



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Dearing

**Respondent:** Humber Teaching NHS Foundation Trust

**HELD:** by CVP **ON:** 13, 14, 15 and 16 October 2020

**BEFORE:** Employment Judge Rogerson (sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr Ben Williams (Counsel)

# JUDGMENT

1. The complaints of unfair dismissal and wrongful dismissal fail and are dismissed.

# REASONS

## Issues and complaints

1. By a claim form dated 3 September 2019, the claimant brought complaints of wrongful dismissal and unfair dismissal. By a response dated 9 October 2019, the respondent defended the complaints.
2. The claimant was summarily dismissed for alleged misconduct of a continued failure to complete accurate and expected minimum standards of clinical documentation in breach of the NMC code and the respondent's codes of conduct and for a failure to complete the required documentation when given the time and facilities to work from home on 25 May 2018 and during the following week. The respondent also found that the claimant's conduct breached the implied term of trust and confidence.

3. The claimant complains her dismissal is unfair and wrongful. While she accepts she was dismissed for a conduct related reason which is a potentially fair reason, she complains her dismissal was unfair and too harsh a sanction. For the wrongful dismissal she says her conduct was not sufficiently serious for it to be treated as a repudiatory breach of contract justifying summary dismissal and her contract provides for 12 weeks' notice of termination. She accepts that in error the respondent paid her 4 weeks' notice pay and she claims a further '8' weeks' pay, are owed as damages for wrongful dismissal.
4. At the beginning of the hearing I explained to the claimant that to decide the wrongful dismissal complaint the respondent had to prove on the balance of probabilities that the claimant had committed the alleged misconduct and that it was a repudiatory breach of contract which entitled the respondent to dismiss without notice or pay in lieu of notice. The claimant has not given her account of the alleged misconduct in her witness statement and she confirmed that she would be relying on the account she gave her employer during the disciplinary process.

### **Evidence**

5. For the respondent I heard evidence from Miss Janine Smith, who was the dismissing officer and Care Group Director and from Mrs Tracey Flanagan who was the appeals officer and is the Deputy Director of Nursing. For the claimant I heard evidence from the claimant. I also read documents from the agreed bundle that I was referred to in the witness statements.

### **Credibility of witnesses**

6. I found the respondent's witnesses answered questions in a direct, open and honest manner. The answers were measured, referable to and consistent with the contemporaneous documents. Although the claimant answered questions truthfully, I found her evidence was less direct, unclear and confusing in parts. The claimant had a tendency not to directly answer the question she was asked. Her answers were often contradictory and were unsupported by the contemporaneous evidence.

### **Findings of fact**

7. The claimant was employed by the respondent as a Community Psychiatric Nurse from 13 April 2015. Prior to this she had worked in a variety of nursing roles and she has over 25 years' experience as a nursing professional.
8. The claimant worked as a Band 5 Psychiatric Nurse for the respondent at two different settings. Between 2016 and spring 2018, she worked with the Goole Older People's Community Team and from 15 May 2018 up until her dismissal she worked in the Holderness Team in Rosedale. In both settings, the claimant accepts that her role as a nurse, is regulated by the Nursing and Midwifery Council ('NMC') and she works under the 'Standards of Professional Practice and Codes of Conduct' ('the Code'). The code expressly requires nurses to 'practice effectively' by "*keeping clear and accurate records relevant to their practice*" and that they "*must complete patient records at the time or as soon as possible after an event, recording if the notes are made sometime afterwards*". Elements of the code are incorporated into the Trust Defensible Documentation Policy. The Trust require the "*prompt completion of patient records and wherever possible it is done within 24 hours of a particular event or interaction*" (See page 96 in the bundle).
9. At paragraphs 14 to 33 of Miss Smith's witness statement, she helpfully describes the role of a Band 5 Psychiatric Nurse, the Trust's requirements and expectations

in relation to patient record keeping and why those requirements are put in place. That evidence was not disputed and the salient points are set out below.

10. Patients who receive care from Community Mental Health Team tend to live in a particular geographical area. They are usually over 65 and have severe and/or enduring mental health issues. They are essentially some of the most vulnerable members of society, often individuals with very complex, physical and mental health needs.
11. The claimant's role as a psychiatric nurse required her to visit those patients in a community setting and to provide nursing care. This generally involved carrying out an initial assessment, identifying and recording risks to health and well-being. Devising and recording care plans for patients and carrying out follow up visits, for the purposes of implementing clinical interventions as specified in the care plan and reporting the patient's progress. The first substantive contact with a patient generally happens during the first meeting and assessment. At that meeting patients generally require either a full mental health assessment ("FMHA") or a memory assessment (MA). FMHA is a full assessment of the patient's social circumstances, their medical history, psychological well-being, mental state, needs, risks and medication. It is essentially a comprehensive biological social and psychological patient assessment.
12. There are several stages to completing the FMHA. Information needs to be correctly recorded in the right place at each stage of the process. This is because if different healthcare professionals or other nurse become involved in caring for that they need to easily access and locate that information. If the information is not where it should be, the patient is put at risk of not having their needs met or important information being missed.
13. After the FMHA assessment has been completed, the nurse is required to record the results of that assessment on to the Trust's computer system which is known as 'Lorenzo'. There are five tabs on the Lorenzo system that need to be completed for each patient. Firstly, the completed CPA assessment, secondly the risk assessment, thirdly the care plan and fourthly the letter to the GP. There is also a fifth tab for recording 'any nursing communications'. The assessment process requires those 4 stages to be completed for each patient ending with the letter to the patient's GP. This is the electronic file of paperwork required for each patient. 'Lorenzo' will show whether each of the stages have been completed, when and by whom. It can also show when an individual has accessed the system by the user identification number, so any activities undertaken on the system can be traced. The claimant understood how to use the Lorenzo system, how to complete each part of the process for each patient, and why that information had to be completed and stored in that way, so that it could easily be retrieved by other health care professionals.
14. The claimant's record keeping was a cause for concern when she had worked in the Goole team under the management of Jackie Vagg. Concerns were raised with the claimant in supervision sessions and continued to be raised when she moved to the Holderness team under the supervision of her new manager, Debbie Drury.
15. On 16 January 2019, the claimant was suspended from clinical duties. During her suspension, the claimant was restricted to non-clinical duties.
16. On 13 March 2019, the claimant was sent a letter inviting her to a disciplinary hearing on 15 April 2019. The date of the disciplinary hearing was subsequently changed, at the claimant's request, to 8 May 2019. The invitation letter identifies

four allegations of potential misconduct which were to be considered at the disciplinary hearing. The first allegation was the “continual lack of accurate and expected minimum standards of clinical documentation”. The second allegation was the “failure to complete a specific work task when given time and facilities to work from home on a specific date to complete the required documentation”. The third allegation was the “further failure to complete this work when given a further week to complete the task”. The fourth allegation was the “failure to engage in line with Trust capability process”. The fourth allegation was not proven and was not relied upon for the dismissal. The second and third allegation were linked together and treated as one allegation during the disciplinary process.

17. The letter informed the claimant that Miss J Smith would be the disciplinary officer, that the management case would be presented by Jenni Jordan, the investigating officer, and that the claimant would be provided a copy of the management case at least 10 days prior to the hearing. The procedure for the hearing was explained to the claimant so that she knew what to expect and could prepare her defence. She was informed the management case would be presented first, then any witnesses would be called by the management side and the claimant would have the opportunity to question those witnesses. The claimant would then present her side of the case and could call any witnesses, if she chose to call witnesses. The claimant also knew that a possible outcome was dismissal because she was warned that the allegations if proven, could be treated as gross misconduct resulting in the termination of the claimant’s contract of employment without notice.
18. The claimant has suggested in closing submissions and in her claim form that the allegations were not sufficiently clear. That was not the position because the letter very clearly identifies all the allegations and 10 days prior to the disciplinary hearing the claimant had a copy of the management case and all the evidence Ms Jordan would rely upon in presenting the management case.

### **The investigation**

19. Ms Jordan carried out the investigation and provided a detailed investigation report as part of the management case (pages 802 to 808 in the bundle). For each allegation she interviewed all the relevant witnesses and gathered all the relevant evidence. When she interviewed the claimant, she looked to establish the facts, and to find any explanation, mitigation or personal reflection from the claimant. She looked for all the relevant documents. This included the documented managerial supervision records from the claimant’s supervisors in both settings to provide a full picture. She reviewed the case file audit documentation. She reviewed the Lorenzo electronic records for all 11 patients the claimant had been allocated when she worked at Holderness. For the Goole setting, she reviewed the audit documentation considered with the claimant during her supervision meetings. The documents illustrate numerous consistent and repeated shortfalls in the claimant’s patient record keeping. Ms Jordan reviewed the managerial support that had been provided to the claimant by Jackie Vagg and Debbie Drury. She noted that the claimant had been given a reduced new patient allocation, increased support and supervision, offers of additional training and a transfer to a new team which was the reason why she had moved to the Holderness team. Ms Jordan reviewed the support provided and concluded that there were no further measures that could have been implemented to help the claimant to achieve what was reasonably expected of her in the performance of her role.
20. For the second allegation, after interviewing the claimant, Ms Jordan conducted further investigations. She reviewed Lorenzo and found that contrary to the

claimant's assertion, she had not undertaken any of the work expected during the 'working from home day' on 25 May 2018 to complete the assessments or in the following week up until her absence due to sickness. There was no evidence on Lorenzo or of any work being completed by the claimant.

21. A table of the results of the Lorenzo review carried out by Ms Jordan (page 809) shows that for the 11 new patients allocated to the claimant, none of the paperwork had been fully completed for any patient. For all the patients the review showed no care plans or letters to GP's had been completed.
22. It was clear from my reading of the investigation report and the documents gathered during the investigation that Ms Jordan conducted a comprehensive and careful investigation. The claimant was provided with all the evidence (documentary and witness evidence) so that she knew the case she was required to answer in advance of the disciplinary hearing. In fairness to the claimant in cross-examination, she accepted that the investigation was fair. Having seen all the evidence, I agreed with her assessment.

### **The disciplinary hearing**

23. Miss Smith conducted the disciplinary hearing. She was an impressive witness. She approached her role carefully and conscientiously. She sets out in her witness statement, how she reached her decision identifying the evidence that she considered and the weight she attached to that evidence. Despite lengthy cross-examination, the claimant failed to successfully challenge that evidence. Miss Smith gave detailed answers supported by the contemporaneous evidence. She had taken great care in preparing for the disciplinary hearing, by reading all the documentary evidence, the management case and the documents the claimant had produced in her defence.
24. The disciplinary hearing took place over two days on 8 May 2019 and 13 May 2019. The claimant was accompanied by a friend at the hearing. The process proceeded as had been previously outlined. Miss Smith reasonably formed the view that the hearing should focus on the allegations to consider the evidence for and against each allegation and whether there were any mitigating factors.
25. Ms Jordan presented the management case. Miss Smith heard direct evidence from the supervisors involved in managing the claimant. She heard evidence from Debbie Drury, Jackie Vagg and Joanne Ambler. The claimant had the opportunity to challenge that evidence. At this hearing, the claimant said that she had disagreed with what they said at the disciplinary hearing, but did not challenge their evidence because she did not want to appear 'aggressive or confrontational'. She understood that if the allegations were proven she was at risk of losing her job. In my view, there was no reason why the claimant could not have provided Miss Smith with an honest and truthful account at the disciplinary hearing, without being aggressive or confrontational. Miss Smith could only decide the disciplinary outcome based on the evidence presented to her and the answers the claimant gave to her at the time.
26. The claimant presented her case on 13 May 2019. It was clear from my reading of the disciplinary hearing notes that the claimant was not rushed and was not cut short in presenting her case. She suggests that because the 2<sup>nd</sup> day of the hearing finished at 1pm her presentation was 'restricted'. There was no evidence to support her suggestion. It was clear from the contemporaneous notes that the process was not rushed. Although Miss Smith did try to keep the claimant focussed on the relevant matters she did not restrict the time spent on those matters. A disciplinary hearing spanning '2' days was not a short hearing. If the claimant wanted more time

and had asked for more time, there was no reason for the claimant to believe any request would have been refused. Furthermore, as Mr Williams points out in his closing submissions, if the claimant had genuinely felt she had been rushed and it was unfair, it was odd that complaint did not feature in her appeal letter.

27. Miss Smith drew on the following findings of fact that she made to support her decision:
- 27.1. The claimant was confident using Lorenzo.
  - 27.2. She knew what she was expected to do in terms of completing necessary paperwork for each patient and she knew she was expected to complete it electronically as soon as possible (ideally straightaway).
  - 27.3. She gave differing accounts of the work she did on the 11 patients she was allocated. She initially said she had fully completed six records, then fully completed five, when Lorenzo showed that none of the patient records had been fully completed.
  - 27.4. The claimant did not demonstrate any insight into her own behaviour or accept any responsibility for her actions.

**The dismissal decision.**

28. The rationale for the decision to dismiss is clearly set out in Miss Smith's witness statement and the outcome letter sent to the claimant on 14 May 2019. For the first allegation Miss Smith decided that there was sufficient evidence to demonstrate that the claimant had failed to meet the expected minimum standards of clinical documentation in that she had failed to complete patient records in a timely manner or at all, and this failure was not a temporary or transient issue. She therefore found the allegation was proven. For allegations two and three, there was no evidence of any work undertaken on Lorenzo on 25 May 2018 which had been a day allocated for the specific purpose of completing the patient records on Lorenzo. The records showed a further day had also been allocated on 18 May 2018 for that purpose. Secondly Miss Smith did not believe the claimant's account of her actions on 25 May 2018. The claimant had not been truthful to Debbie Drury at the time or in the account she gave to Miss Smith at the disciplinary hearing. The work was not completed on 25 May 2018 or from 26 May 2018 to 4 June 2018 when the claimant was absent from work due to sickness. The claimant knew the records had not been completed and were still a cause for concern for Ms Drury because the issue had been raised with her in the supervision meeting on 29 May 2018. Despite this, the claimant, failed to take any steps to complete the paperwork
29. Having found those allegations were proven, Miss Smith considered the sanction and again provides her detailed rationale in the outcome letter. She treated the proven allegations as serious misconduct and considered that the cumulative effects of the misconduct had broken trust and confidence. Fundamentally the claimant had not been truthful when she repeatedly said she had completed work and assessments when she knew that was untrue. She had also not truthfully explained what she had done on 25 May or for the week after when she could have completed the work.
30. Miss Smith provided a written outcome letter which is at pages 953 to 958. She accepts that in error, the claimant was paid for four weeks' notice when summary dismissal would not entitle the claimant to any notice or pay in lieu of notice. When the claimant was taken to page 957, she accepted that Miss Smith had a genuine

belief that the claimant had committed the alleged misconduct, and that trust and confidence had been broken.

31. Very succinctly the dismissal letter sets out the reasons why Miss Smith genuinely believed that the claimant's conduct was gross misconduct which justified her summary dismissal. The most important factor for Miss Smith was the risk that the claimant would repeat the conduct exposing the Trust to further risk. The relevant part of the letter states:

*"I have reviewed all of the information presented at the hearing by both parties and I have concluded that your actions and behaviours amount to gross misconduct under the Trust's disciplinary policy, and a breakdown of trust and confidence. You've not only fallen short of the standards expected by NMC in your role as a registered nurse, by failing to keep clear an accurate record at all times, but have also breached the Trust policy on Record Keeping and the Essential Elements of Defensible Documentation Guidance. You also sought to mislead your managers in relation to the same by alleging that the documents have been completed when there was no evidence of this. You have also failed to demonstrate any insight into the serious nature of the allegations against you, the risk that you would pose to patients in not having accurate clinical records, and have further failed to take any responsibility for your actions."*

32. The claimant appealed the dismissal relying on a number of 'points' of appeal. Miss Smith prepared a report dated 1 August 2019, responding to each point. The appeal was due to be heard by Ms Tracey Flanagan on 15 August 2019, however Ms Flanagan agreed with the claimant's request that the appeal hearing should be postponed until the outcome of the grievance appeal because the outcome might be relied upon as mitigation. That was the agreed way forward and something the claimant insisted was followed thereafter. Unfortunately, the decision on the grievance appeal was delayed and eventually Ms Flanagan suggested the appeal hearing should proceed on 27 November 2019 without the grievance appeal outcome. She decided she would reserve any decision until the outcome of the grievance appeal so the claimant was not disadvantaged in any way. It was a sensible solution, however, on 20 November 2019, the claimant refused to agree to that and suggested it was unreasonable for Miss Flanagan to proceed to hear the appeal without the grievance outcome.
33. Ms Flanagan agreed to the claimant's request and rearranged the appeal hearing for 3 December 2019. On 29 November 2019, the claimant's union representative informed the respondent that the claimant had chosen not to attend the appeal hearing. The claimant says that she had another job and she was finding it difficult to attend, even though she accepts that the appeal was arranged to suit her work commitments. By 29 November 2019, the claimant had received the outcome of the grievance appeal but did not want to share that outcome with Miss Flanagan. The grievance appeal was not upheld. Given the claimant's reliance on that outcome and the position adopted to that point, it is odd that she did not share the outcome with Ms Flanagan. No doubt if the appeal had been upheld, the claimant would have shared that outcome.
34. The claimant did not attend the appeal hearing and Ms Flanagan upheld the dismissal. The claimant had been given the opportunity to attend or to provide written information. Prior to the appeal the claimant had requested access to

Lorenzo. The respondent provided her with that access and the claimant produced her own audit of the patient records. The claimant's audit was consistent with the review carried out by Ms Jordan and did not help her case. It showed there was a failure to complete any patient records on Lorenzo. Although the claimant now suggests that prior to her dismissal the respondent refused her request for access to Lorenzo, there was no evidence of any request being made. I agreed with Mr Williams that it was disingenuous for the claimant to make that suggestion now when she had not referred to it at all before this hearing. It did not, in any case, make any difference given that the audit the claimant conducted gave the same result as the respondent's audit. Ms Flanagan was entitled to conclude that there was no basis upon which the decision made by Miss Smith should be overturned

### Applicable law

35. Section 98(1) provides that it is for the employer to show the reason for the dismissal and that it is a potentially fair reason. Section 98(2)(b) provides that a potentially fair reason for dismissal is one relating to the conduct of the employee.
36. Section 98(4) provides that "where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-
  - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
  - (b) shall be determined in accordance with equity and the substantial merits of the case.
37. The guidelines established in **British Home Stores-v Burchell 1978 IRLR 379**, apply in conduct dismissals. Has the respondent shown it had a genuine belief that the claimant was guilty of the misconduct, and then applying a neutral burden of proof, did the respondent have reasonable grounds to sustain that belief at the stage it was formed, and was a reasonable investigation conducted?
38. Those guidelines are used regularly by Tribunals and have been upheld by the Court of Appeal in **Graham v Secretary of State for Work and Pensions (Jobcentre Plus) 2012 EWCA Civ 903 2012 IRLR 75**. Where Aikens LJ gave a useful summary of how the Tribunal should approach its task:

*'35 ...once it is established that 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 those 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 or range 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. ....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."*

39. In the context of section 98(4) ERA 1996, the three relevant elements to consider are:

- Did the employer have reasonable grounds on which to sustain his belief;
- Had the employer carried out as much investigation as was reasonable; and
- was dismissal a fair sanction to impose?

40. For the wrongful dismissal (breach of contract in relation to notice pay), a very different legal question must be answered. The Tribunal has to decide on the balance of probabilities, whether the claimant was in breach of contract to the extent that her conduct might be regarded as repudiatory which entitled the employer to summarily dismiss? It is only if the respondent was not so entitled, that the claimant is entitled to damages for the breach by way of notice pay.

## Conclusions

### Unfair dismissal

41. The first question was whether Miss Smith had a genuine belief that the claimant was guilty of the proven misconduct. I find and the claimant has agreed that Miss Smith did have that genuine belief. Secondly, did Miss Smith, as a result of Ms Jordan's investigation and her own investigation during the disciplinary hearing, carry out a reasonable investigation into the alleged misconduct. The claimant accepts and I find, the investigation conducted by Ms Jordan was reasonable, thorough and fair. All the relevant witnesses were interviewed, all the relevant documents were gathered and disclosed to the claimant. The claimant also had the opportunity to challenge the witness accounts at the disciplinary hearing and to question the investigating officer, if she felt there had been any deficiencies in the investigation process. Finally, did Miss Smith have reasonable grounds for believing the claimant was guilty of the proven acts of misconduct and that trust and confidence was broken. The grounds are very clearly set out in the findings of fact made at paragraphs 27 and 28, and in the letter of dismissal referred to in paragraph 31. Miss Smith approached the hearing with an open mind, she approached her role carefully and conscientiously and provided a reasoned outcome, supported by the evidence collected in the investigation and at the disciplinary hearing. The claimant had not completed the patient records effectively at the time of the patient assessment or as soon as possible afterwards. She had been allocated additional time out for this task to be completed on 18 May 2018 and 25 May 2018. She had a further period of time up to 4 June 2018 to do the work, she should have done on 25 May 2018. She didn't do the work on 25 May 2018 and provided her employer with an untruthful account of the work she had done on that day. Even at this hearing she has not been able to explain her actions on 25 May or why she didn't do the work she was expected to do on that date or any time after when she knew the patient records on Lorenzo had not been completed and that her failure was a cause for concern.

42. Trust and confidence is a fundamental term of the contract of employment. Miss Smith reached a reasonable conclusion on the evidence before her that the claimant had not been honest in the account she had provided and her conduct had broken trust and confidence.
43. Was dismissal within the band of reasonable responses? Given the conclusion that Miss Smith reasonably reached that trust and confidence was lost and there was a real risk of recurrence, dismissal was a reasonable response. The claimant had not demonstrated any insight or taken responsibility for her actions. The evidence showed repeated recurrence of the misconduct despite failed attempts to help the claimant rectify her behaviour. The consequences of that behaviour put patient care at risk, and Miss Smith concluded that was too great a risk for the Trust to take. The claimant is an experienced nurse of 25 years. She knew what she was required to do in completing the assessment documentation, how it was required to be completed and why the records had to be completed on Lorenzo. Miss Smith reasonably concluded that the claimant was unwilling, not unable and she had been untruthful about her actions. For those reasons any reasonable employer faced with circumstances where an experienced nurse is found to have deliberately failed to complete patient records and been untruthful, could reasonably conclude that dismissal was a sanction falling within the band of reasonable responses.
44. Was the dismissal procedurally unfair and in breach of any of the ACAS code of practice? The alleged procedural breaches the claimant identified in her claim form were not all put to the witnesses in cross examination. I have not found any breaches of the ACAS Code in the findings of fact made. There was no evidence to support the complaints the claimant makes at paragraph 51 of her claim form but for the sake of completeness, I will briefly deal with each one in turn:
- (1) *The respondent failed to investigate without reasonable delay.* The investigation was thorough and detailed and took place within a reasonable period time.
  - (2) *The claimant's suspension was unreasonable.* The suspension was not unreasonable and the claimant continued to perform non-clinical duties during the suspension period.
  - (3) *A failure to provide sufficient detail about the alleged misconduct to allow the claimant to answer the case.* There was no such failure. The allegations were clear and the claimant knew the case she had to answer at the disciplinary hearing.
  - (4) *There was a failure to hold a disciplinary hearing without unreasonable delay.* The disciplinary hearing was postponed at the claimant's request and took place in a reasonable period thereafter.
  - (5) *There was a failure to provide the claimant with an opportunity to call witnesses.* The claimant knew that she could have called witnesses and chose not to do so.
  - (6) *There was a failure to provide an appeal and to hear an appeal without delay.* While there was a delay from May 2019 to December 2019 the delay was explained. It had been agreed at the claimant's request because she wanted the respondent to delay her appeal until she had got the outcome of her grievance appeal. It would be unreasonable to criticise the respondent for the delay in those circumstances. In any event it is difficult to see what (if any) unfairness that delay caused the claimant. The claimant had another job, and

had lost interest in the appeal. She wanted the appeal delayed and chose not to attend. There was no unfairness caused by that delay to the claimant.

The dismissal was procedurally and substantively fair.

45. Dealing then with the wrongful dismissal complaint. Unfortunately, I have not had any better account from the claimant to explain the misconduct than the account the claimant gave to the respondent at the time. Having heard evidence from Miss Smith and from the claimant and having seen the documents I find the respondent has proved to me on the balance of probabilities that the claimant was guilty of serious misconduct which irretrievably damaged trust and confidence. The risk of repetition was real. The claimant has shown no insight and did not and has not accepted any responsibility for her actions. The respondent was entitled to conclude she had by her conduct committed a repudiatory breach which entitled the respondent to summarily dismiss.
46. One final point that I would make is that the records that the respondent required the claimant to complete was not unnecessary or unimportant. The Lorenzo records were required to be completed for the patient safety and care were for the patients allocated to the claimant. If completed any practitioner looking at those records could see what that patient required and could take the next step. The claimant's subsequent sickness absence illustrates why someone else would need to step in to care for those patients in her absence. It was understandable why the claimant's failure to complete those records was treated as seriously as it was. It is unfortunate that the claimant did not and does not view her failure as seriously given those consequences. Both complaints fail and are dismissed.

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Employment Judge Rogerson

Date: 25 November 2020

JUDGMENT SENT TO THE PARTIES ON

Date: 30 November 2020