EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4103423/2018

Heard in Edinburgh on the 7th to 9th November 2018

Employment Judge: Jane M Porter

Mr G Phillips	Claimant Represented by:- Miss A Hunter, Solicitor
Arnold Clark Automobiles Limited	Respondents Represented by:- Miss J Skeoch, Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

It is the Judgment of the Employment Tribunal to dismiss the claimant's claims of unfair dismissal.

Introduction

1. The claimant, who is 62 years of age, was employed by the respondents as an Instructor/Assessor between the 29th of September 1997 to the 28th of November 2017. On the latter date the claimant was dismissed on the grounds of gross

misconduct. In these proceedings the claimant claims that he was unfairly dismissed.

2. The proceedings are defended and there was a Hearing on the Merits between the 7th and the 9th of November 2018. At the Hearing the claimant was represented by Miss Hunter, Solicitor and the respondents were represented by Miss Skeoch, Solicitor.

3. In advance of the Hearing on the Merits the parties produced a Joint Bundle of Documentation numbered **1** to **54**, page numbers **1** to **257**. In this Judgment reference will be made to the page numbers of the documents.

4. The parties also produced a Cast List of all individuals who gave evidence and were referred to in the proceedings, a Chronology of Events and Summary Submissions for inclusion in the Judgment. A List of Authorities were also provided and referred to by the Employment Judge.

5. The Tribunal found the production of this documentation and the conduct of the parties in conducting this Hearing to be exemplary and extremely helpful.

6. In evidence, the Tribunal heard from Vari Ferrence, People Advisor and the Investigatory Officer, Clare Fergusson, People Advisor who commenced the investigation and thereafter acted as Disciplinary Officer, and Emma Glass, Senior People Advisor who was the Appeals Officer. The claimant gave evidence himself.

7. From this evidence the Tribunal made the undernoted essential Findings in Fact.

FINDINGS IN FACT

8. The claimant's employment as an Instructor/Assessor was based at the respondents' GTG Training Site at Queen Anne Drive, Edinburgh. His duties included instructing and assessing apprentices in job related skills and knowledge to standards set by external industry standards. The claimant's job description (**69**)

stated inter alia: "*Set a good example by acting in a professional manner at all times ... carry out all training and education in a safe manner … use appropriate training and education methods at all times.*"

9. The Tribunal heard evidence that many of the apprentices under the claimant's charge were under the age of 18. For this reason the respondents have a Safeguarding Policy which is to be found at page **49** onwards of the Joint Bundle of Productions. At page **57** the policy expressly states: "*Staff must never: engage in inappropriate rough physical games including horseplay with children, students or protected adults. Allow or engage in inappropriate touching of any kind.*"

10. Paragraph 5.1 of the Safeguarding Policy (**58**) states: "*Inappropriate behaviour will be thoroughly investigated and will not be tolerated within GTG Training. Where appropriate the company will take disciplinary action against any employee who breaches this company policy or is found guilty of misconduct towards any child, student or protected adult.*"

11. At all material times the claimant was aware of the terms of the Safeguarding Policy.

12. The claimant was also aware of the respondents' Disciplinary Procedure (to be found at page **63** onwards of the Joint Bundle of Productions.) Paragraph 2 of the disciplinary procedure states:

> "*2 Guidelines for the conduct of formal disciplinary meetings*
>
> *2.1 Disciplinary action will normally be taken by the HR Department but circumstances may warrant someone else being involved.*
>
> *2.2 No disciplinary sanction will be imposed until the situation has been investigated.*
>
> *2.3 You will be advised in writing of the nature of the complaint against you and we will aim to give you a minimum of 48 hours' notice before any*

disciplinary meeting takes place. You will be given the opportunity to comment before any decision is made at a disciplinary hearing. Your comments will be taken into account in making that decision.

2.4 You may be accompanied by a work colleague or an official of a Trade Union during any disciplinary meeting or appeal. The person accompanying you may not answer questions on your behalf and his or her name should be disclosed before any meeting.

2.5 Disciplinary action may be started or taken at any level of this procedure if a particular complaint warrants such action.

2.7 You may appeal against any disciplinary decision."

13. The reference to the "HR Department" in the Disciplinary Procedure is a reference to the respondents' "People Team". Vari Ferrence, Clare Fergusson and Emma Glass are all part of the respondents' "People Team".

14. The chain of events leading to the claimant's dismissal commenced on the 29th September 2017. At that point in time the claimant had 20 years unblemished service with the respondents.

15. On the 29th September 2017 a 17 year old apprentice of the respondents called Jack Doyle made a written complaint which is to be found at page **73**. That complaint stated:

"*Jack Doyle complaint against Gary Phillips*
Ron Maxwell asked me to put a tyre pressure gauge away. I walked over and Gary was standing beside the cupboard. I had to put it away in. I tried to walk past and he kept continually blocking my way and I tried to pass him. I walked into him thats when he grabbed my genitalia. I walked back and told Ron Maxwell. When I looked back over at Gary and he started holding

his arms out shouting in an aggressive manner. This incident was seen by the vast majority of EAC 09." **(73)**

16. On the same day Steve McLeod an Instructor/ Assessor of the same grade as the claimant, also gave a written statement (**74**). That statement stated: "*As I was walking away into the direction of Jim Hendry's office I was approached by a distressed looking young man (Jack Doyle). He had approached me and said "Steven I was just in the workshop trying to put a tyre pressure gauge away and Gary the trainer (Phillips) blocked my way and wouldn't let me past. He bumped into me and just grabbed my balls. I am no happy and want something done. " Jack Doyle was physically upset.*"

17. A call was made by Billy Hammond, an employee of the respondents regarding the incident to Clare Fergusson. The incident was discussed and it was decided that the claimant should be suspended with immediate effect. The claimant was suspended by Jim Hendry, a Manager with the respondents. The call from Billy Hammond is seen noted on a call sheet to be found at page **70**, which was completed by Clare Fergusson.

18. Clare Fergusson thereafter wrote to the claimant on the 3rd of October 2017 (**78**) confirming his suspension. To this end it was confirmed that the suspension was with pay and that the claimant remained an employee.

19. Clare Fergusson then proceeded to investigate the claim. She took 5 statements over the telephone from apprentices who were present at the relevant time. None of these apprentices (Harry Swan, Jack Norman, Stuart Robertson, Steven Tower and Cameron Evans (**79 to 85**)) corroborated the statement of Jack Doyle.

20. Clare Fergusson then went on annual leave. The Tribunal accepted her evidence that at the point of departure on annual leave Clare Fergusson had formed no opinion (in her words "had no thoughts or feelings") on the case.

21. The investigation was then passed over to Vari Ferrence to complete whilst Clare Fergusson was on annual leave. Vari Ferrence took statements from a further 10 apprentices who were in the claimant's class at the material time on the 29th September 2017. These apprentices were: Robbie Coulter; Ross Alexander; Alan Cannon; Logan Napier; Michael Gunn; Jordan Vachini; Jamie Hume; Rhys Lochhead; Logan MacKay and David Boulton (**87 to 99**).

22. The evidence of the respondents was accepted that a statement was not taken from Jack Doyle at the investigatory stage as they already had a statement from him. The Tribunal accepted the evidence of Vari Ferrence that the respondents' procedure was not to take a statement from an accused employee at the time of the investigation to allow the employee to see all the evidence against them before stating their position.

23. David Boulton's statement is to be found on page **99** of the productions. In his statement he stated (when talking about the claimant and Jack Doyle): "*The only thing that I had witnessed was everyone was joking about and he slipped .. I think I'm not sure if it was him or not because I don't know their names but he had slipped someone well obviously where they're not meant to.*" In evidence the Tribunal heard that "slipped" was a typographical error for "slapped".

24. In the light of the statement given by David Boulton a letter was sent to the claimant dated 20th October 2017 inviting him to a disciplinary hearing to be held on Wednesday 25th October 2017 to be conducted by Clare Fergusson (**100 to 101**). The letter was written by Charlotte Hutchison, HR Advisor in the absence of Vari Ferrence who was in Elgin on business. After having regard to the statement by Jack Doyle and the statement of David Boulton, the allegation of misconduct was: "*Your physical, inappropriate and aggressive behaviour towards Jack Doyle on 29th September 2017*" (**100 to 101**). All the statements taken accompanied the letter inviting the claimant to the disciplinary hearing.

25. The Tribunal accepted the evidence of Vari Ferrence that in framing the charges she had had regard to the statements of not only Jack Doyle, but David Boulton.

26. Vari Ferrence's unchallenged evidence was that had it not been for David Boulton's statement then the allegations against the claimant would not have proceeded further. The Tribunal accepted Vari Ferrence's evidence that had it not been for the statement taken from David Boulton then there might have been a conversation between HR and the claimant regarding the appropriateness of "banter" in the workplace, but no disciplinary proceedings would have ensued.

27. The Tribunal accepted the evidence of Clare Fergusson that she felt able to take over the disciplinary hearing as she had drawn no conclusions from her involvement in the investigation prior to handing over to Vari Ferrence.

28. A disciplinary hearing took place on the 25th October 2017. In advance of the disciplinary hearing the claimant produced a statement (**102**) in which he denied any physical contact with Jack Doyle.

29. At the disciplinary hearing the claimant was accompanied by Willie Deary. Liam McGeever, Manager was also present along with Clare Fergusson. Notes of the hearing are to be found between **106 to 128**.

30. At the outset of the hearing Clare Fergusson asked the claimant if he understood the allegations put forward in the letter inviting him to the disciplinary hearing. The claimant advised that he did.

31. In the hearing, the claimant had the opportunity to explain his position. His position remained as stated in his statement that there was no physical contact between himself and Jack Doyle. In the hearing there was discussion as to the claimant's discussion with his instructor Ron Maxwell immediately after the alleged incident. The claimant expressed surprise that there had not been a statement taken from Ron Maxwell (**115**).

32. There was an adjournment in the proceedings (**127**) in which Clare Fergusson went through all the statements taken by the apprentices present on the 29th September

2017. In the course of the adjournment Clare Fergusson considered that she should carry out further investigations and take a statement from Ron Maxwell. She confirmed to the claimant that he would remain suspended on full pay.

33. Following the disciplinary hearing Clare Fergusson carried out additional investigations. She interviewed David Boulton on the telephone on the 9th November 2017 (**130 to 133**). In the interview David Boulton stated: *"I'm not sure exactly where it was but where I was sitting I was kind of to the side so I never seen where his hand properly went but it might have been that because he had flinched as if it was there."* **(131)**

34. Clare Fergusson also spoke to Jack Norman (**134 to 135**), Harry Swan (**136 to 137**), Jake McKay (**138**) and Ron Maxwell (**139 to 141**). Ron Maxwell is an Instructor/Assessor in the respondents' GTG Training Site of the same level as the claimant and Steven McLeod who initially gave a statement on the 29th September 2017.

35. In his statement, Ron Maxwell stated: "*Now I didn't see what happened because my back was turned working with the rest of the class. We were doing tyre puncture and repairs but when Jack came back to see me he was extremely upset and extremely agitated and he said to me you have to excuse my language "that Gary's just grabbed me in the balls". … "That was immediately and he was really upset and he was quite angry*" (**139**) Ron Maxwell went on to state: "*Jim Hendry asked Steven if he would take a statement from Jack. When I got back to Jack I spoke to him and asked him again what had happened and he told me again that he said "Gary had grabbed him on the balls and he was really really angry about it and really upset about it.*"

36. The statements of Jack Norman, Harry Swan and Jake McKay did not support the version of events as stated by David Boulton and Jack Doyle.

37. On 22nd November 2017 the claimant was invited to a further disciplinary hearing which was held on the 28th November 2017. Present at the meeting were the claimant, Willie Deary as his witness, Liam McGeever, Manager and Clare Fergusson as HR Advisor. All of the additional statements were provided to the claimant in advance of that meeting (**142 to 143**).

38. Minutes of the reconvened disciplinary meeting with the claimant are to be found at **143 to 153**. At the outset of the meeting Clare Fergusson again went through the allegation with the claimant who responded "*Sure okay*". The Tribunal accepted the evidence of Clare Fergusson as recorded in the notes that in the course of the adjourned disciplinary hearing the claimant again had the opportunity to explain his version of events. The claimant's position remained that there had been no physical contact between himself and Jack Doyle.

39. At the conclusion of the meeting there was an adjournment (**152**). Following the adjournment Clare Fergusson stated:

> "*So we have had the opportunity to consider all the things that we have discussed through this meeting and also in the past meeting and obviously looked at your statement again in regards to how the incident occurred and also the statements from the other people who were involved so looking at the evidence obviously we have got Jack's statement as to what happened, his version of events. He feels that you did touch him in the genital area. He has obviously gone, from Ron's statement, gone straight over to Ron who said the same thing and been quite visibly upset about it and that is what he had said to the other trainer when they had spoken to him in regards to it and then obviously we have David who has said that he has witnessed that there has been physical contact between the two parties and obviously have asked him to clarify exactly what he saw. He said that he thought it was the side of the leg that he thinks that Jack flinched as if it was his genital area. So based on the evidence we have got I do have a reasonable belief that there has been an altercation between yourself and Jack and there has*

been physical contact. So based on that I am going to be dismissing you today without notice for gross misconduct." (**153**).

40. The Tribunal heard evidence from Clare Fergusson as to why she reached the decision to dismiss the claimant. The Tribunal accepted her evidence that Jack Doyle had made a contemporaneous statement which had been supported by his statements immediately after the event to two Instructors, namely Steven McLeod and Ron Maxwell. Further, Clare Fergusson had laid weight on the fact that the claimant's position was that no physical contact took place but the evidence of David Boulton was that he witnessed physical contact taking place between the claimant and Jack Doyle.

41. The Tribunal further accepted the evidence that in reaching this decision Clare Fergusson did have regard to the other statements taken in this case which were to the effect that nothing had been witnessed or what had been witnessed was simply "banter". However, Clare Fergusson considered that the seriousness of the charge and the fact that Jack Doyle was at the time a minor rendered this a very serious matter indeed. In considering the other statements, Clare Fergusson had regard to the fact that many of the individuals were themselves under 18 and would not want to speak out against the claimant who was their trainer at the material time.

42. The Tribunal accepted the evidence of Clare Fergusson that the decision to dismiss the claimant was not an easy decision to reach. In deliberating on the decision, she took account of the claimant's 20 years unblemished service. However, she concluded that based on the serious nature of the incident, the fact that Jack Doyle is a minor and the physical aspect to the incident, dismissal was the appropriate sanction in all the circumstances of the case.

43. The claimant was advised of his dismissal and the right to appeal that dismissal by letter dated 28th November 2017 (**154**). That letter stated:

"*I am writing to confirm the decision taken at the disciplinary hearing held on 28th November 2017 that you be summarily dismissed without notice or*

payment in lieu of notice in accordance with the company's disciplinary procedure. Your last day of service was 28th November 2017. The reasons for your dismissal are:- your physical inappropriate and aggressive behaviour towards Jack Doyle on the 29th September 2017. I can confirm that your length of service and previous clean disciplinary record has been taken into consideration, however due to the serious nature of your conduct the decision has been taken that dismissal is the only suitable outcome."

44. The claimant appealed the decision to dismiss him by letter dated 5th December 2017 **(156-157).**

45. The claimant attended a disciplinary Appeal Hearing on the 20th December 2017 conducted by Emma Glass, Senior HR Advisor. Emma Glass's handwritten notes of this Hearing are to be found at page **160** of the Bundle. The Tribunal accepted the evidence that during the hearing the claimant was provided with opportunity to expand upon the grounds of appeal that he had raised in his appeal letter of 5th December 2017.

46. Following the appeal hearing Emma Glass conducted an investigation of the claimant's appeal points which included a face to face meeting with David Boulton (**page 178 to 181**) and a telephone call with Jack Doyle (**183 to 185**). In both the face to face meeting with David Boulton and the telephone call with Jack Doyle Emma Glass spent time probing the case against the claimant. To this end, David Boulton confirmed that he had witnessed physical contact between the claimant and Jack Doyle, stating "*I never knew whether it was actually the part where you're not meant to or just the legs what I'm on about. I don't know exactly where it hit but I know it was in that area.*" (**180**) and Jack Doyle confirmed that the incident had taken place as originally stated by him. To this extent the Tribunal was of the view that the appeal hearing amounted to a partial rehearing of the disciplinary proceedings.

47. In addition, Emma Glass emailed Clare Fergusson on 22nd December 2017 raising with her appeal points made by the claimant. Clare Fergusson responded that day (**175**).

48. By letter dated 23rd January 2018 **(186)** Emma Glass advised the claimant that his appeal had been dismissed. In doing so, she went through each of the grounds of appeal raised by the claimant in his letter of 5th December 2017.

49. On the 16th of October 2018 the claimant received a letter from Disclosure Scotland **(215)** advising him that he had been referred to the Scottish Ministers by the respondents under section 3 of the Protection of Vulnerable Groups (Scotland) Act 2007. The Tribunal accepted the evidence of the respondents that they had no option but to make this referral.

Submissions

50. The parties both provided a summary of their submissions to be included within this Judgment.

Submissions for the Respondents

1.1 **Potentially fair reason for dismissal:** The Respondent submits that the reason the Claimant's dismissal was his conduct. This is a potentially fair reason for dismissal which sits squarely under Section 98(2)(b) of the ERA.

1.2 The Claimant has not disputed that conduct was indeed the reason, and we anticipate that will be an end to the matter. It was not put to the Respondent's witnesses on cross examination that conduct wasn't the true reason for dismissal the Claimant and no such point is advanced in the ET1.

1.3 The allegation against the Claimant was clearly an issue of conduct, and furthermore a matter which the Respondent had reasonably categorised as gross misconduct. Different employers will take different approaches to whether or not

something constitutes gross misconduct. However, it almost goes without saying that the allegation against would constitute gross misconduct.

1.4 Lord Justice Griffiths comments in ***Gilham and ors v Kent County Council (No 2) 1985 ICR 233, CA*** are relevant to the approach that should be taken when identifying a potentially fair reason:

> *"The hurdle over which the employer has to jump at this stage of an inquiry into an unfair dismissal complaint is designed to deter employers from dismissing employees for some trivial or unworthy reason. If he does so, the dismissal is deemed to be unfair without the need to look further into the merits. But if on the face of it the reason could justify dismissal, then it passes as a substantial reason, and the enquiry moves onto [S98(4)] and the question of reasonableness".*

1.5 At this stage the Tribunal is reminded that the employer does not have to prove that the allegations did justify dismissal, this is a matter of reasonableness that comes later in the assessment. Furthermore, an honest belief held on reasonable grounds will be enough, even if it is wrong.

1.6 On that analysis, and especially mindful of the low hurdle required to satisfy this part of the statutory test, it is submitted that this case clearly passes this hurdle of a potentially fair reason for dismissal and that the Respondent has discharged the burden of proof in that regard.

1.7 **Belief there was gross misconduct:** It is clear from Clare Fergusson's evidence that she believed the Claimant was guilty of gross misconduct. We have also heard through her detailed evidence and seen through the relevant documentation, the grounds on which she held those beliefs, such conclusions having been reached after analysing statements from 15 different apprentices and two Instructors, reviewing a statement from the Claimant and hearing from the Claimant at a disciplinary hearing and again at a re-convened hearing.

1.8 Similarly, at the appeal stage, we have heard in detailed terms the grounds for which Emma Glass upheld Clare Fergusson's decision, and we would refer the

Tribunal to the detailed reasons contained within the letter to the Claimant with the appeal outcome (**Document 51**) in this regard.

1.9 It is submitted based on the documentary evidence presented by the Respondent and the evidence heard from the Respondent's witnesses, that it is clear that the Respondent had a genuine belief in the employee's misconduct and that the dismissal was, therefore, for one of the potentially fair reasons, being conduct.

1.10 It was not put to the Respondent's witnesses on cross examination that they did not believe the Claimant was guilty and no such point is advanced in the ET1.

1.11 **Were there reasonable grounds for believing this?**

1.12 It is not lost on the Respondent that this is an extremely serious allegation. However, the test remains whether there were reasonable grounds to sustain their belief.

1.13 We consider the principles of Burchell to be entirely apposite:

It is not relevant, as we think, that the tribunal would itself have shared that view in those circumstances. It is not relevant, as we think, for the tribunal to examine the quality of the material which the employer had before him, for instance to see whether it was the sort of material, objectively considered, which would lead to a certain conclusion on the balance of probabilities or whether it was the sort of material which would lead to the same conclusion only upon the basis of being "sure" as it is now said more normally in a criminal context, or, to use the more old-fashioned term, such as to put the matter "beyond reasonable doubt". The test, and the test all the way through, is reasonableness, and certainly, as it seems to us, a conclusion on the balance of probabilities will in any surmisable circumstances be a reasonable conclusion".

1.14 It is through this lens the Tribunal must view the evidence from the Respondent.

1.15 The Respondent's evidence was clear and unwavering. It considered all of the evidence available, but the following evidence pointed towards the allegation being upheld:

1.15.1 Jack Doyle's contemporaneous hand written statement. A simple, clear and unfiltered account of events. The Claimant reported this immediately.

1.15.2 Steven McLeod's contemporaneous statement mirroring the Claimant's statement and describing the Claimant being in a state of upset.

1.15.3 David Boulton's statements corroborating inappropriate physical contact. Three statements were taken, and three times he categorically stated he had seen physical contact in the genital area (using different terminology).

1.15.4 Ron Maxwell's Statement mirroring the Claimant's statement including in relation to the Claimant being immediately upset and the "what's the problem" aspect of the allegation.

1.15.5 The fact that a number of the other apprentices' statements indicated there had been a heated incident/altercation between the Claimant and Jack Doyle and that some supported Jack Doyle's version of events (albeit not in relation to inappropriate touching).

1.16 Contrary to Claimant's position, the weight of evidence did not support him. The 8 statements where the witness could not recall anything happening cannot possibly be said to support the Claimant. He produced a page long statement of his version of events. If they supported or were consistent with his version of events, they would have recalled – as a bare minimum – there being an incident. Their recollection was conspicuously absent, something which was not lost on the Respondent given their age and whom the allegation was made against.

1.17 In terms of the credibility of the Claimant's explanation, it is submitted that the Respondent reasonably came to the conclusion that the Claimant's version of events simply didn't add up. He changed his version of events during the disciplinary hearing (for example describing himself as dancing to and fro to block

the Claimant and then being adamant he remained stationary). His story was not consistent with the other apprentices' statement (a number of them described him making fun off/laughing at the Claimant and there being a heated exchange – the Claimant refuted this). The Claimant seeks to deny physical contact but offers an incredible alternative of someone being in his personal space and towering down on him in an aggressive manner and then matters simply diffusing, with subsequent laughter from all around.

1.18 The Claimant's health and safety rationale is somewhat of a red-herring. The Claimant categorically denies physical contact of any kind whatsoever. Either the Claimant's version is correct, and there was no physical contact and therefore no need for mitigation. Or Jack Doyle's version is correct and it cannot possibly be argued that Health and Safety considerations would be capable of justifying this conduct (as Emma Glass concluded).

1.19 It is also submitted that it is not for the tribunal to make its own assessment of the **credibility** of witnesses on the basis of evidence given before it. As the EAT put it in ***Linfood Cash and Carry Ltd v Thomson [1989] IRLR 235*** the relevant question is whether an employer acting reasonably and fairly in the circumstances could properly have accepted the facts and opinions which it did. The tribunal is not entitled to interfere simply on the grounds that it prefers one witness to another; it must have logical and substantial grounds for concluding that no reasonable employer could have assessed the **credibility** in the way that it did.

1.20 While it is recognised, as in the case of *Leach v OFCOM [2012] IRLR 839* that where there is no admission of guilt by an individual, Tribunals will always be worried by the thought—*'what if he was innocent?'* in determining whether an employer had a reasonable belief that an employee was guilty of such conduct however, the legal point, as in all unfair dismissal law, is not a question of whether the employee has suffered injustice, but instead whether the employer has behaved reasonably in the circumstances.

1.21 Accordingly, it is submitted that at the time of the decision to dismiss and to reject the appeal, the Respondent had reasonable grounds to sustain its belief that the Claimant was guilty of the misconduct in question.

1.22 **Reasonable Investigation:** It is submitted that there can be no doubt that a reasonable investigation was carried out by the Respondent. Again, the appropriate test is whether the Respondent's investigation fell within the range of reasonable responses available to a reasonable employer.

1.23 The Respondent interviewed every member of the Claimant's class that day, using open questions to elicit an honest recollection from them.

1.24 The Respondent accepts no investigation meeting took place with the Claimant – this is not their normal practice and is not, contrary to the Claimant's position, in breach of the ACAS Code. The Code indeed recognises in some cases an investigation will comprise the collation of evidence prior to a disciplinary hearing. There can be no doubt, however, that the Respondent investigated the Claimant's version of events at the disciplinary hearing. His statement was read out and carefully considered. His representations resulted in further investigation by Claire Fergusson and a second hearing, at which he got a further chance to state his case.

1.25 The following quote from Burchell indicates, the reasonableness of the investigation is viewed in the round including all efforts made prior to the decision being taken:

> *And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.*

1.26 It therefore follows that the Tribunal will be judging the Respondent based on not just the initial investigation, but on the totality of the investigation up to and including the appeal, including the three interviews with David Boulton, the statement taken

from Ron Maxwell on the Claimant's request, the re-interviews of Harry Swan and Jack Norman, and the further interview with Jack Doyle.

1.27 The Respondent did consider and indeed investigate the comments that Jack Doyle did not like the Claimant. It may be the case that other employers would have done less or indeed more by way of investigation on this or other points, but the question is what fell within the range of reasonableness. The Claimant repeatedly indicated he had no working relationship whatsoever with Jack Doyle, he didn't even know who he was. This immediately therefore reduced the requirement for further investigation of such comments. The apprentices' statements, and indeed Jack Doyle himself, simply indicated that – at worst – Jack Doyle didn't find the Claimant's banter or jokes funny, perhaps unsurprisingly if it was at his or others' expense. No further investigation was required.

1.28 The Respondent is not required to leave no stone unturned. That said, and setting aside the character reference request (which the Respondent properly determined was not relevant or necessary – there being no question of the Claimant's performance/capability), the Respondent asked if there was anyone else the Claimant wished them to speak to and he said no; indeed he said they had spoken to everyone in his class which comprised everyone he considered relevant.

1.29 The Claimant understandably does not like the conclusions reached by the Respondent based on the investigation, but submit there can be no basis on which it could be said the Respondent's investigation when viewed in totality did not fall within the range of reasonableness.

1.30 The Claimant is inviting the Tribunal to undertake the process it is not permitted to do – re-hear the case, and find in his favour.

1.31 **Fair Procedure:** In coming to its decision, the Respondent followed a fair process and adhered to the standards set out in the ACAS Code of Practice. In particular:

1.31.1 the Respondent acted promptly and did not unreasonably delay the disciplinary process;

1.31.2 the Respondent carried out an investigation to establish, so far as was possible, the facts of the case;

1.31.3 the Claimant was informed of the allegations against him and provided with copies of all the material in question in advance of the hearing;

1.31.4 the Claimant was informed that the allegations could constitute gross misconduct and could lead to summary dismissal without notice or payment in lieu,

1.31.5 the Claimant was given the opportunity to put forward his case at a disciplinary hearing;

1.31.6 an impartial decision maker was appointed to chair the disciplinary hearing;

1.31.7 the Claimant was given the opportunity to be accompanied throughout the disciplinary process;

1.31.8 the Claimant was afforded the opportunity to appeal the Company's decision, which he took; and

1.31.9 a more senior and impartial decision maker was appointed to chair the appeal hearing.

1.32 The Respondent's disciplinary process was followed. The Respondent disputes the Claimant's assertion it has breached any aspect of the ACAS Code.

1.33 Different people were involved at the original investigation and subsequent disciplinary hearing stage. This is not a case of Claire Fergusson conducting the full investigation and deciding there was a case to answer, then deciding to uphold the allegation. That was Vari Ferrence's job, one which she took on because of Claire's annual leave.

1.34 Claire Fergusson's limited involvement in the investigation did not taint her impartiality at the disciplinary hearing. She did not take Jack Doyle or Steven McLeod's statement. She did not take David Boulton's statement. She had not

formed any view on the case at all prior to the disciplinary hearing. The submission that she was biased is entirely contradicted by her diligent and comprehensive approach to the disciplinary hearing. Of course she had to put the case to the Claimant; and challenge his version of events. This is not indicative of bias. This is a principle of natural justice afforded to the Claimant to ensure he had the opportunity to defend himself.

1.35 It is submitted when Claire Fergusson's evidence is considered by the Tribunal they will have no difficulty reaching the conclusion she had not pre-judged the outcome. Far from it. She expressly advised the Claimant at the end of the first hearing she did not feel comfortable taking a decision until she had a clearer picture. Her actions could not be further from someone who was just paying lip service to the process.

1.36 The suggestion that the procedure was flawed because the process was chaired by the HR team is, respectfully, misconceived. It is accepted that the Respondent's approach of having their HR – now People – team handle disciplinary matters is not typical of most organisations. That does not make it wrong or affect the impartiality of the decision makers. To suggest that is to seek to undermine the integrity of professional individuals following their internal process which are in place to ensure consistency across a large organisation. It is an accusation without foundation.

1.37 Any argument that Emma Glass would be disinclined to overturn Claire Fergusson's decision cannot be squared with the reality that appeal managers in other organisations are regularly and routinely the line manager of the original decision maker.

1.38 Emma Glass had no knowledge of the details of the Claimant's case prior to the appeal and came to it with fresh eyes and an open mind. She did not uphold the decision but it does not follow that she would not have done so had she felt the evidence supported that conclusion. Not put to the Respondent's witnesses they had read the papers or discussed the case with each other; and not put to Emma Glass she influenced Claire Fergusson's decision or vice versa. Papers handed

over for allocation to another member of staff – absolutely standard and not evidence from which the Tribunal can conclude collusion between the team.

1.39 The suggestion that the Claimant did not know the allegation against him simply cannot stand when viewed against the backdrop of the documents sent to him in advance (the invite letter and enclosures); the discussion at the disciplinary hearing of exactly what was being alleged; and his clear and unequivocal confirmation he understood the allegation against him at both disciplinary hearings. At no point during those hearings did he say he misunderstood the allegation.

1.40 The Claimant's argument that an asserted difference between grabbing someone in the genitals and inappropriate touching in the genital area/private parts is, respectfully, not one that we imagine the Tribunal will find attractive. This is not least on account of the fact that the Claimant categorically denies any physical contact whatsoever. He cannot possibly say that he could have defended himself better if he had been told at the start of the hearing that the allegation was touching the Claimant's genital area instead of grabbing. This argument being advanced, in the Respondent's respectful submission, undermines the credibility of the Claimant's primary argument that he did not do what was alleged.

1.41 In assessing whether an employer has adopted a reasonable procedure, consideration should be given to whether the disciplinary process as a whole was fair, which may be the case notwithstanding the presence of some particular procedural flaw, and it is also to consider the matter on the basis of the range of reasonable responses, which also of course applies to the substantive unfair dismissal question (see ***Taylor v OCS Group Limited [2006] IRLR 613; and Sainsbury PLC v Hitt [2003] IRLR 23***).Further, in *Taylor v OCS Group Ltd 2006 ICR 1602, CA* it was suggested that the more serious the misconduct alleged, the more likely it is that a dismissal tainted by procedural irregularities would nonetheless be fair.[1] It is submitted by the Respondent that, in these circumstances, the affected individual being a child in the Respondent's care, the severity of the allegation outweighs any procedural irregularities found in this claim,

[1] IDS Employment Law Handbooks, Volume 12, Chapter 3, Paragraph 94

although it is denied that such irregularities had any impact on the overall fairness of the Respondent's disciplinary process. In *Sharkey v Lloyds Bank plc UKEATS/0005/15 (4 August 2015, unreported)* Langstaff J summed this up as follows:

> *"…procedure does not sit in a vacuum to be assessed separately. It is an integral part of the question whether there has been a reasonable investigation that substance and procedure run together."*

1.42 The Respondent further respectfully directs the Tribunal to the case of *USDAW v Burns EAT 0557/12*, in which it was acknowledged that the tribunal must not treat the reasonableness of the decision to dismiss and the reasonableness of the procedure as if they are two separate questions, each of which must be answered in the employer's favour before the dismissal can be considered fair. It is not, however, an error of law for a tribunal to deal with the substantive and procedural elements of the decision to dismiss separately, ***provided that*** its approach leads to an ***overall determination as to the fairness or unfairness of the dismissal***.[2] **Was Dismissal a Reasonable Sanction?** The Claimant was found to have inappropriately touched an apprentice – then a 17 year old child in the Respondent's care, conduct which the Respondent categorised as physical, inappropriate and aggressive conduct. Different employers will take different approaches as to whether or not certain conduct justifies summary dismissal. However, it must follow that this type of conduct, if upheld, constitutes gross misconduct.

1.43 We heard this type of behaviour went to the ethos of GTG – to train and safeguard apprentices. The Respondent had a responsibility to safeguard these children and young people. Appreciate the Claimant will invite the Tribunal to consider the impact this decision has on him, but equally the Respondent would invite the Tribunal to consider its responsibility to take appropriate action where an allegation of this nature had been upheld.

[2] IDS Employment Law Handbooks, Volume 12, Chapter 3, Paragraph 86

1.44 The Claimant's conduct undermined the trust and confidence in the employment contract and clearly goes to the root of the contract. Dismissal in these circumstances plainly fell within the band of reasonable responses open to the Respondent.

1.45 The Respondent did take length of service and prior record into account. We heard that in evidence from Claire Fergusson and again from Emma Glass. 20 years' service is an extremely long amount of time with an employer and this was weighed in the balance, but due to the nature of the allegation no alternatives to dismissal were considered appropriate. We heard that a warning and or alternative role would not have been appropriate due to trust breaking down.

1.46 Would ask the Tribunal not to focus on the impact of the dismissal on the Claimant. Clearly that weighs heavy on his mind. But the Tribunal's responsibility does not extend to consequences flowing from dismissal – these are matters that are not relevant to the determination of the Burchell factors. The Respondent acknowledges its decision has an impact for the Claimant but that is the reality of the work the Claimant did. And whilst clearly it is appropriate that the Claimant' voice is heard in these, the Claimant's proceedings, we respectfully submit that the indirect result of that focus is that sight may be lost of another key individual in this incident: Jack Doyle – a child at the time of the incident. A child who had raised a complaint immediately after he said it had occurred. The Respondent had evidence to support this complaint, and as a result genuinely believed it had occurred. We imagine the Tribunal can envisage the criticism the Respondent would – rightly – be exposed to had it not taken this matter of safeguarding of a child in their care as seriously as they did. The Claimant may well continue to maintain that he did not do what was alleged, but can certainly not suggest to the Tribunal that if the Respondent did in fact believe he was guilty, that they did not act reasonably in dismissing him.

Conclusions

1.47 In all the circumstances, the Respondent invites the Tribunal to find that the dismissal of the Claimant was fair.

1.48 In the alternative, if the Tribunal finds that the Claimant's conduct was not the principal reason for dismissal (which is not accepted by the Respondent), it is submitted that the reason was due to the breakdown of the trust and confidence required for the employment relationship to continue, which constitutes some other substantial reason and as such is a potentially fair reason under Section 98(1)(b) of ERA 1996.

Submissions for the Claimant

1. The Claimant submits that his dismissal was unfair for the following reasons:

Reason for dismissal

2. It is accepted that the reason for the Claimant's dismissal was properly characterised as conduct. However, the allegation against the Claimant was not precisely framed and did not contain sufficient information to allow the Claimant to properly put forward his case against the precise allegation for which he was, in reality, dismissed (*Strouthos v London Underground Ltd* [2004] IRLR 636).

Genuine belief

3. It is accepted that the Respondent had a genuine belief in the alleged misconduct.

Lack of reasonable grounds

4. The Respondent did not have reasonable grounds upon which to form that belief. Proper consideration and weight was not given to the statements that expressly confirm that the Claimant did not do the conduct alleged, and in particular did not 'grab' or 'touch' the complainant's, Jack Doyle's, genitalia. Those statements expressly confirmed that there was no physical contact between the Claimant and Jack Doyle. Witness statements that state that the alleged conduct did not happen are evidence to support the Claimant's position that he did not commit the alleged conduct.

5. Proper consideration and weight was not given to those witnesses who stated they saw nothing happen. This is particularly relevant in light of the set up of the workshop.

6. Proper consideration was not given to Mr Boulton's statements as a whole, in that he cannot be seen to be "corroborating" Jack Doyle's version of events. He did not see the Claimant's hand make contact, as he reiterates on a number of occasions. He also expressly stated that he did not "think it was what this is about", thereby expressly stating that it was not the conduct alleged by Jack Doyle. He also referred twice to two other trainees who would have seen any "hit", and both those trainees confirmed twice that they did not see physical contact. Undue weight was given to his statement, along with the statements of Mr Maxwell and Mr McLeod as to Jack Doyle's reaction which were contradicted by first hand witness evidence.

7. No consideration or weight was given to the fact that Jack Doyle's own statement was contradicted by other witness evidence. This is particularly relevant in light of his assertion that the incident was "seen by the vast majority of EAC 09". Stuart Robertson and Stephen Tarr raised that Jack Doyle did not like the Claimant. In addition, Stuart Robertson and Robbise Coulter raised that they thought that Jack Doyle had exaggerated the exchange between him and the Claimant. These issues were not investigated further despite being raised by the Claimant.

8. The Claimant's length of service was not properly considered (*Strouthos v London Underground* [2004] IRLR 636*)*. In particular his length of service was not considered when assessing the credibility of his evidence. As a trainer with over 20 years' service and with no prior concerns having been raised about his conduct, such an act would have been entirely out of character.

9. The Respondent did not have reasonable grounds to form the belief that the Claimant had committed the conduct alleged. A reasonable employer on the basis of the evidence before the Respondent would have decided that the Claimant did not commit the conduct or, at the very least, that there was not sufficient evidence to allow it to make a finding as to whether the Claimant or Jack Doyle should have been believed.

As such, at the very least, this is a case where it would have been proper for the Respondent to find that it could not "resolve the conflict of evidence and accordingly do not find the case proved." (*Salford Royal NHS Foundation Trust v Roldan* [2010] EWCA Civ 522, at para 73).

Lack of reasonable investigation

10. It is submitted that the investigation carried out by the Respondent was not reasonable. The Respondent failed to interview the Claimant or Jack Doyle before deciding there was 'a case to answer' and proceeding to disciplinary. The Respondent took Jack Doyle's untested statement as 'the written truth'. The Respondent's view of all of the subsequent witness statements was therefore tainted against the Claimant. The fact that the Jack Doyle's version of events was untested throughout the disciplinary process is fundamentally unfair. It is for the Respondent to ensure that a fair procedure is adopted (*Crawford and Another v Suffolk Mental Health Partnership Trust* [2012] IRLR 402).

11. Due to the seriousness of the allegation and its effect upon the Claimant's career, the Respondent was required to "focus no less on any potential evidence that may exculpate or at least point towards the innocence of the [Claimant] as [it did] on the evidence directed towards proving charges against him… anything less than an even-handed approach to the process of investigation would not be reasonable in all the circumstances." (*A v B* 2003 IRLR 405, EAT, per Mr Justice Elias at paras 58 - 61, confirmed by the Court of Appeal in *Salford Royal NHS Foundation Trust v Roldan* 2010 ICR 1457, CA paras 13 and 60). The Respondent failed to do so and the investigation was far from even-handed.

12. The procedure followed was unfair as Ms Fergusson (i) was the HR adviser involved from the very beginning, (ii) she gave advice to suspend the Claimant, (iii) she planned the investigation, (iv) she carried out a third of the investigation (being 5 out of 15 statements) and (v) she then carried out the disciplinary hearing. This was not immaterial involvement in the investigation and, in light of the size and resources of the Respondent, made the process unfair.

13. It is submitted that for all of these reasons the Respondent's decision to dismiss the Claimant in the circumstances of this case fell out with the band of reasonable responses.

Dismissal was procedurally unfair

14. For the reasons outlined above, the dismissal of the Claimant was both procedurally and substantively unfair. In respect of the procedure, in particular the Respondent's investigation was not reasonable, and the disciplinary hearing was conducted by Ms Fergusson who had had material involvement in the case beforehand. This a breach of the ACAS Code. It is submitted that the defects were not remedied on appeal, due to the limited nature of the further investigation carried out. It is submitted that Ms Glass was not an impartial appeal manager, due to the fact she was a member of the HR Department that as a whole had conducted the disciplinary process against the Claimant.

THE LAW

1. The terms of section 98 of the Employment Rights Act 1996 and the authorities of **British Home Stores v Burchell (1978) IRLR 379 EAT**, **Iceland Frozen Foods Limited v Jones (1982) IRLR 439 EAT** are often cited and are well known to the parties. The principles emanating from these cases are neatly summarised in the case of **Graham v Secretary of State for Work and Pensions (Jobcentre Plus) (2012) EWCA Civ 903**; **(2012) IRLR 8789**. In **Graham** Aikens LJ in a Judgment with which Rafferty and Pill LJJ concurred stated:

> "*35 … once it is established that the employer's reason for dismissing the employee was a "valid" reason within the statute, the ET has to consider three aspects of the employer's conduct. First did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case; secondly did the employer believe that the employee was guilty of the misconduct complained of and thirdly did the employer have reasonable grounds for that belief.*

36 If the answer to each of these questions is "yes", the ET must then decide on the reasonableness of the response by the employer. In performing the latter exercise the ET must consider, by the objective standards of the hypothetical reasonable employer rather than by reference to the ET's own subjective views, whether the employer has acted within a "band of reasonable responses" to the particular misconduct found of the particular employee. If the employer has so acted, then the employer's decision to dismiss will be reasonable. However this is not the same thing as saying that a decision of an employer to dismiss will only be regarded as unreasonable if it is shown to be perverse. The ET must not simply consider whether they think that the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that of the employer. The ET must determine whether the decision of the employer to dismiss the employee fell within the band of reasonable responses which "a reasonable employer might have adopted". An ET must focus its attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any internal appeal process) and not on whether in fact the employee has suffered an injustice."

51. In determining this case the Tribunal also had regard, of course, to the authorities cited by the parties.

Discussion and Decision

52. The Tribunal commenced their deliberations by deliberating the reason given for the claimant's dismissal, namely misconduct. To this end, the Tribunal considered the claimant's position that the allegation against him was not precisely framed and did not contain sufficient information to allow the claimant to put forward his case. In making this submission, the claimant relied upon the case of **Strouthos v London Underground Limited (2004) EWCA Civ 412**.

53. The proposition that the charge against an employee facing dismissal should be precisely framed is, of course, one that is accepted by this Tribunal. However, the

Tribunal did not consider that in the circumstances of the case there was any confusion regarding the charge which the claimant faced. In this respect the charge that was before the claimant was "*Your physical, inappropriate and aggressive behaviour towards Jack Doyle on the 29th September 2017.*"

54. The Tribunal heard the evidence of Vari Ferrence that in framing this charge she had regard to the statements of Jack Doyle and of David Boulton.

55. In the disciplinary hearings of 25th October 2017 and 28th November 2017 the claimant confirmed that he understood the allegations put forward against him. His position was quite simply that no physical contact had taken place between himself and Jack Doyle. In those circumstances, and considering the test of reasonableness, the Tribunal was of the view that the claimant did understand the allegation against him and, further, had full opportunity and did defend that charge at both the disciplinary hearings and the appeal hearing by denying that any physical contact had taken place between himself and Jack Doyle.

56. The Tribunal then proceeded to consider whether the respondents carried out an investigation into the matter that was reasonable in the circumstances of the case. In this respect, the claimant's position is that the investigation carried out by the respondents was unfair, firstly, as the respondents failed to interview either the claimant or Jack Doyle before proceeding to a disciplinary hearing. The Tribunal was not persuaded that this in itself rendered the investigation unfair as the reasons given by the respondents for this were that they already had a statement from Jack Doyle and, insofar as the claimant was concerned, it was fairer to him to see all the evidence before stating his position on the incident in question. Both these reasons seemed to the Tribunal to fall within the band of reasonable responses open to the respondents in all the circumstances of this case.

57. Further, it is noteworthy that against the backdrop of the statements of Jack Doyle and Steven McLeod, Clare Fergusson and Vari Ferrence went on to interview 15 apprentices who were present on the 29th September 2017. Indeed, had it not been for the statement of David Boulton Vari Ferrence fairly said that it was unlikely

that matter would have proceeded further and that the most that would have happened might have been a discussion with the claimant regarding appropriate use of "banter". In this respect, the Tribunal accepted that Vari Ferrence placed weight on the 14 statements provided by apprentices which did not support the statement of Jack Doyle.

58. In determining whether the investigation was reasonable or not and whether the decision to progress the matter to a disciplinary hearing was reasonable or not, the Tribunal had regard to the fact that the charge laid against the claimant was a very serious charge indeed and was a charge that involved a minor working as an apprentice with the respondents. In this respect, the investigation as a whole and the conclusions reached by Vari Ferrence could not, in the opinion of the Tribunal be said to fall outwith the band of reasonable responses open to the respondents.

59. In all of those circumstances the Tribunal concluded that the investigation into this case that was carried out by the respondents was reasonable .

60. The Tribunal then considered whether the respondents believed that the claimant was guilty of the misconduct complained of. To this end, the claimant's solicitor helpfully conceded that the respondents did have a genuine belief in the misconduct of the claimant.

61. The Tribunal then considered whether the respondents had reasonable grounds for that belief. The claimant's position is that proper consideration and weight was not given to the witness statements that did not support Jack Doyle's narration of events. It is also submitted that the statements of David Boulton could not be seen to corroborate Jack Doyle's version of events as he did not expressly witness the expressed allegations made by Jack Doyle.

62. In deliberating this issue, the Tribunal considered the grounds that the respondents relied upon in forming their belief that the claimant had committed an act of gross misconduct. To this end, in reaching her decision Clare Fergusson relied upon Jack Doyle's contemporaneous handwritten statement, the statements from Steven

McLeod and Ron Maxwell who did not witness the incident but did witness first hand Jack Doyle's reaction to the incident and David Boulton's statements. Against this, the claimant's position throughout was that he denied any physical contact whatsoever with Jack Doyle.

63. In deliberating this issue, the Tribunal reminded itself that it must determine whether the decision of the employer to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. In the words of Aitkens LJ in **Graham** "*An ET must focus its attention on the fairness of the conduct of the employer at the time of the investigation or dismissal (or any internal appeal process) and not on whether in fact the employee has suffered an injustice.*"

64. It may be that in all the circumstances of this case the Tribunal itself may have concluded that there were not reasonable grounds to form the belief that the claimant had committed the conduct alleged. The Tribunal itself may have determined that it could not resolve the conflict of evidence and find the case not proven. However, if the Tribunal were to substitute its own decision making process for that of the respondents it would err in law. In these circumstances, in view of the seriousness of the charge laid before the claimant, in view of the fact that this involved a minor and in view of the fact that there was evidence that was supportive of Jack Doyle's allegations it is the decision of the Tribunal that there were reasonable grounds for the respondents to have a genuine belief in the alleged misconduct of the claimant.

65. The Tribunal then proceeded to consider the allegations made by the claimant that the dismissal of the claimant was procedurally unfair in that Clare Fergusson was the HR Advisor involved from the outset who gave advice to suspend the claimant; she had some involvement of the investigation in that she interviewed 5 of the 15 apprentices before departing on annual leave and she then carried out the disciplinary hearing.

66. The Tribunal accepted the evidence of Clare Fergusson that after her involvement in the investigation she had formed no opinion on the guilt or otherwise of the claimant. To this end she had had sight of this statements of Jack Doyle and Steven

McLeod and had also carried out 5 of the 15 statements all of which did not support the account given by Jack Doyle.

67. The Tribunal considered that the involvement of Clare Fergusson in the investigation was not material. In reaching this conclusion, the Tribunal had regard to the statement of Vari Ferrence that her decision that this matter proceed to a disciplinary hearing was predicated upon the statement of David Boulton and had it not been for that statement then in all probability the claimant would not have faced sanction. In all these circumstances, the Tribunal concluded that the procedure followed by the respondents fell within the band of reasonable responses open to them in the circumstances of this case.

68. Further and in any event, the Tribunal is of the view that *esto* there were any procedural deficiencies in the case, those were remedied on appeal. The Tribunal found the appeal process to be thorough and to amount to a partial rehearing of the essential elements of the claimant's claim. The Tribunal considered Emma Glass to be an impressive witness who clearly approached her task with impartiality and fairness. In this respect, the Tribunal found no basis or merit in the argument made by the claimant that Emma Glass was not an impartial Appeal Manager due to the fact that she also was a member of the respondents' HR Department.

69. The Tribunal then considered the reasonableness of the response by the respondents in dismissing the claimant. To this end, the Tribunal deliberated upon the claimant's 20 years unblemished service. Against that, the Tribunal had regard again to the seriousness of the allegations involving as they did a minor in the employment of the respondents. Once again, the Tribunal reminded itself it would be an error in law for the Tribunal to substitute its own opinion on sanctions for those imposed by the respondents. In all the circumstances, the Tribunal concluded that it could not be said that dismissal of the claimant in these circumstances fell outwith the band of reasonable responses open to the respondents.

70. It is for all these reasons that the claimant's claim of unfair dismissal is dismissed.

Employment Judge: Porter
Date of Judgment: 03 December 2018
Entered into the Register: 07 December 2018
and Copied to Parties