



EMPLOYMENT TRIBUNALS

Claimant: Ms Margaret O'Connor

Respondent: HC-One Limited

Heard at: Cardiff by CVP **On:** 19th March 2021

Before: Employment Judge G Duncan

Representation

Claimant: Mr Cowley, Citizens Advice

Respondent: Mr McGlashan, Solicitor

RESERVED JUDGMENT

It is the decision of Employment Judge G Duncan that the Claimant's claims for unfair dismissal and wrongful dismissal are dismissed.

REASONS

Introduction

1. The Claimant is Ms Margaret O'Connor. The Respondent is HC-One Limited. The Claimant worked as a care assistant in the Respondent's care home. She initially commenced her employment as a member of staff in the kitchen, in June 2005, before progressing into the role of care assistant. She was dismissed on 27th July 2020.
2. The Claimant was represented today by Mr Cowley of the Citizens Advice Bureau. The Respondent was represented by Mr McGlashan, Solicitor.
3. The Claimant, by way of ET1, received by the Tribunal on 12th November 2020, states that she was attending to a resident at approximately 10:45am on 20th June 2020. She details that she needed to change the resident's bedding and clothing. The Claimant details that her interactions with the resident led to her dismantling the bed and placing it in the corridor. She states that she informed a number of members of staff of her actions before

finding out that a member of the kitchen staff had tested positively for Covid-19. She states that everyone started panicking and in that panic she had forgotten about the resident's bedding. The Claimant was dismissed for gross misconduct.

4. The Claimant brings a claim for unfair dismissal on the basis that her actions were intended to preserve the health and safety of the resident. She contends that the decision to dismiss was outside the band of reasonable responses. She states that if her actions were inappropriate then this was a consequence of improper training. She contends her length of service and previous conduct was not taken into account properly. She also claims for wrongful dismissal for 12 weeks' notice pay.
5. The Respondent, by way of ET3 and accompanying statement in response, defends the claims and assert that the Claimant's conduct fell into the Respondent's non-exhaustive list of offences that are normally regarded as gross misconduct. They state that the incident was appropriately investigated, the disciplinary procedure was fair and that the decision was within the band of reasonable responses.
6. In consideration of the claims, I have received a bundle running to 191 pages and a separate witness statement bundle. The bundle includes statements from the witnesses from whom I heard oral evidence, namely:
 - i) Lisa Llewellyn, manager responsible for conducting the investigation;
 - ii) Maria Jones, manager responsible for the disciplinary hearing;
 - iii) Janine Marouf, manager responsible for the appeal hearing; and,
 - iv) Claimant.
7. I am grateful for the considerable effort made by the witnesses to ensure that the hearing could proceed. There were connection difficulties for Lisa Llewellyn and Maria Jones. Despite this, I was able to fully understand their evidence and I am entirely satisfied that the process was fair to all parties if not extremely frustrating whilst parties had to wait for connection issues to resolve.

Preliminary Issue

8. Rule 50 of the Employment Tribunal Rules allows for an order to be made to prevent or restrict the public disclosure of any aspect of the proceedings so far as it considers necessary in the interests of justice to protect the convention rights of any person. In the circumstances of this case, the resident referred to throughout the documentation is plainly a vulnerable adult. I raised the issue at the outset of the hearing and it was agreed that an order should be made to protect the identity of the resident.
9. I therefore made an order that for the purpose of the final hearing, the resident be referred to as "Resident" or "R" and that for the purpose of any documents to be made available for public record, namely, any written reasons.

Findings of Fact

10. Whilst the decision making of the Respondent is in dispute, there are a considerable number of agreed facts.
11. It is agreed between the parties that the Claimant was employed by the Respondent since 2005 and that she has an unblemished disciplinary record. At the time of the incident that led to her dismissal she was in the role of care assistant.
12. It is accepted that at approximately 10:45am on 20th June 2020, the Claimant attended to a resident, "R".
13. It is agreed that R has vascular dementia and it is agreed that she needs encouragement to eat and to leave her bedroom to visit communal areas – those needs are recorded in the care plan relating to R and relevant extracts can be found at page 79 to 85 of the bundle. I observe that the care plan records numerous entries that state that R can sometimes become confused and disorientated, staff will need to be patient with R at these times and offer continual support.
14. When the Claimant entered R's room on 20th June 2020, she was alone with R. She states that she noticed that her underwear was wet on the floor in the bathroom. The Claimant asked R if she would enter the bathroom to have a wash before going to breakfast. She states that R was not happy with this as she wanted to stay in bed. The Claimant says she explained that she needed to get out of bed and that once she had breakfast she could then go back to bed. The Claimant reports that R got out of bed and sat on the sofa. She states that she had to take everything off her bed as it was wet. The Claimant proceeded to go downstairs to get R's breakfast.
15. When the Claimant returned to the room, she states she found R on the bed once again. The Claimant states that R refused to continue eating and just wanted to lay on her bed. She states that they talked for a while before R decided to move to the sofa. The Claimant then decided to dismantle the bed.
16. The Claimant states she removed the mattress and base of the bed so to allow a thorough clean. She moved the bed into the corridor. She then changed R's night dress, but states that R refused to allow her to change her bottom half. After washing the bed, the Claimant went downstairs to the seniors' office.
17. The account thus far detailed is one that is almost entirely based upon the account of the Claimant. I have only heard oral evidence from her with regards to the events as outlined above. The Respondent, quite understandably, does not call any of the other staff present to give oral evidence. I accept the oral evidence of the Claimant as outlined above – there is little to rebut that evidence and I find as fact the account as I have outlined.
18. The problematic and contradictory evidence relates to the intention behind the Claimant's actions in removing the bed and her reasons for doing so.

The Claimant very clearly states that this was not an act of malice. She states that the removal of the bed was in the best interests of the resident. The Respondent's witnesses, quite properly, were not to be drawn on the issue of whether the Claimant had acted in malice – they were not physically present on site, they were not in the room and they cannot pass opinion evidence on the internal workings of the Claimant's mind. There are though slightly different reports given in the hours and days after the incident as I outline below in trying to determine the reason behind the actions of the Claimant.

19. Following the decision to remove the bed, it is agreed that the Claimant went to the senior's office. Present in the room at one point or another were Lauren McNeil, Aimee Lawrence, Margaret Ayres and Nicola Passmore. All four of the individuals were members of staff.
20. At page 88, Lauren McNeil informs Lisa Llewellyn that the bed was removed into the corridor to stop her getting back to her bed. At page 90, in a statement of Lauren McNeil, she asserts that the Claimant told the seniors that R "would not get out of bed and eat her breakfast so when R went into the bathroom she removed the entire bed from her bedroom including the frame, mattress and headboard and bedding so that she could not just use the blankets on the sofa" – there is no reference in either of those first contemporaneous accounts to the reason for removing the bed being that it needed wiping down outside in the corridor, they specifically state that the reason was to ensure R would not get back into bed.
21. Nicola Passmore, in an investigation interview, states that the Claimant entered the senior's office and said, "something along the lines of she had taken R's bed out of her room... something to do with her not eating... she had taken all the blankets and sheets out as she's not having them to sleep on her sofa". Again, there is no reference to wiping down the bed in the corridor and there is a focus on R eating.
22. At page 94, in the minutes of the investigation meeting with Aimee Lawrence, Ms Lawrence states that the Claimant "was smirking, she said she wanted to tell us something but don't worry I haven't killed anybody she said... Lauren said I hope you haven't with that smirk on your face. Nicola finished her phone call and the Claimant said R would not get out of bed to do her bottom half and top half had been done, the Claimant then said that she had taken the whole bed out of her room after she eventually got her out". In response to a question, "Did she say why she had done this?", she states, "because she wasn't eating and wouldn't come into the dining room but R never goes in there anyway".
23. At page 95, in the minutes of the investigation meeting with Margaret Ayres, Ms Ayres states the Claimant reported, "I'm having problems with R, only her top half is dressed but she won't get her bottom half done and she won't eat or come in the dining room for breakfast so I've taken her bed, mattress, headboard and all the sheets out of her room".
24. In my view, the reports made by the four members of staff in the days following the incident are broadly consistent. They include no reference to

wet bedding being the reason for removing the bed and the focus is on R not eating her food.

25. Weighed against those documents is the oral evidence of the Claimant. She states very clearly that she removed the entire bed, mattress and bedding as it was wet. She explained that the size of R's room meant that it was necessary to remove the bed. In cross-examination, the Claimant described that it was not unusual to find that R had wet her bed in the morning - she described this as a regular occurrence. Despite this, the Claimant accepts that she took the highly unusual step of removing the entire bed to wipe down the bed, mattress, base and change the bedding – she had never taken this step before, despite R presenting as wet on a regular basis. She was, under cross-examination, and in response to a further question from the Tribunal, unable to properly explain why she had taken this highly unusual step.
26. The Claimant asserted in cross-examination that she had informed the four other members of staff present in the seniors' office that the reason for moving the bed was that R, and the bed, were wet. She accused each of the four staff members of lying and that the reason for this was that a number of them had falsely assumed that the Claimant had reported them to the senior management the week before the incident. It was put to the Claimant in cross-examination that this had not been advanced as a reason within the claim form or statements in support of her case. Further, she had not sought to correct the investigatory notes or investigatory report as part of her disciplinary process or appeal despite having been provided with all documentation well in advance of the meetings. It was in cross-examination that the Claimant made the allegation for the first time.
27. Alongside this, the Claimant made various allegations that the minutes of the meetings were inaccurate, despite having failed to address this during the disciplinary process itself or in cross-examination of the Respondent's witnesses that conducted the disciplinary and appeal meetings. The allegations were coupled with accusations that the minutes of the investigatory meetings were manipulated against her as they were taken by Lynne Watts and that her son was in a relationship with one of the four members of staff present in the senior office on the day of the incident. Again, these allegations were not raised prior to her responses in cross-examination. The accusations made by the Claimant are not supported by the evidence contained in the bundle. The Claimant has failed to raise the allegations against the other members of staff despite numerous opportunities to do so, whether in the internal disciplinary process or through the Tribunal proceedings that followed.
28. In consideration of the Claimant's allegation that the other staff members have lied, I have regard to the fact that the contemporaneous record given by each gives a broadly consistent account of the comments made by the Claimant when she entered the senior room on the 20th June 2020. Whilst sharing a common theme that the Claimant removed the bed on account of R's failure to eat and that the Claimant wanted to prevent R from going back to bed, they are also sufficiently varied and nuanced in the intricacies of the reporting so to give the distinct impression that these four people are simply reporting what they believe they heard rather than a deliberate conspiracy

in which it must have been predetermined that each would omit any specific reference to R's bed having been wet.

29. Throughout cross-examination, the Claimant stated that she was upset and crying during the investigatory meeting and subsequent disciplinary. She reported that she was unable to remember anything specific from the meetings. Despite this difficulty in recollecting the exact conversations that took place, she maintained that the minutes were inaccurate and that the four members of staff had lied.
30. In determining the reason that the Claimant removed the bed from R's room, I attach considerable weight to the reports made by the four members of staff during the investigatory process. I have regard to the fact that they omit any reference to the R having been wet as a reason to dismantle the bed. They are clear that the primary reason for the removal of the bed was to encourage R to eat. Further, I am troubled by the Claimant's inability to explain why she took the unusual step of removing the bed in such routine circumstances. Having considered the totality of the evidence on this issue, I find, on balance, that the primary reason for the removal of R's bed was to encourage or coerce R into eating food. I accept that R was wet and so was the bed but I do not accept that this was the main reason for removing the bed on the day of the incident.
31. R's presentation during the incident is also in dispute. In cross-examination, the Claimant repeated that R was not distressed and that she was not shouting. However, at page 97 of the bundle, in the course of the investigatory meeting with the Claimant on 29th June 2020, the Claimant is reported to have stated that R was shouting. Further, in the minutes of the disciplinary meeting on 27th July 2020 it is recorded that the Claimant was asked the question, "Why do you think that R was shouting?" – it would appear that this question is posed as a follow up to the Claimant's own report in the investigatory meeting that this was how R presented. The Claimant is minuted to have responded, "Because she didn't want to get out of bed, when she does get up she said she feels sick, she feels sick because she won't eat or drink". Again, I have regard to the fact that the Claimant states that she was too distressed to recall her responses during the meetings that were held. I also have regard to the fact that the Claimant, until cross-examination, had not communicated her disagreement with the minutes. On balance, I prefer the accounts given by the Claimant as reported in the minutes of the meetings. The meetings took place in the days following the incident and on the Claimant's own evidence she struggles to remember the discussions that took place. I therefore find that the Claimant was distressed and shouting during the incident.
32. Following the removal of the bed and the discussions in the senior office, it is agreed that one of the kitchen staff confirmed that they had tested positive for Covid-19. I accept that there would have been a degree of concern from the staff present but I reject the Claimant's assertion that there was chaos in the care home. The care home is responsible for the wellbeing of many vulnerable adults and I consider it inherently unlikely that a positive Covid-19 test would have led to a state of chaos that would have rendered the Claimant and other members of staff unable to properly focus upon the residents to whom they are responsible. I attach weight to the Respondent's

evidence that the individual was sent home and close contacts told to self-isolate. It would appear, given the limited evidence available on the issue, that the positive test was dealt with swiftly and in a manner that safeguarded others as far as possible. I find that the positive Covid-19 test would have been a momentary distraction for the Claimant but that in the wider context of her actions on the morning on the 20th June 2020 the test result had no impact upon her interactions with the resident.

33. As outlined above, the incident led to an investigation led by Lisa Llewellyn. She interviewed Tracy Fry, care assistant, the four members of staff in the senior office and the Claimant. The record of the meetings can be found at pages 91 to 97 of the bundle. Lisa Llewellyn drafted an investigatory report dated 29th June 2020.
34. By way of letter, dated 22nd July 2020, the Claimant was invited to a disciplinary meeting to be held on 27th July 2020 via Zoom. The letter states that there will be discussion surrounding the allegations of gross misconduct for alleged behaviour that could cause distress, alarm or injury to residents, their friends or family, colleagues or visitors or third parties. The letter states that the Claimant has a right to be accompanied and copies of the company disciplinary policy and investigation documents were enclosed.
35. The hearing took place on 27th July 2020. The Claimant was asked to explain her decision to remove the bed on the 20th June. She states that the bed was saturated with urine and is always wet. The Claimant details that R had not drunk for days and not eaten – she states that she would not just leave the resident. Of note, the minutes detail that R was shouting because she did not want to get out of bed. The Claimant described the pillows and blankets as soaking. The Claimant made a number of allegations of bullying but failed to provide any particulars at the time, or after the meeting. She accepts in the meeting that she only changed the top half of the resident's clothes. The Claimant disputed the description that she had smirked in the senior's office. The reason for the Claimant's failure to return the bed to the room was the commotion caused by the positive Covid test. In response to the question, what do you think could have been done differently? The Claimant responded somewhat flippantly that she, "should have just left her in a soaking bed, cause look where this has got me". In response to the question, "did you think about reporting to her seniors and asking for assistance?" she responded by stating that, "I honestly don't think that it was the wrong decision". The Claimant criticises a number of colleagues for their actions or lack of in respect of caring for residents.
36. The Claimant was sent a dismissal letter, dated 27th July 2020. The Respondent details that the Claimant's behaviour amounted to gross misconduct. It outlines the following concerns:
 - a) Removal of the bed even though the resident was shouting and displayed signs of distress;
 - b) Leaving R in urine soaked clothes for several hours;
 - c) During that period, failing to ask for assistance or support to wash and dress R.

37. The letter also raises concern due to the Claimant's lack of remorse and inability to offer a proper explanation for her actions and a failure to display an understanding or learning from the incident. The Respondent states that they have a duty to refer the matter to the Disclosure Barring Service and make a referral to the Local Authority. I am aware that the referral to the Local Authority resulted in no further action.
38. The Claimant was given a right of appeal and exercised that right by way of letter dated 4th August 2020. The letter raises three heads of appeal:
- a) That according to the terms of her contract signed as a kitchen assistant, three warnings must be given before dismissal;
 - b) Her good conduct over 15 years has not been taken into account;
 - c) Some of the allegations surrounding the incident on 20th June are disputed.
39. By letter, dated 18th August 2020, the Respondent invites the Claimant to an appeal hearing on 21st August 2020. Within the bundle are the minutes of the appeal hearing. The Claimant does not pursue the first ground of appeal relating to three warnings and recognises that this would not apply in her case. The Respondent does not dispute the positive feedback and disciplinary record but it is emphasised that in depriving R of her rights, this amounts to a deprivation of liberty. The Claimant, in response to the question, "why would you take out the bed?", responds by stating that R needed encouraging to get up out of bed and sit on the sofa. It was agreed that the Claimant's action prevented R getting back into bed.
40. The appeal outcome letter was sent to the Claimant, dated 24th August 2020. The letter states that the Claimant's good conduct was considered but that in light of the length of time working in the care setting she should have known how to support residents with a diagnosis of dementia. The Respondent states that the disputed elements of the statement do not change the view that her conduct was negligent. The letter highlights the Respondent's view that it still appeared that the Claimant did not fully understand why her actions resulted in a deprivation of R's right to return to her bed. It is emphasised that R is classed as a vulnerable resident. The appeal was dismissed.

The Law

41. The law that I must apply is settled and I do not propose to rehearse it in great detail. In relation to the unfair dismissal claim, it is for the respondent to prove the reason for dismissal in accordance with section 98 of ERA 1996. Section 98 lists the potentially fair reasons for dismissal. Where the employer does show a potentially fair reason for dismissing the Claimant, or where that is conceded, the question of fairness is determined by section 98(4). The question of whether the dismissal is fair or unfair (having regard to the reason shown by the employer) 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 shall be determined in accordance with equity and the substantial merits of the case.

42. The correct approach to follow in conduct dismissals is based on the principles distilled from **British Homes Stores v Burchell [1980] ICR 303**. The Tribunal should have reference to the ACAS Code of Practice and take account of the whole disciplinary process. Applying **Burchell**, and **Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23**, the questions for the Tribunal are:

- a) Did the Respondent genuinely believe that the Claimant was guilty of misconduct?
- b) If so, was that belief based on reasonable grounds?
- c) Had the employer carried out such investigation into the matter as was reasonable?
- d) Did the employer follow a reasonably fair procedure?
- e) If all those requirements are met, was it within the band of reasonable responses to dismiss the Claimant rather than impose some other disciplinary sanction?

43. In respect of the claim for wrongful dismissal and notice pay, this is a claim advanced in contract. I must be satisfied that the employer breached the contract of employment with the employee in failing to give notice of termination.

Conclusions

44. I must firstly consider the reason for dismissal. The Respondent has adduced evidence to demonstrate the steps taken following the incident on the 20th June 2020. The investigation and subsequent disciplinary was entirely focused upon the Claimant's conduct on the day of the incident. The only evidence to question the motive behind the Respondent's decision was the Claimant's oral evidence when she alleged that a number of staff members had lied and manipulated their reports in response to an erroneous assumption that the Claimant had reported other members of staff to senior management. In that respect, as noted above, I found that the accounts given by each of the four members of staff were credible and rejected the assertion by the Claimant that they were lying. It is also clear that the Claimant did not raise the allegation during the investigatory or disciplinary process and I heard no evidence to suggest that the Respondent's witnesses were aware of the Claimant's speculation. I therefore conclude that the reason for dismissal was conduct and I thereafter must consider whether the dismissal was fair.

45. When considering the Respondent's actions, I have regard to the fact that the Respondent is a large company with considerable resources. The Respondent employs 14000 people in the UK and I heard evidence that the Respondent's witnesses had received HR training focusing on the investigatory, disciplinary and appeal processes. In consideration of the

Respondent's actions, I do so having concluded that the Respondent is of a significant size and with considerable resources.

46. As outlined above, I must consider the following questions of the test outlined in **Burchell**.

a) Did the Respondent genuinely believe that the Claimant was guilty of misconduct?

In consideration of this issue, I have regard to the fact that the incident on 20th June 2020 triggered an investigation during which the Claimant herself reported that she had removed a resident's bed from their room whilst that resident was in a state of distress and shouting. Further, the investigatory process established that one of the reasons given by the Claimant for the removal of the bed was that she was trying to get R to eat. The Respondent subsequently referred the matter to the Local Authority. I have regard to the Respondent's disciplinary procedure document, at page 54 of the bundle, where a list of examples are given that may be considered as gross misconduct. Example k) states "Behaviour that causes distress, alarm, or injury to Residents, their friends or family, colleagues, or visitors or third parties". Given the evidence available to the Respondent at the time of the disciplinary, I am satisfied that the Respondent genuinely believed that the Claimant was guilty of misconduct.

b) If so, was that belief based on reasonable grounds?

As I have found above, the belief was based upon the Claimant's own reports during the investigation and disciplinary meetings. It was her own reporting of the incident that describes R as distressed and shouting. It was also coupled with the statements from the four staff members present in the seniors office to state that the reason for removal of the bed was that the Claimant was trying to get R to eat. I am entirely satisfied that the Respondent's belief was based on reasonable grounds and that the Respondent's view that the Claimant's actions amounted to misconduct is within the band of responsible responses.

c) Had the employer carried out such investigation into the matter as was reasonable?

I have already referenced the size of the Respondent and the resources available for the purposes of investigation. The Respondent appointed an appropriately placed individual to undertake an investigation and that investigation commenced promptly. The investigation gathered information from five other members of staff and plainly focused on the short passage of time on 20th June 2020. There was some criticism of the Respondent that the investigatory meetings were brief but, in my view, they are understandably concise given the focus upon relevant events. The primary source of information during the investigation came from the Claimant. She was spoken to regarding the events of the 20th June 2020 and had a reasonable opportunity to account for her actions and engage in the process. She was asked relevant questions and reasonably pressed on her decision making. During the course of the

hearing, there was very little by way of active challenge to the investigatory process other than to disagree with the conclusion. I was not referred to any individual that should have been spoken to nor was I referred to any glaring omissions from the investigatory process. Having considered the totality of the evidence, I conclude that the investigatory process was fair and falls squarely within the band of reasonable responses.

- d) Did the employer follow a reasonably fair procedure?

As detailed within my findings of fact, the Claimant was invited to engage in an investigatory process and provided with all evidence obtained following the conclusion of that process. She was invited to a disciplinary meeting and given sufficient warning of the same. She was informed that she could be accompanied by a colleague and she exercised that right. There was passing criticism that the colleague was unable to fully engage in the disciplinary meeting but this was clarified by Maria Jones when she stated that she requested that the Claimant directly respond to certain points rather than the colleague answering on the Claimant's behalf – that request, in my view, is entirely reasonable given the questions posed of the Claimant during the disciplinary. During the disciplinary meeting the Claimant was asked entirely appropriate questions in an attempt to allow her to respond to the allegations, the Claimant engaged in that process and had ample opportunity to offer an explanation for her actions or advance any mitigation. The disciplinary letter outlined clearly the reasons for the dismissal and explained the right of appeal, a right that was exercised to an independent member of staff. The appeal gave the opportunity to the Claimant to advance her areas of concern but the Respondent maintained the initial decision. The Claimant, in reality, does not advance a case by which there is substantial criticism of the Respondent's procedure that was followed. In my view, such a stance is entirely understandable given the steps that the Respondent took to follow a fair process. I conclude that the process followed falls within the band of reasonable responses.

- e) If all those requirements are met, was it within the band of reasonable responses to dismiss the Claimant rather than impose some other disciplinary sanction?

In consideration of the Respondent's decision, I have regard to the aforementioned disciplinary procedure and the examples given of gross misconduct. In light of the information that the Claimant gave that R was distressed and shouting, in conjunction with the statements provided by the members of staff present in the senior room, the Respondent treated the incident extremely seriously. The Respondent was acutely aware that the Claimant considered that she was acting in the best interests of R but the Respondent reasonably focused upon the implications and feelings of R rather than the intention of the Claimant. The Respondent, through the disciplinary process, focuses a number of questions to the Claimant upon the reasons for her actions and the subsequent impact upon R. During that process, the Claimant responds somewhat flippantly and demonstrates to the Respondent's decision makers a clear lack of

insight into the impact of her decision. The Respondent is steadfast in the disciplinary meeting that her actions were justified and the Respondent considered that the Claimant showed little remorse. In light of the evidence available to the Respondent at the time of the decision, I conclude that the Respondent acted within the band of reasonable responses to categorise the Claimant's conduct as gross misconduct.

In considering whether the decision to dismiss was reasonable, I again have regard to the Respondent's disciplinary policy and the Respondent's concern that the Claimant had exposed R to emotional abuse - behaviour of this nature being an example of conduct that would normally lead to dismissal. In light of the Claimant's own reporting of distress and shouting, the Claimant's inability to justify her actions, her minimisation of her actions and the impact upon R, the Respondent's view that she lacked remorse and the Respondent's view that the Claimant had potentially deprived R of her liberty, the Respondent concludes that dismissal is appropriate. The Claimant submits that the outcome was unjustifiably harsh in the circumstances. I have regard to the scrutiny placed on care homes in the provision of the care that they provide to some of the most vulnerable members of society. Many, including R, have limitations making them almost entirely dependent upon their carers to ensure that their needs are met. Understandably, a company responsible for the running of care homes must place resident care and wellbeing at the forefront of their decision making – neglect, abuse or a deprivation of liberty, whether intentional or reckless in nature, in the Respondent's view, understandably falls into the most serious category of potential conduct issues that may arise in the context of employment in a care home.

The Claimant advances three main arguments in support her assertion that the decision to dismiss was outside of the range of reasonable responses. Firstly, she states that the Respondent failed to consider her unblemished disciplinary record. In my view, the Respondent has considered the relevance of her positive record but has weighed against this the concern that as a long serving member of staff, with experience working with vulnerable adults, her conduct was even more troubling. Secondly, the Claimant asserts that she was in a situation where the options available to her in R's room were limited and that all options would have led to some degree of distress for R. I remind myself that this was not an explanation that the Claimant advanced in the investigatory meeting or disciplinary process. In any event, this argument appears to be substantially undermined by her own oral evidence that she took the highly unusual step of dismantling the bed despite R presenting in a wet state on a daily basis. Thirdly, the Claimant alleges that the Respondent acted unfairly when considering the manner in which other employees were treated. I have no written or documentary evidence relating to other misconduct issues and the manner in which those employees were treated. The main focus of this argument was on a mattress alleged to have been present in another corridor on the day before the Claimant's disciplinary. Other than a photograph to show a mattress, I have no information as to how the mattress was placed there, when and by whom. I am unable to draw any comparison of treatment in then circumstances.

In consideration of the competing submissions, I conclude that the Respondent acted within the band of reasonable responses. I consider that the three main limbs of the Claimant's case on this issue are not matters that make the decision unfair.

47. In consideration of the notice pay claim, I have regard to my earlier findings that the Claimant's actions to remove the bed were taken at a time when R was distressed and shouting. I have regard to the finding that the Claimant's primary reason for removing the bed was to encourage or coerce R into eating. Further, I consider the Claimant's actions in the context of R's care plan as referenced at paragraph 13 of this decision. It is difficult to reconcile the Claimant's actions with the care plan when it states that R requires patience when she is confused or disorientated. The Respondent was plainly concerned that the Claimant's actions failed to respect the fundamental right of R to make her own choices and that the Claimant's actions prevented her from making acting upon those choices – I agree with that submission. I conclude that the Claimant acted in such a way that amounted to gross misconduct as defined by the Respondent's disciplinary procedure. Accordingly, I conclude that the Respondent was entitled to dismiss the Claimant and terminate the contract of employment.

48. Accordingly, I dismiss the claims.

Employment Judge **G Duncan**

Date 23rd March 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 24 March 2021

.....
FOR EMPLOYMENT TRIBUNALS