Case Number: 2300475/2018

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE MORTON**

BETWEEN:

Ms C Eboh **Claimant**

AND

Immaculate Healthcare Services Ltd **Respondent**

ON: **13 July 2018**

Appearances:

For the Claimant: Miss E Godwins (Employment Consultant)

For the Respondent: Miss C Scarborough (Counsel)

RESERVED JUDGMENT

1. The Claimant was unfairly dismissed by the Respondent.
2. The Claimant's claim of breach of contract succeeds.

REASONS

1. By a claim form presented on 7 February 2018 the Claimant, Ms Eboh, presented to the Tribunal a claim of unfair dismissal arising from her dismissal for gross misconduct. She also complained that her pay had been withheld from her whilst she was suspended from work and that this represented a breach of her contract of employment.

2. Ms Eboh gave evidence on her own behalf at the hearing and the Respondent's evidence was given by Ms Oloniyo, the Claimant's line manager. All the witnesses had produced written statements which I read before the start of the oral evidence and there was a bundle of documents containing 106 pages.

The relevant law

3. The burden of proof is on the Respondent to show that it had a potentially fair reason to the Claimant. The Respondent's case is that it dismissed her for what it regarded as gross misconduct on her part. Misconduct is a potentially fair reason to dismiss under section 98(2)(b) Employment Rights Act 1996 ("ERA"). The question of whether the Respondent is entitled to rely on the alleged misconduct to dismiss the Claimant fairly involves consideration of the test in British Home Stores v Burchell [1980] ICR 303 namely whether the Respondent at the time of the dismissal had a reasonable belief in the employee's guilt based on reasonable grounds after conducting such investigation as was reasonable in the circumstances. The standard to be applied to the investigation carried out by the Respondent in a misconduct case is also a standard based on what a reasonable employer might have done (Sainsbury's Supermarkets v Hitt [2003] IRLR 23).

4. The case of *Iceland Frozen Foods v Jones [1982] IRLR 439* establishes that the Tribunal must not, in reaching a decision on the reasonableness of the Respondent's decision to dismiss, substitute its own view as to what it would have done in the circumstances. Instead it must consider whether the Respondent's response fell within a band of responses which a reasonable employer could adopt in such a case.

5. Further issues then arise under section 98(4) ERA which provides that the question of whether the dismissal was fair or unfair involves the consideration of whether, having regard to the reasons shown by the Respondent, in all the circumstances of the case, including the size and administrative resources of the Respondent's undertaking, the Respondent acted reasonably or unreasonably in treating the reason relied on as a sufficient reason for dismissing the Claimant. The question must be determined in accordance with equity and the substantial merits of the case.

6. In order to meet the test in section 98(4) the Respondent must also follow a procedure that is fair in all the circumstances. That will ordinarily involve compliance with the provisions of the ACAS code of practice on grievances and discipline and with the Respondent's own written procedures.

7. In a case in which a dismissal is found to be procedurally unfair consideration must also be given to the principles in the case of Polkey v A E Dayton Services [1988] ICR 142 and if it appears that the Claimant would have been fairly dismissed in any event had a fair procedure been followed then any compensation awarded must be reduced to reflect the percentage chance of that being the case.

8. In a case in which the Claimant is found by the Tribunal to have been unfairly dismissed for misconduct the Tribunal must if it has found that the Claimant has to any extent caused or contributed to her own dismissal reduce any compensation by such amount as the Tribunal considers just and equitable having regard to that finding (section 123(6) ERA). A finding of contributory fault can only be made if the Tribunal forms the conclusion that the Claimant has on the balance of probabilities been guilty of misconduct.

9. I was also referred to and took into consideration in reaching my decision on the unfair dismissal claim the case of *Ellis v Hammond, EAT 1257/95.*

10. Claims of breach of contract may be brought under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994/1623 Article 3 of which provides:

> **Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if-**
>
> **(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;**
>
> **(b) the claim is not one to which article 5 applies; and**
>
> **(c) the claim arises or is outstanding on the termination of the employee's employment.**

Findings of fact

11. I make the following findings of fact and reach the following conclusions based on the witness statements of the Claimant, Fola Oloniyo, the Claimant's line manager and the Respondent's Regional Manager, the witnesses' oral evidence and the bundle of documents of which the majority (pages 37-81) consisted of a version of the Respondent's staff handbook that was introduced in October 2017.

12. The Respondent is a domiciliary care agency which provides help and support services to individuals in need of support to enable them to continue to live in their own homes.

13. The Claimant's employment with the Respondent commenced on 4 February 2013. She applied for a role as a care worker but was offered the job of administrator and care co-ordinator in the Respondent's Croydon office. Her job description was at page 30 – 31. I find as a fact that the Claimant was not given copies of the Respondent's staff handbook or disciplinary policies at the start of her employment. Despite the fact that she signed to say that she had received them, I accepted her evidence that she did so in anticipation of being given copies, but those copies never materialised.

14. On 17 November 2017 she was suspended from her employment and on 4 December 2017 she was dismissed for gross misconduct. The Respondent relied on its written disciplinary policy (page 34-36), which provided that suspension without pay could be imposed on an employee as an alternative disciplinary sanction. The policy also stated that an employee could be suspended with pay during a disciplinary investigation. I find that in suspending the Claimant without pay on 17 November 2017 the Respondent failed to follow its own disciplinary policy and seems to have misunderstood the terms of it. The suspension was imposed before any disciplinary investigation had been carried out and should therefore have been a paid suspension. It was clearly not imposed on the Claimant as a disciplinary penalty after the carrying out of a disciplinary process.

15. The history prior to the Claimant's dismissal was as follows. On 2 June 2014 the Claimant was issued with a written warning for what was described in the warning letter at page 82 as "unprovoked verbal abuse on a colleague in the office" that was "unethical and negative to the smooth running of an office and unacceptable to the management". The bundle contained only the letter of warning and I find as a fact that there was no compliance by the Respondent with the ACAS Code on Disciplinary and Grievance Procedures ("the ACAS Code") on that occasion, and no offer of a right of appeal against the warning.

16. On 19 August 2015 the Claimant was awarded a pay increase (page 83).

17. On 9 September 2015 Ms Oloniyo sent the Claimant a memo (page 84-85) which informed her that she was being given a "last warning" and that "any further acts of gross misconduct by you shall attract strict disciplinary action". The Respondent's complaint against the Claimant on that occasion was that she had refused to write a statement in response to a complaint unless she had seen the letter of complaint. The memo went on to say "Perhaps I should also bring to your notice what I have observed recently, that whenever you are asked to carry out simple tasks, you do instantly object to doing them. The latest example was only yesterday… You were asked to retrieve some Log sheets for use in solving the same client's enquiry and your response was 'I can't do it! I can't do it because I have back pain! Your attitude even led me to have a short 'Pep talk' with all the office staff this morning, during which office ethics and telephone etiquettes were once again discussed". There was no other documentary evidence of this incident and I find as a fact that the Respondent once again did not comply with the ACAS Code or offer of a right of appeal against the warning.

18. On 24 September 2015 Ms Oloniyo wrote the Claimant a letter (page 86) asking her to explain in writing what action she had taken when she received a "restart" telephone call in respect of a client. There was no other documentary evidence of this incident and it is not clear in what respect the Respondent sought to rely on it.

19. On 19 August 2015 the Claimant was awarded an 8.5 per cent pay increase (page 87) "in recognition of your hard work, dedication and commitment" and received thanks for her "support and loyalty to the company".

20. 18 months later, on 28 February 2017 Ms Oloniyo wrote to the Claimant again (page 88). The concern set out in the letter was the Claimant's response to a change to the on call rota. The Claimant's account which I accept as accurate, was that a colleague had enlisted Ms Oloniyo's support to change the rota, causing disruption to the Claimant's working hours. The previous arrangement had required employees not to involve Ms Oloniyo in resolving rota concerns. The Claimant felt undermined and that Ms Oloniyo had taken her colleague's part against her unfairly. She made this known to Ms Oloniyo who responded by issuing her with a final written warning. There was no meeting, discussion or invitation to be accompanied by a colleague prior to the warning being issued and the letter stated as follows:

> **"As you are aware there have been issues bearing on gross misconduct and disciplinary action in recent times with you and I have had a final rethink in giving you another chance in settling the personal issues you stated is causing stress to you.**
>
> **The management and I gave you a chance after we decided on your future with Immaculate Care as we could no longer tolerate your excesses. I had a meeting/supervision with you on the 14th February 2017 when you showed remorse and reiterated that you will ensure that you do not let issues get at you that will make you raise your voice at me or show any signs of gross misconduct.**
>
> **I regard your attitude at this instance yesterday as an act of "insubordination" (Gross Misconduct").**
>
> **I will state here that this memo will serve as a final warning to you as any unruly behaviour or objection to my instruction and authority may result to strict disciplinary action and eventually dismissal.**
>
> **I have had to go through this process of talking with you all the time and I think this had to stop".**

21. There were no documents relating to the meeting on 14 February. I find that the scope of this warning letter was unclear, but that the terms of it appeared to suggest that any challenge to Ms Oloniyo's authority, however moderate, reasonable or justified, was liable to be construed by her as insubordinate and therefore a matter gross misconduct. I return to that point in my conclusions.

22. On 30 March Ms Oloniyo sent the Claimant the letter at page 90. This followed a meeting (otherwise undocumented) on 29 March between the Claimant, Ms Oloniyo and the Respondent's Director, Mr Adekoya. The letter referred to a recent "disciplinary process" and invited the Claimant to refer to "my memos and warning, also most recently dated 28th February 2017 and 14th February 2017 where I had to prevail on the Director to let us put your termination letter on hold as I would like to work with you for One Month to support and assist with some pressure/tension you stated is affecting your work. The Director accepted my plea and explained firmly that your attitude and performance at work is not adding value to the company any longer." The letter goes on to refer to the support the Respondent considered that it had offered to the Claimant to enable her to perform her role and to the "countless memos raised", "several verbal supervision and verbal warning" and the fact that "as such exhausted all areas to achieve our outcome of supporting and assisting you to be better at your job". The letter then went on to ask the Claimant to provide a written response as to

what she intended to do following the meeting the previous day. The Claimant responded but the Respondent did not include a copy of her response in the bundle. I find as a fact that that letter was not a disciplinary warning letter. It included no sanction and it is not clear exactly what the Respondent was complaining about or what it intended to do in response to its complaints.

23. On 5 July the Claimant was awarded a 5 per cent pay increase and was thanked for her support and loyalty (page 92).

24. On 17 November the Claimant was 15 minutes late for work on a day on which there was considerable disruption on public transport. All the Respondent's employees were late as a result. Ms Oloniyo spoke to each employee in turn about their lateness. When she spoke to the Claimant she also raised the Claimant's lateness on other occasions. The Claimant's accepted that she had had some difficulties arriving at work on time. Her daughter had come to live with her at the start of the year and she had needed to make childcare arrangements that sometimes affected her ability to arrive at the office on time. There was however no evidence of any prior warnings about her punctuality and the Claimant had in fact thought that Ms Oloniyo had understood her difficulties as she was also a mother of young children. The Claimant became upset during the conversation with Ms Oloniyo and as the conversation was taking place in the kitchen area rather than in a private room, the Claimant went to dry her eyes when she saw other people approaching so that they would not see that she had been crying. When she returned Ms Oloniyo had left. I do not accept the Respondent's evidence that the Claimant left the discussion abruptly and rudely, and walked away saying "Do what you want". In the context of the overall evidence in the case I found the Claimant's account of the incident to be more plausible.

25. Shortly after that Ms Oloniyo accused the Claimant of walking out during their meeting and issued the Claimant with the memo at page 93-94 and asked her to sign it without giving her the chance to read it. The Claimant resisted this request. The memo stated as follows:

> **"Dear Carolyn**
> **Following our recent discussion today Friday 17 November 2017 on you late coming, I will like to state here that there was no support you asked of me that I have not rendered to help and support your job since you started working at Immaculate Care Croydon 4 February 2013.**
> **If you remember we discussed as recent as 7 November 2017 of the same issues of your coming late, I gave support where I could to help ease your tension and you promised to work on the support and you will endeavour to come early.**
> **I called you on Friday 17 November 2017 via the office phone to discuss an emergency issue and as at 9.25am, you were not in the office and you were not co-operative while I was having a discussion with you on these unchanging pattern of resumption time.**
> **You were very unprofessional with your explanation and you walked away saying and I quote 'do whatever you want!' and each time you are being corrected on issues surrounding your attitude to work, you do not absorb your inadequacies and you tend to be very unprofessional in your approach in explaining issue to me.**
> **I have been very supportive and I have had to endure your gross misconduct and insubordination.**
> **You have had several written warnings and verbal warnings this year on issues surrounding gross misconduct and I had to still go through the issues again today.**

> **This memo serves as a last warning for you as we cannot continue to have same issues and attitude to work for more than four years without any positive changes.**
> **I have had to go through this process of talking with you all the time and I think this has to stop.**
> **I will state here that this memo will serve as a Final Warning to you as any unruly behaviour or objection to my instruction and authority may result to strict disciplinary action and eventually dismissal."**

26. The memo therefore described itself as a "final warning" in relation to insubordination, lack of professionalism and lateness although I find as a fact that there were no live warnings in place in relation to any of these matters save for the letter issued on 28 February 2017, which could possibly be construed as a warning, albeit given nine months earlier, about the Claimant's alleged insubordination. There was also a clear and obvious lack of procedural safeguards in relation to the manner in which either the letter of February 2017 or the memo of 17 November 2017 were issued to the Claimant. To the extent that the Respondent was relying on verbal warnings it was unable to show how or when these were administered, what the reason for or content of them was, how long they were intended to remain live and how the Claimant had been warned of the type of conduct what would lead to further disciplinary sanctions.

27. After giving the Claimant the memo at page 93 Ms Oloniyo telephoned Mr Adekoya on whose instructions the Claimant was then given a second letter (page 95) suspending her from her employment by reason of her refusal to sign the memo. The letter informed the Claimant that she was being suspended for insubordination and gross misconduct (of an unspecified nature), inability to accept inadequacies or mistakes when corrected and the previous warnings that had been issued to her ("several verbal warnings and five written warning/memo in this year about your action and attitude to work"). I have already found as a fact that there was evidence of only one written warning, given in February 2017, that the scope of that warning lacked clarity and that it had been issued without a proper procedure being adopted.

28. The Claimant responded to her suspension by writing the letter at page 96-97 on 21 November. This letter set out the Claimant's concerns about her working relationship with Ms Oloniyo, referred to her need for a more flexible start time given her childcare responsibilities and referred to "unethical practice" on the part of the Respondent, but gave no detail of what the Claimant meant by that. Her recollection about when she sent it and to whom was not entirely clear and her witness statement was at odds with her oral evidence on that point, but I am satisfied that she sent the letter to Mr Adekoya at some point. In this case nothing turns on the question of whether she sent it before or after the letter of dismissal, nor on the question of whether or not she copied it to Ms Oloniyo. On 27 November the Ms Oloniyo sent the Claimant the letter at pages 98-101, terminating her employment. There was no meeting prior to that letter and the Claimant was not informed that she had the right to appeal. The letter was therefore wholly non-compliant with the requirements of the ACAS Code.

29. The letter set out the Respondent's reasons for terminating the Claimant's employment, which I summarise as follows:

a. Not meeting the standards of the Respondent's work ethic;
b. Attitude and performance falling below the required standard;
c. An altercation with a colleague on 13 December 2016, followed by verbal warning, a repetition of the alleged conduct in January 2017 and a final warning memo on 8 February 2017;
d. Use of the office on call mobile to make personal phone calls in early 2017;
e. Her approach to her duties whilst on call which the letter described as "lackadaisical". It referred to three occasions at approximately six month intervals on which the Claimant had not answered the phone promptly whilst on call;
f. Her punctuality;
g. A history of five written warnings for insubordination and gross misconduct;
h. The incident on 17 November, which the Respondent described as the Claimant having said that there was "no way" that she would be able to start work at 9am and having then shouted and walked off;
i. The Claimant having made a long personal phone call after the receiving the final warning letter.

30. The Claimant wrote to Mr Adekoya informing him of her dismissal (pages 102-103). She hoped that this letter would at least result in a meeting being called to address the situation, but instead Mr Adekoya sent the email at page 104, which upheld Ms Oloniyo's decision. No meeting or discussion took place with the Claimant before Mr Adekoya sent that email.

Conclusions

31. In reaching my judgment in this case I have borne in mind that the Respondent is a small employer and does not have specialist knowledge of good employee relations practices. Nonetheless all employers are expected to adhere to certain standards of fairness and good practice, regardless of their size and administrative resources. There is an abundance of advice available to employers free of charge from ACAS and the Respondent in this case departed significantly from the standards of fairness that the law expects of employers.

32. In my judgment the Respondent has not discharged the burden of showing that that Claimant was guilty of misconduct, let alone conduct justifying summary dismissal. The Respondent's evidence was replete with generalised assertions about the Claimant's behaviour but is largely devoid of specific examples. Paragraph 10 of Ms Oloniyo's witness statement is a case in point: "The level of incompetence, insubordination, failure to follow simple management instructions, breach of company's policy and some other unacceptable behaviour resulted in the Claimant getting 6 written warnings within a period of six months". The existence of six written warnings (in other parts of the Respondent's account it was five warnings, not six) was simply unsupported by evidence. The dismissal letter also took this sweeping and unparticularised approach.

33. Given that the burden of proving that there was a potentially fair reason to dismiss lay on the Respondent, the case was in my judgment very poorly documented. Ms Oloniyo's witness statement refers to a number of matters that were supported by no documents at all, such as the incident on 13 December 2016 referred to in paragraph 7 of her witness statement in which the Claimant allegedly "exhibited a complete unprofessional behaviour by having altercation with a colleague…for which she was issued with a final written warning which was kept on the office file on the 8th February 2017". There was no document fitting that description in the bundle. There was also a lack of evidence that a fair process compliant with the ACAS Code had been followed in relation to any of the "warnings" relied upon by the Respondent and it was the Claimant's case that no such process was ever followed. I was also unimpressed by the evidence that the Respondent had not made complete disclosure of the relevant documents in the case – the Claimant maintained that she had produced written responses to some of the Respondent's management interventions, but despite their relevance to the issues in this case, they did not find their way into the bundle for the hearing.

34. Leaving aside the fact that it is simply not the case that the Claimant was issued with six written warnings within six months (I have found as a fact that at best the Respondent issued one warning during that period), nowhere in the written or oral evidence was there any evidence of incompetence on the Claimant's part. The fact that she was rewarded with two pay rises during the course of her employment would suggest the reverse - that she was competent and the Respondent valued her work. Nor was there any evidence of any failure to follow simple management instructions or breaches of company policy in the period leading to her dismissal. The Respondent appeared to be relying on some minor historic concerns such as the issue with the retrieval of documents when the Claimant was suffering from back pain (paragraph 16 above), in order to bolster what is otherwise a weak defence. Ms Oloniyo's oral evidence and her attempt to persuade the tribunal that she had issued various other warnings to the Claimant but had "lost" them, was wholly unconvincing and undermined my confidence in her credibility as a witness.

35. Turning to the matters that led to the Claimant's dismissal, I conclude from my findings at paragraphs 23 – 27, that on 17 November the Claimant was unavoidably late for work and no reasonable employer would have dismissed for that reason alone. At its highest the Respondent's case was that the Claimant was insubordinate by refusing to sign the memo that Ms Oloniyo presented to her. It has failed to convince me that that was the case. The Claimant's evidence, which I find persuasive, was that Ms Oloniyo was trying to coerce her into signing the memo without reading it first. It was understandable that the Claimant felt reluctant to do this. It was also understandable that the Claimant would want to hide the fact that the meeting with Ms Oloniyo on 17 November had caused her to become upset. The Respondent could and should in my view have chosen a private place in which to conduct that meeting and it was unreasonable to enter into a discussion of that nature in full view of other staff members.

36. The Respondent has not in my judgment shown on a balance of probabilities that the Claimant said or did anything else that could have justified disciplinary action on that occasion. The fault in my view lay with the Respondent, which made an unreasonable request (to sign the memo without reading it first) and then unreasonably escalated the situation by suspending the Claimant without pay. Hence its decision to dismiss her four days later without any procedural safeguards at all, was egregiously unfair both substantively and procedurally. The Respondent did not show that there was any misconduct on the part of the Claimant that could have formed the basis of a potentially fair dismissal and it also showed itself to be either ignorant of or willing to disregard even basic procedural safeguards.

37. Turning to the dismissal letter itself, I will address each of the matters relied on in turn:

    a. *Not meeting the standards of the Respondent's work ethic*. This was in my view a vague and unparticularised allegation and the Respondent did not show what standards the Claimant was expected to meet or how she failed to meet them.
    b. *Attitude and performance falling below the required standard*. The letter refers to the Claimant having failed to keep the carers' files up to date, but there is no evidence that this was a justified concern, that it had ever been put to the Claimant or that it had been a concern prior to the termination letter being written.
    c. *An altercation with a colleague on 13 December 2016*, *followed by verbal warning, a repetition of the alleged conduct in January 2017 and a final warning memo on 8 February 2017*. There is no evidence of these matters other than a reference to "complete unprofessional behaviour by having an altercation with a colleague on the 13th of December 2016 for which she was given a final written warning which was kept on the office file on 8th February 2017" in Ms Oloniyo's witness statement. There were no documents showing why the Respondent had reasonably reached a conclusion that the Claimant had been guilty of misconduct on that occasion, how it had weighted up any explanation given by the Claimant or any explanation as to why it was reasonable for the Respondent to rely on a matter that had taken place almost a year earlier to dismiss the Claimant.
    d. *Use of the office on call mobile to make personal phone calls in early 2017*. I make the same observations about this allegation as in the previous paragraph – it was unsupported by evidence other than a brief reference in Ms Oloniyo's witness statement and there was no evidence as to if and how it had put its concerns to the Claimant or taken into account any explanation she had offered.
    e. *Her approach to her duties whilst on call which the letter described as "lackadaisical". It referred to three occasions at approximately six month intervals on which the Claimant had not answered the phone promptly whilst on call*. Again the Respondent has not provided the evidence to explain why it was reasonable to treat these as disciplinary matters, if and how they had been put to the Claimant at the time and how it had weighed any explanation the Claimant might have had.

f. Her punctuality. In principle poor timekeeping can form the basis of a fair dismissal, but ordinarily only after a staged warning procedure has been followed. It was the Claimant's case that her long journey to work from home and her childcare responsibilities had made arriving at 9.00 am very difficult and she had hoped and expected that the Respondent would understand her need for a more flexible approach. The evidence, such as it was, was that Ms Oloniyo was taking a very inflexible approach without explaining why this was justified or why it was reasonable for the Respondent to rely at this juncture on the Claimant's punctuality as a reason to dismiss. The Respondent did not have any evidence of how many times the Claimant had been late or how late she had been and there was no evidence of any staged warning procedure having been followed.

g. *A history of five written warnings for insubordination and gross misconduct*. If there were five written warnings the Respondent failed to provide evidence of them, as I have set out above. There was evidence of one warning, albeit that there was no evidence that this had been given with appropriate procedural safeguards.

h. *The incident on 17 November, which the Respondent described as the Claimant having said that there was "no way" that she would be able to start work at 9am and having then shouted and walked off*. I prefer the Claimant's account of this incident as inherently more plausible. On a balance of probabilities the Claimant was upset at being reprimanded in a public area of the Respondent's premises for something that was outside of her control. The Respondent's approach was overbearing and unreasonable.

i. *The Claimant having made a long personal phone call after the receiving the final warning letter*. There was no evidence of what this concern was about, if or how it was put to the Claimant prior to the dismissal letter why it was reasonable to rely on it as a reason to dismiss.

The Claimant's response when the Respondent's concerns were put to her in cross examination, was to say that there were elements of the Respondent's evidence that were true, in the sense that there were discussions between the parties from time to time about day to day management issues, but that they did not take place in the manner suggested by Ms Oloniyo's evidence and she had not understood them to be part of a disciplinary process. The picture that emerges is that the Respondent, for reasons that it failed adequately to explain, lost patience with the Claimant and sought after the event to find reasons supporting its decision to dismiss her. The Respondent has not satisfied me that there was any misconduct on the Claimant's part that would have constituted a potentially fair reason to dismiss and my inevitable conclusion is that the Claimant was unfairly dismissed.

38. Ms Slaughter made a well-argued but ultimately unsuccessful attempt to characterise the Respondent's actions as reasonable and the lack of a procedure as inconsequential as procedural safeguards would, she submitted, have been futile. That was the approach Ms Oloniyo took in her oral evidence – that the Claimant had been given so many chances that a fair process would have served no purpose. I do not accept that proposition. The evidence pointed

to an authoritarian attitude on the part of Ms Oloniyo and Mr Adekoya and the Respondent having adopted a coercive and overbearing approach to the management of the Claimant, which is at odds with the requirements of fairness and reasonableness set out in s98 ERA. It cannot be said in a case in which the Respondent had departed from even basic standards of procedural fairness at every stage that the outcome would not have been very different if it had taken an approach that was compliant with the expectations set out in s98 ERA. It also follows from my conclusion that the Respondent has not discharged the burden of showing that the Claimant was guilty of misconduct that any Polkey reduction to the compensation payable to the Claimant would be inapplicable. For the same reason I conclude that the Respondent has not shown that the Claimant contributed to her own dismissal.

39. Finally I turn to the Claimant's breach of contract claim. I have already found as a fact that the Respondent was in breach of its own disciplinary policy by suspending the Claimant without pay when, having gone on to dismiss the Claimant a few days after suspending her, it was plainly not doing so as an alternative to dismissal. The Respondent was unable to point to any other document that entitled it to withhold pay from the Claimant during a disciplinary process and I find that it therefore breached the Claimant's contract by withholding pay from her during her suspension from work and must compensate her accordingly.

40. It was agreed that if the Claimant was successful remedy would be dealt with at a separate remedy hearing. The parties are invited to endeavour to agree remedy without recourse to a further hearing, but if that is not possible the parties should promptly notify the tribunal of their dates to avoid in the next six months for the purposes of listing the matter for a one day remedy hearing.

Employment Judge Morton

Date: 12 September 2018