical? and/or
- (e) Refusing to allow him to return to work following return from his sabbatical?

- 1.2 If so, was the breach of contract such that it repudiated the contract of employment?
  - 1.3 If there was a repudiatory breach of contract, was the breach of contract an effective cause of the claimant's resignation on 4 January 2016 (or, in the alternative, 8 January 2016)?
  - 1.4 Did the claimant waive any relevant breach and/or affirm the contract of employment?
  - 1.5 If the claimant was constructively dismissed, what was the reason for the dismissal?
  - 1.6 If the claimant was constructively dismissed, was it for a potentially fair reason? Did the respondent act fairly in dismissing the claimant for that reason?
  - 1.7 If the claimant is successful in his claim, what compensation should he receive?
  - 1.8 Should a Polkey reduction be made?
  - 1.9 Did the claimant contribute to his dismissal so that any compensation should be reduced?
2. The claimant gave evidence in support of his own case and also relied on the evidence of Mrs Susan Mullins who gave her evidence via Skype. The respondent relied on the evidence of Mrs Barbara Cooke. All the witnesses produced statements which were presented as their evidence-in-chief. I was also provided with a trial bundle of documents containing 351 pages to which an additional sheaf of unpaginated documents was added.
  3. From these sources, I made the following findings of fact which I considered necessary to decide the issues in this case.
  4. The respondent is a supplier of luxury bathrobes and towels to hotels, spas and laundries across the United Kingdom and Europe. At the material time, the respondent employed 19 employees.
  5. Barbara Cooke founded the respondent in 2001. Currently, Barbara Cooke is a director of the respondent and is employed as general manager. At the relevant time, she was the respondent's Managing Director. Barbara Cooke is the majority shareholder in a company called Towelsoft Ltd (Towelsoft), a retail outlet for the respondent's products.
  6. Michael Parker is the respondent's Chairman. At the relevant time, he was married to Barbara Cooke and they were going through the process of a divorce. Michael Parker was not involved in the day to day running of the respondent.

7. The claimant is the son of Michael Parker; Barbara Cooke was his stepmother. The claimant was employed by the respondent as a customer service representative and he also did work on web development.
8. Part of the claimant's duties in his employment with the respondent included assisting in the content management of the retail website for Towelsoft. The claimant's remuneration from the respondent included payment of commission based on sales by Towelsoft and the respondent.
9. In May 2015, it was agreed that the claimant could take a sabbatical and that his position with the respondent would be kept open. Barbara Cooke was a party to the agreement that the claimant's job would be kept open until 1 December 2015 [p 65].
10. Without any consultation with Barbara Cooke, on 31 July 2015, the day the claimant was leaving the respondent to commence his sabbatical, Michael Parker sent an email to the claimant extending his sabbatical. Part of the email read: "I expect Barbara to make a fuss about this but for the avoidance of doubt on your part, as a director of the company, I agree to hold your position open for a 12 month period."
11. Barbara Cooke did not agree to this variation before the email was sent. When she became aware of the email Barbara Cooke did not express any objection in writing to the new arrangement. Barbara Cooke's evidence was that she made it known to Michael Parker, verbally, that she objected and she did not agree to the extension. There was no evidence that this was not the case and I accept her evidence on that.
12. On 17 August, the respondent's bank contacted the respondent's offices to ask about a number of refunds which had been found to be from the same debit card. Barbara Cooke spoke to the bank. She was informed that a number of refunds carried out through Towelsoft and made to a debit card were being investigated by the bank. Barbara Cooke was informed that the account holder was the claimant.
13. As a result of what Barbara Cooke was told by the bank, she carried out her own investigation, assisted by other employees of the respondent. It was discovered that refunds were paid to the claimant online either by logging into the website or directly by Sagepay, a secure payment mechanism used by the respondent's customers to pay by credit card.
14. Barbara Cooke spoke with two of her employees and also with her account, Tracy Booth, but she did not ascertain any legitimate reason for the payments to the claimant. Barbara Cooke came to the conclusion that the claimant had *"helped himself to Towelsoft's money and had deliberately made them small, regular but different amounts to avoid any suspicion"*. She concluded the claimant had stolen from Towelsoft. After discussion with the bank, Barbara Cooke reported the matter to the police.

15. At a board meeting on 28 August 2015, Barbara Cooke and Michael Parker discussed the situation concerning the transactions and the claimant. Barbara Cooke informed Michael Parker that the amount involved was £3,300.00 over a six-month period.
16. Michael Parker stated in this board meeting that the claimant was in Australia and that *"I have left him a message. I have left him four or five messages to call and explain... You are assuming he is guilty but we haven't heard his side of the events at the moment but from his past history I totally agree with you at the moment so I have nothing more to say on the matter"*.
17. This passage, taken from a transcript of the recording of the board meeting, shows that on 28 August Michael Parker did not put forward any explanation for the claimant's receiving payments totalling £3,300.00 from Towelsoft.
18. Meanwhile, in Australia, by October 2015 the claimant was aware that allegations of fraud on his part were being made against him by Barbara Cooke. The claimant did nothing. He made no attempt to contact Barbara Cooke about the allegations. Barbara Cooke herself did not have any means of contacting the claimant as she did not have contact details for the claimant whilst he was in Australia. The claimant could have contacted Barbara Cooke and given her his innocent explanation, he did not do so.
19. There was a board meeting in October 2015 by which time there had been some contact between the claimant and Michael Parker. At the October board meeting, Michael Parker stated that the claimant did not deny that he had received the money. At this meeting Michael Parker did not put forward any further explanation. The transcript suggests Michael Parker was still awaiting an explanation for the claimant's conduct.
20. On 11 December 2015, Michael Parker spoke to Barbara Cooke on the telephone. Michael Parker told her that the claimant was returning to work on Monday 14 December 2015.
21. Barbara Cooke refused to accept that the claimant could return to work on 14 December. She said she would send an email explaining her position. Barbara Cooke sent an email to Michael Parker in which she said: "I agreed reluctantly at the end of May this year to let Eddie take unpaid leave until 1 December 2015... The 1 December has now passed and therefore Eddie is no longer an employee of the company and I have no wish to re-employ him [p.194]."
22. Barbara Cooke then took HR advice. [p. 98]. She was given advice that explained how she might deal with the situation [p. 97].
23. The claimant did not attend work on 14 December 2015. He did however attend at the respondent's premises at about 5.00 pm on 15 December 2015. The claimant arrived unannounced with his father. The claimant and

Barbara Cooke said little to each other. Barbara Cooke told the claimant that she would write to him. Barbara Cooke spent much of the time on this occasion in a meeting alone with Michael Parker.

24. The claimant's account of this meeting is that Barbara Cooke told him "*to go home and she would send me a detailed email that same day, explaining exactly why she had refused to allow me to return to work... I emphasised that she had made very serious allegations against me and that I wanted to resolve the matter before Christmas.*" On his own account the claimant did not say that at this meeting he said that he wanted to return to work.

25. On 16 December 2015, the claimant sent an email to Barbara Cooke complaining that she had not sent the email "explaining exactly why you have refused to allow me to return to work". [p. 103] Barbara Cooke replied about an hour later saying:

"As far as your employment is concerned, I agreed in May to keep your job open on the condition that you returned to work on 1 December. I will send you the email correspondence relating to that agreement in a separate email once I am back in the office. Your father then subsequently offered you an extension of your sabbatical to 12 months, however this was not agreed by me so effectively not approved by the board. Since 1 December has now passed, you are now on an unauthorised leave. I have tried to call you on your mobile but this seems to be permanently switched off. Please let me know in writing what your intentions are. Are you intending to come back to work and if so on what date?" [p. 102]

26. Further emails were exchanged between Barbara Cooke and the claimant. In her emails, Barbara Cooke asked the claimant whether he was returning to work and when he was returning. Barbara Cooke confirmed that the claimant's job was still open. The claimant's position was illustrated by his response to her email of 17 December 2015 where he states:

"I see you have refused to answer my request and your promise to justify what you have been saying about me behind my back and why you do not want me to return to work. I thank you for your email today which I see was written by presumably a lawyer and forwarded to me which is exactly what I will be doing with it. I am sure they will be in touch in due course." [p. 105]

27. The email exchanges came to a head in the following way. On 18 December 2015, Barbara Cooke sent an email in which she stated:

"For the avoidance of doubt, your contract of employment states that you report directly to me, the managing director. Therefore, I would expect you to notify me directly of your intentions... All that is required from you is that you confirm directly to me that you wish to come back to work and from what date." [p. 107/108]

28. On 4 January 2016, the claimant sent the following email [p. 109]:

"I refer to our recent email exchanges. The company expressly allowed me a sabbatical. I notified the company of my intention to return well within the

allowed sabbatical period; specifically I notified the company of my intention to return on 14 December which I duly did, You refused to allow me to return to work. Moreover, you have both in my absence and since I have tried to return to work, been wrongfully accusing me of fraud and moreover, repeating those allegations to third parties, including my fellow employees. As such, you have committed a fundamental breach of my Contract of Employment, which I am accepting as terminating my employment.”

29. On 7 January 2016, Barbara Cooke replied as follows:

“You did not notify me, your line manager, of your intention to return to work and I have been asking you since before Christmas to let me know when you plan to return so that I can manage your return to work effectively. The period of your sabbatical was not clear because alternative arrangements were made with Mike and without my express agreement. I think it is perfectly reasonable to ask you for an intended date of return when the end of your sabbatical had been changed without my agreement... Your employment has not been terminated by me or the company and I need to be clear if your email is intended to be your resignation. If it is your intention to resign, I will of course process your leaving documentation. However, if your email was not your resignation and this was not your true intention, it is important that you let me know immediately. Please contact me to let me know your intentions so that I know whether we should process the termination of your employment or if you are coming back to work. If I do not hear from you within the next two working days and you do not attend work, it may become necessary for me to rely on your email as notification of your resignation.” [p.111]

30. The claimant replied on 8 January:

“Further to your email yesterday as per my email to you on 4 January 2016 due to the fundamental breach of contract which you have committed, I consider myself to have been constructively and unfairly dismissed. I will now be commencing the pre-claim procedures with a view to issuing a claim at the employment tribunal.” [p.114]

31. On 13 May 2016, the claimant presented his complaint to the employment tribunal. In section 8.2 of the claim form, he included the statement:

“Managing Director (soon to be ex-stepmother) has made multiple false claims of inappropriate behaviour and claims of theft, all of which are untrue and witnessed by other individuals. Whilst doing this, she has slandered by name and reputation and made my position untenable, also causing strains and breakups of friendships due to the difficult situation. Mrs Cooke is the MD, is currently in the middle of divorce proceedings against Mr Parker who is also my father and Chairman of the business. I am also a shareholder of this business and the MD’s behaviour seems to be an additional way of forcing me to sell my shares to her.”

32. Witness statements in this case were exchanged by the parties in September 2016. The claimant set out his explanation for the payments made into his account for the first time at that point. Among documents disclosed in the proceedings is a letter from Susan Mullins to the claimant c/o Michael Parker [p. 280]. That letter includes the passage:

“Additionally, I have included £3,500 “benefits in kind” from Towelsoft Ltd which I am advised relates to personal expenses paid by the Towelsoft credit card.”

33. The claimant was asked about this specifically and stated that it does not reflect his case and is not what happened or was agreed with Barbara Cooke.
34. On 6 September 2016, Susan Mullins wrote to the claimant and made the following comments [p. 307]:

“I met with your father on Wednesday 24 June 2015 during one of my visits to the South East... We specifically discussed your return because of your imminent departure for Australia and we talked about the information which I would need from you. Your father told me that you wanted to make sure that it was dealt with before you left. He advised me that there was an amount of £3,500 which Barbara had agreed that you should take from Towelsoft Ltd and whilst this had not been taxed at source we agreed that it should be shown on your return as expenses payments received.”
35. Susan Mullins was questioned about these documents and her statement. She was steadfast in her position that her account in her witness statement was correct. She states at paragraph 5:

“At the meeting on 24 June 2015, Mike Parker told me that Eddie Parker would be leaving the UK for Australia in August. Mike Parker therefore asked me to let him know as soon as possible if I needed any further information from Eddie Parker in order for me to complete Eddie Parker’s tax return so that I had this information before Eddie Parker went on his travels. Mike Parker also told me that Eddie Parker needed to declare an additional £3,500 of come from Towelsoft. I specifically recall Mike Parker telling me that Barbara Cooke had approved Eddie Parker to take this money but the deductions had not been made at source through PAYE or declared by the company in any other way, e.g. through the completion of a P11D. I discussed with Mike Parker the various options for declaring the income to HMRC and I concluded that the best way to deal with this would be to declare it as expenses payments received.”
36. Susan Mullins was asked about the information contained in the letter of 22 October. She was unable to say whether the explanation that “£3,500 benefits in kind from Towelsoft Ltd which I am advised relates to personal expenses paid by Towelsoft credit card” was told to her by Michael Parker on 24 June or later.
37. In her witness statement, she states that “I specifically recall Mike Parker telling me that Barbara Cooke had approved Eddie Parker to take this money”, and “I concluded that the best way to deal with this would be to declare it as expenses payments received”. The letter of 22 October states that she was told that it was “personal expenses paid by the Towelsoft credit card”.
38. On being questioned about this matter, Susan Mullins said that it may be that Michael Parker told her on 24 June or he may have told her later than

that date that it was “personal expenses paid by the Towelsoft credit card”. It is unclear to me how Susan Mullins’ accounts, in her letters, witness statement and oral evidence, about the £3,500 can be consistent. In paragraph 5 of her statement she states that she “specifically” recalls what she was told by Michael Parker on 24 June 2015. In her letter of the 6 September 2016 she says she “specifically discussed” the claimant’s tax return and was advised that “Barbara had agreed”.

39. Susan Mullins made no notes of the meeting on 24 June and the information she relies on came from Michael Parker. Susan Mullins is a busy tax practitioner, with hundreds of clients, she works “*more than full time hours*”. I am not satisfied that her recollection is reliable on this issue.
40. The error contained in the letter of 22 October is not explained. There are no notes of the meeting of 24 June 2015 and the letter of 6 September 2016 appears to contain a different explanation to the one contained in the letter of 22 October.
41. The respondent has provided outline submissions in writing which I do not repeat. I have taken these into account. The claimant has provided an opening note which I have taken into account. I have also taken into account the oral submissions which have been made on behalf of the parties.
42. Section 95 of the Employment Rights Act 1996 provides that an employee is dismissed by her employer if the employee terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate it without notice by reason of the employer’s conduct. If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat herself as discharged from any further performance. If she does so, then she terminates the contract by reason of the employer’s conduct. She is constructively dismissed. The employee may leave at the instant without giving any notice at all or, alternatively, she may give notice and leave at the end of the notice. The conduct must be sufficiently serious to entitle her to leave at once. She must not wait too long or she will lose her right to treat herself as discharged. She will be regarded as having affirmed the contract.<sup>1</sup>
43. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.
44. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract. The very essence of the breach of the implied

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<sup>1</sup> Western Excavating (ECC) v Sharp [1978] 1QB 761



term is that it is calculated or likely to destroy or seriously damage the relationship.

45. The test of whether there has been a breach of the implied term of trust and confidence is objective. The conduct relied on as constituting the breach must "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer"<sup>2</sup>.
46. In this case it said that there were examples of the breach of the term include: falsely accusing the claimant of stealing; informing the claimant's colleagues and friends that he had defrauded Towelsoft so that, on his return from sabbatical the claimant was widely believed to be a fraudster; and failing to conduct any or any adequate investigation into o those allegations of fraud in breach of the ACAS Code of Practice.

### Conclusions

47. Was the respondent in breach of the claimant's contract of employment?

#### Falsely alleging that he had committed a fraud

48. Did Barbara Cooke falsely accuse the claimant of fraud or did she have reasonable and proper cause for doing so? The claimant's account is that he agreed to carry out work for Towelsoft and in return he could refund money from sales to his personal account as payment. The claimant contends this was because Barbara Cooke refused to put the claimant on Towelsoft's payroll because it had no payroll. The claimant says that he kept Barbara Cooke informed of the work he carried out and the hours worked and that Barbara Cooke checked it. All this is denied by Barbara Cooke who says there was no such arrangement and that the payments made to the claimant's account were the proceeds of theft. The conflict in the two accounts is irreconcilable.
49. I am unable to accept the claimant's version of events. I agree with the respondent's submission that the claimant's account is implausible. The claimant's pay as an employee for the respondent already encompassed an element that took into account commission relating to Towelsoft. The convoluted arrangements referred to by the claimant was unnecessary as a way for remunerating his work for Towelsoft – the mechanism to do so already existed.
50. The claimant relies on the evidence of Susan Mullins in support of his case. I have not been able to accept the evidence given by Susan Mullins as correct in reporting the existence of the arrangement that is put forward by the claimant. I come to this conclusion for the following reasons.

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<sup>2</sup> Malik v Bank of Credit and Commerce International SA [1998] AC 20

- 35.1 In her witness statement, Susan Mullins said on 24 June 2015 Michael Parker told her that the claimant needed to declare £3,500 of income from Towelsoft:

“I specifically recall Mike Parker telling me that Barbara Cooke had approved Eddie Parker to take this money but that deductions had not been made at source through PAYE or declared by the company in any other way, e.g. through the completion of a P11D.”

- 35.2 In a letter dated 22 October 2015, Susan Mullins wrote to Michael Parker about the same money in the following way:

“Additionally, I have included £3,500 “benefits in kind” from Towelsoft Ltd which I am advised relates to personal expenses paid by the Towelsoft credit card”.

- 35.3 When challenged in cross-examination about the contrary positions put, Susan Mullins said of the letter of 23 October 2015: “That’s what I was told”. If that is what Susan Mullins was told on 24 June, it does not support the claimant’s account at all as the claimant expressly denied that was the reason for the payments into his account.

- 35.4 Susan Mullins then said that the amount of £3,500 was mentioned on 24 June but it may be the case that she was told the reason for the payment at a later date. Despite her uncertainty on the date or the inaccuracy of the statement in the letter of 22 October 2015, and notwithstanding that she made no notes about this at the meeting on 24 June, Susan Mullins insisted on the accuracy of her evidence. I am of the view that there is a very real risk that Susan Mullins has made a mistake about what she was told and when she was told.

- 35.5 The source of Susan Mullins’ knowledge is Michael Parker. Michael Parker has not given evidence. There is however some evidence of what Michael Parker said at a board meeting on 28 August. In this, there is no suggestion that he was aware of an innocent explanation for the payments.

- 35.6 At the October board meeting, Michael Parker mentions that the claimant “does not deny receiving the money”. There is still no indication at this meeting that a simple reason was available to explain the payments to the claimant. It was not mentioned by Michael Parker. Michael Parker’s comments on 28 August and October board meetings do not sit easily with the contention that on 24 June he reported to Susan Mullins that the claimant needed to declare £3,500. I am of the view that it is unlikely that Michael Parker would have said this on that occasion. I cannot be satisfied, on balance of probability, that it was said

- 35.7 The first reference to the explanation that the claimant now presents appeared in September 2016, the same month that Susan Mullins

first refers to an account which is consistent with the claimant's case [p. 307].

51. Having set out my reasons for rejecting the claimant's account, I have considered the account given by Barbara Cooke. She has denied all knowledge of the payments until it was referred to her by the bank. In my view, this has not been disproved by any evidence and I see no reason why this should be doubted. Such information as there is from the bank is consistent with her account that the matter was reported to her by the bank. There is nothing to support the suggestion it was she who drew it to the attention of the bank as was suggested by the claimant.
52. Having rejected the evidence of the claimant and Susan Mullins, I am of the view that there was no agreement to allow the claimant to receive the payments. Further, accepting that the payments were first brought to her attention by the bank and her investigation revealed no explanation for the payments, in the circumstances I am satisfied that Barbara Cooke had reasonable and proper cause for alleging that the claimant had been stealing from the respondent. On a balance of probabilities, the respondent did not falsely allege that the claimant had committed fraud.

Informing his colleagues and/or family friends that he had committed a fraud

53. Barbara Cooke believes the claimant committed a fraud on the respondent. Barbara Cooke had reasonable and proper cause for believing that that was the case. Barbara Cooke admits that she informed her senior management team and family friends that this was the case. This was not a breach of contract of the part of the respondent.

Failing to set out the allegations in writing and carry out a formal investigation into allegations of fraud

54. The respondent says that the suggestion that there was a failure to carry out a formal investigation into the allegations of fraud is to put "the cart before the horse". Before there could be any disciplinary investigation, the claimant would have to have returned to work and at the point the claimant resigned, the claimant had not returned to work. The claimant contends that there was a failure to investigate in his case and the failure was important because there is no adequate evidence that the claimant was guilty of fraud.
55. There was some investigation carried out by Barbara Cooke. She spoke with the bank; made enquiries of her staff and her accountant; the product of her investigation was not put into writing and provided to the claimant. The position in this case is that Barbara Cooke considered the claimant guilty of fraud. She reported the matter to the police. The claimant had not returned to work so the question of a disciplinary investigation had not arisen. There was no breach of contract in this respect.

Failing to acknowledge the extension to his sabbatical

56. The claimant arranged with his father and Barbara Cooke a sabbatical which involved him returning to work by 1 December. The claimant and his father then extended his sabbatical for a term which had not been agreed with Barbara Cooke. While Barbara Cooke did not object to the extension expressly, she did not consent to it either. Barbara Cooke is the respondent's managing director. The claimant's father was a director of the company. However, he was not involved in the day to day management of the company. Barbara Cooke is involved in the day to day management of the company but had not been involved in the decision to extend the claimant's sabbatical. There was no breach of contract in respect of this issue.

Refusing to allow the claimant to return to work following return from his sabbatical

57. The position of Barbara Cooke changed in the period from 11 December to 15 December. Initially Barbara Cooke's position was that the claimant could not return to work because he had failed to return by 1 December. She took advice and revised her position by 16 December when she asked the claimant "Please let me know in writing about what your intentions are. Are you intending to come back to work and if so, on what date?"
58. From this point on, and before the claimant had resigned, the claimant would have been aware that he could return to work. I am of the view that the claimant had no intention of returning to work for the respondent. He was asked a number of times what his intentions were and his answers were never simple and did not given a direct answer to the question. It appears to me from considering the correspondence and having heard the claimant's evidence that he was posturing, by which I mean he was positioning himself to complain about Barbara Cooke and the respondent's actions. It is of significance to me that He did not attend work on 14 December. He attended the workplace at the end of the working day with his father on 15 December and on that occasion said nothing about returning to work. In email correspondence after 14 December, the claimant never asked to return to work and when asked when he was returning to work, never answered the question or even set out terms on which he would return.
59. I am of the view that taken individually or as a whole, the matters that I have set out above do not show that there was a serious breach of contract justifying the claimant's resignation. There was no fundamental breach of contract.
60. I am not satisfied that the matters set out above show that there was a breach of the implied term of trust and confidence. I am not satisfied that there was a breach of contract.

61. The respondent's submission that "the only issue of substance that arose thereafter and before his resignation on 4 January 2016 was the "chicken and egg" situation regarding his return and the pursuit of internal charges and ... his case in respect thereof is one of gamesmanship/opportunism". In my view, that accurately characterises the claimant's position. There was no breach of contract: the claimant resigned his employment, he was not dismissed.
62. If the claimant had been dismissed, I would in any event have concluded that on the balance of probability, the claimant had caused payments to be made into his own account without authority. This was dishonest conduct which entitled the respondent to dismiss him for his conduct.
63. In the circumstances, the claimant's conduct contributed to such dismissal to an extent that no basic or compensatory award should be made. Alternatively, by reason of the Polkey principle, the claimant should receive no award because if a fair procedure had been followed, the claimant would have been dismissed in any event.

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Employment Judge Gumbiti-Zimuto

Date: .....20.02.17.....

Judgment and Reasons

Sent to the parties on: .....

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For the Tribunal Office