



EMPLOYMENT TRIBUNALS

Claimant: Mr D P Herrity

Respondent: Mr S Brougham (representing the committee members of the Merseyside Police Sports and Social Association)

Heard at: Liverpool Employment Tribunal (by video)

On: 27 June 2024, 18, 19 and 20 September 2024

Before: Employment Judge Dunlop

Representation

Claimant: Mrs Mr Herrity Herrity (claimant's wife)

Respondent: Mrs A Dean (HR Consultant)

JUDGMENT having been sent to the parties on 24 September 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The respondent is an unincorporated association running a sports and social club used by current and retired officers and staff of Merseyside Police. The claimant, Mr Herrity, was employed by the respondent from July 1991 until his dismissal on 20 January 2023, on the grounds of alleged gross misconduct. At the time of his dismissal he was employed as the manager of the club.
2. Mr Herrity's claim included complaints in respect of unpaid notice pay and holiday pay. Those claims were withdrawn during the course of the proceedings. In the case of the notice pay, Mr Herrity had actually been given a payment in lieu of notice (notwithstanding the finding of gross misconduct). In the case of the holiday pay, the parties agreed that sums were owed and this was resolved between them in the period between the original hearing in June and the reconvened hearing in September. Mr Herrity accordingly withdrew his claim at the start of the reconvened hearing.

3. These written reasons are therefore concerned with the unfair dismissal claim only.

The Hearing

4. The case was originally listed for a one-day hearing on 27 June 2024. It was immediately obvious that it would take longer than one day. This had not been appreciated by the parties. Mr Herrity was represented by his wife, who is not a lawyer. The respondent was represented by Mrs Dean, who is an HR consultant, she also has minimal experience of litigation or of Tribunal procedure. I therefore spent some time on the first morning explaining the Tribunal process and dealing with some preliminary issues around the correct identity of the respondent, as well as outlining the 'Burchell test' to the parties and ensuring that everyone understood the issues in the case.
5. I spent some further time reading the papers in the case which comprised a bundle of documents just under 600 pages long and four witness statements from the respondent. Mr Herrity had not prepared a witness statement for himself, not appreciating that he needed to do so. However, the grounds of claim attached to his claim form were detailed and in narrative form, and he had also prepared a further narrative document commenting on the respondent's response to the claim. Mr Herrity agreed that these documents set out what he wanted to say and I agreed that they could, jointly, stand as his witness statement. In the June hearing, Mr Herrity produced some further 'statements' from other individuals. Mrs Dean objected to those being admitted into evidence as the individuals were not in attendance, further, the statements were not signed and bore no statement of truth.
6. I informed Mr Herrity that if he wished for these people to give evidence in the case, he should secure their attendance for the reconvened hearing. If they could not attend, then the Tribunal may admit a statement which is signed, but the weight attached to a statement where the witness does not attend (especially where the reasons seems to be that they do not want to attend) would be minimal. I also explained the Tribunal's power to make witness orders in appropriate cases.
7. In the event, no additional witnesses attended for the reconvened hearing. Mr Herrity produced one signed statement, from Mr Barry Copeland. Mrs Dean objected to this statement being admitted. I decided to admit the statement into evidence, although it turned out that none of the findings I made in the case turned on this statement.
8. Returning to the June hearing, in the afternoon I heard evidence from Mrs Wendy Barlow, who is Head of Force Resourcing for Merseyside Police and a member of MPSSA. She was the appeal manager in the disciplinary case, but her evidence was taken out of order due to availability concerns. We were able to complete her evidence before adjourning the hearing.
9. At the reconvened hearing, I heard evidence from the following witnesses for the respondent:

Paul Lamb, who is a Detective Superintendent of Merseyside Police and a member of MPSSA. Mr Lamb chaired Mr Herrity's disciplinary hearing.

Mark Pedder, who is a Detective Sergeant of Merseyside Police and a member of MPSSA. Mr Pedder was at all relevant times the Secretary of MPSSA.

Alison Dean, who is a freelance HR consultant engaged by the respondent. Mrs Dean gave evidence as well as acting as the respondent's representative in these proceedings.

10. On the second day of the resumed hearing I heard evidence from Mr Herrity, which lasted for the morning. In the afternoon, I gave the parties opportunity to make submissions. Mrs Dean relied primarily on written submissions, which she was given time to finalise. Mrs Herrity made oral submissions on behalf of Mr Herrity. I then adjourned to consider my decision and gave an oral Judgment on the morning of the third day of the resumed hearing.

The Issues

11. I discussed the issues with the parties at the start of the hearing. They were as follows:

- 11.1 What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

- 11.2 If the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

- 1.1.1 there were reasonable grounds for that belief;
- 1.1.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
- 1.1.3 the respondent otherwise acted in a procedurally fair manner;
- 1.1.4 dismissal was within the range of reasonable responses.

Findings of Fact

12. The MPSSA is an unincorporated association. It is governed by its Articles of Association, which appeared in the bundle. Under the Articles, the Association is made up of members and run by a Management Committee elected by the Members. The Chief Constable of Merseyside is the President of the Association by default. The Deputy and Assistant Chief Constables are Vice-Presidents by default, but may also be elected onto the Management Committee. The Management Committee appoints various officers, including a Chairman, a Secretary and a Treasurer. At the time of events in this case, the role of Treasurer was held by a police officer

named Carla Hayes. Ms Hayes did not give evidence in this case, but she featured in the evidence from both sides.

13. The MPSSA is, of course, a distinct and separate organisation from Merseyside Police, but it is, as will be obvious, closely associated with Merseyside Police.
14. The MPSSA runs a sport and social club, Riversdale, where Mr Herrity was employed. Mr Herrity started work with the MPSSA in 1991 at another club, which has since been taken over by another organisation. He moved to Riversdale several years before the events in this case. He is a very long-serving employee. At the time of the events in question, Mr Herrity was assisted by an assistant bar manager, James Woods. They also had hourly-paid staff who could be called upon to work at events and so on.
15. Mr Herrity says, and I have no reason to doubt, that he had a clean disciplinary record and no problems with his work prior to Ms Hayes' appointment as Treasurer.
16. In around 2019 the club's general manager, Graham Mulcahy, had stepped down and was not replaced. Mr Herrity took on much of the administrative burden of his role. This also meant that Mr Herrity reported directly to the Committee, rather than to an employed manager. There is ample evidence in this case that Mr Herrity was a poor administrator and that matters such as record-keeping, paperwork and general business organisation were not well managed.
17. The club closed down at the point of the covid lockdown. Mr Herrity disagrees with the approach the committee took at that time, with regards to things like furlough. I don't need to make specific findings about that time, other than to record that it stoked the poor relationship between Mr Herrity and Ms Hayes.
18. In September 2020, Mr Herrity was issued with a final written warning in respect of "gross negligence". The matters which were said to give rise to this were largely administrative matters – problems with things like accounting processes, timesheets and payment records, cash handling and the booking system. Although they were administrative in nature that does not mean they were unimportant. Such matters are very important for an organisation of this type, where relatively large sums of money are being handled, as well as valuable stock. The warning expired after year.
19. When Mr Herrity returned to work having been on furlough, the club's former arrangement as to event catering was not re-started. Instead, an agreement was entered into between Mr Herrity and the committee that he would offer catering services. With the committee's blessing, Mr Herrity began to operate a business called Riversdale Catering ("Riversdale"). Mr Woods, the assistant bar manager, worked alongside him in this enterprise. If someone wished to hold a function at the club, they could book catering through Riversdale. Mr Herrity would take the food order, prepare the food and charge the customer for it. The same customer would also be being billed by the MPSSA for room hire, and any other charges. The arrangement included an agreement that Riversdale catering would pay MPSSA a fee of £1 per head.

20. This agreement was entered into verbally between Mr Herrity and the Committee, and it was noted in Committee minutes. Later, during the investigation process, Mr Pedder described that arrangement as “naïve”. Andy McCourt, the investigating officer, would describe it as a “mistake” to allow Mr Herrity and Mr Woods to operate their own business alongside their duties to MPSSA. I would agree with both of those assessments. The Committee did, however, allow Mr Herrity to do this and did fail to put in place a comprehensive written agreement outlining his obligations and responsibilities. That was their failing, and it is particularly hard to understand in circumstances where Mr Herrity had recently accepted a written warning based on poor administration.
21. Mr Herrity believes that Ms Hayes had a problem with him running the catering business alongside his bar manager work, and I accept this is probably correct. Such a concern could have been legitimately held, and it may have been in Ms Hayes’ case, or it may have been the result of personal animosity towards Mr Herrity. I do not need to decide either way.
22. There was a vote in May 2022 when it was proposed to close the catering function, on the basis that it was causing the club to incur costs which were not fully covered by the £1 fee, particularly given the rapid increases in gas and electricity which were happening at that period. The motion did not carry and the catering function continued.
23. I accept Mr Herrity’s evidence, which is supported by documents in the bundle that Ms Hayes was ‘on his case’ throughout this period. This included her instigating a change in the stock-taker used by the business, and her raising issues with the council’s health & safety team about whether the separate catering business was properly registered. Those actions raised tensions and caused rifts within the Committee, with some members being supportive of Mr Herrity.
24. Matters came to a head during a health and safety inspection visit in May 2022. An altercation between Mr Herrity and Ms Hayes prompted Ms Hayes to present a written complaint about Mr Herrity to Mark Pedder, in his role as Secretary. The Articles provide in relation to “Conduct of Members of Staff”:
 - a. Misbehaviour or inattention on the part of any employee of the Association, shall in no way be made a matter of personal reprimand by an individual member.
 - b. All complaints of whatever kind must be addressed to the Hon. Secretary and signed by the member making the complaint with a copy to the Club Manager.
 - c. The Hon. Secretary of the Association shall be empowered to ensure that all complaints are dealt with, in accordance with current employment legislation.
25. By letter dated 20 July 2022, Mr Pedder suspended Mr Herrity from his duties. I believe Mr Woods was suspended around the same date. The suspension was said to be to allow the respondent to carry out investigations into “fraud/theft, aggressive & intimidating behaviour, misuse

of club property and resources and failure to follow reasonable management instructions.”

26. The investigation was conducted by Mr McCourt who did not give evidence. It would have been useful to have Mr McCourt in attendance and Mrs Dean frankly acknowledged that his absence was due to her own inexperience in Tribunal litigation.
27. Mr Herrity did not allege any connection between Ms Hayes and Mr McCourt, nor did he suggest that Mr McCourt would have any reason to act unfairly in the way he investigated Mr Herrity. Rather, Mr Herrity makes two main complaints about Mr McCourt’s investigation. The first is that it took far too long and the second is that it was conducted in an over-bearing and oppressive way, like a criminal investigation. There is some validity in each of these points.
28. With regard to delay, Mr Herrity was suspended on 20 July, he was interviewed by Mr Mccourt in July, August and September. Mrs Dean telephoned him shortly before Christmas to explain that the matter was progressing to a disciplinary hearing in January, and he received an invitation letter on 3 January for a hearing on 18 January. That was a suspension period of 6 months. I accept that that is a long period to be suspended, particularly in the circumstances of this case where Mr Herrity was long-serving employee. I accept it had a negative effect on his mental health, as he has described in evidence. However, I also have to bear in mind that this is a very small organisation. Although it was (uniquely) able to draw on the resources of the police, in the form of Mr McCourt, to conduct the investigation, the effect of that was that this investigation would not necessarily be a top priority. In particular, I accept Mrs Dean’s evidence that Mr McCourt was drawn into a very high-profile murder investigation which had to take priority over this matter, and that contributed significantly to the delay.
29. In relation to the second complaint, employees often complain that investigations are not thorough enough, and there is case law to say that employers are only required to conduct ‘reasonable’ investigations, and not to conduct them with the thoroughness expected of the police. Here, there is the opposite complaint, this investigation was, perhaps inevitably, conducted extremely thoroughly, which is another reason why it took a relatively long period of time.
30. It is the job of the investigator to take an even-handed approach and to look for evidence which exculpates the employee, as well as evidence which incriminates. As I have said, it is unfortunate that the respondent did not call Mr McCourt to give evidence, so Mr Herrity was unable to cross examine him on his methods and motivations. However, that problem is addressed, to a large extent, by the paper trail created by the investigation, and by Mr McCourt’s investigation report which sets out his thinking.
31. The tone and language of some of the investigation does reflect the criminal law, which is unsurprising given that is Mr McCourt’s day job. I also accept Mr Herrity’s evidence that he found the lengthy interviews with Mr McCourt to be oppressive and uncomfortable. Set against those factors, it is clear to me that Mr McCourt did seek evidence in Mr Herrity’s favour - for example

by interviewing those members of the committee who were believed to be supportive of him - and did reach some conclusions which were in his favour too. Although the investigation was very detailed, and may have felt oppressive, there is nothing to support a conclusion that it was not even-handed.

32. Around the time of the completion of the investigation report, the HR consultant who had been supporting the respondent decided to step back and Mrs Deans, another HR consultant, was brought in to manage the disciplinary process. Mrs Deans prepared the investigation bundle and redacted information which was not relevant to the allegations being pursued. She took the decision to contact Mr Herrity before Christmas to let him know that the matter was progressing. I appreciate that there is a balance between the wish to provide an update after a long delay and the wish not to spoil Christmas. I consider it was thoughtful of Mrs Dean to provide an update, but to wait until January to provide the bulky disciplinary pack, and to ensure that there was a good period of time – around four weeks – for Mr Herrity to consider it before the disciplinary hearing.

33. The key findings of Mr McCourt's investigation report were:

33.1 He believed that it was more likely than not that Mr Herrity and Mr Woods were either removing stock or permitting it to be removed.

33.2 There was at least one Riversdale invoice which included the MPSSA VAT number. Riversdale was not VAT registered, and so no VAT number should have appeared on I invoices. Mr McCourt believed that Mr Herrity had retained the MPSSA VAT number on Riversdale catering invoices to make the business look professional, but in doing so had unwittingly exposed MPSSA to potential financial liability.

33.3 He believed that it has been a "mistake" to allow Mr Herrity and Mr Woods to run their own catering company for events at MPSSA, and that this created a conflict of interest.

33.4 He believed that members were being prevented from bringing their own food and cakes for functions, despite being entitled to do so.

33.5 He identified a particular episode where a customer had arranged a bouncy castle for an event and was charged £40 for electricity, which was paid into the Riversdale bank account, and not the MPSSA one.

34. The conclusion of the investigation was that there was a disciplinary case to answer.

35. Another officer, Mr Lamb, was identified to deal with the disciplinary hearing. Four disciplinary allegations were formulated and included in the invitation to the disciplinary hearing. I will reproduce these in full.

1. Fraud - Missing Stock: this allegation relates to shortfalls in stock which have been detected during the period in which you had responsibility for stock control.

2. Fraud - VAT: this allegation relates to your unauthorised use of the MPSSA VAT number for billing and invoicing in relation to your own catering company. As a separate business, you should have ensured that you were VAT registered and that all financial records were kept separate to those of MPSSA. The implications of this are that MPSSA could be subject to an investigation by HMRC and may incur financial penalties and other expenses involved in resolving this issue.

3. Misuse of MPSSA property, name and reputation: this allegation is in relation to your use of club property and premises in order to profit in a way in which you were not entitled. For example the unauthorised charging of catering customers for additional services for which MPSSA have born the cost. These charges should either not have been made or the income derived from them paid to the MPSSA account. In your capacity of Club Manager, you should have ensured that the income from your catering business was restricted purely to the additional catering services provided and that anything related to the venue was paid to the MPSSA account. Specific details of this are included in the enclosed evidence pack but include charges for electricity, additional venue hire and non-use of DJ. In addition it is alleged that you used your management position at the club, along with the good reputation of the club, to manipulate additional profit for your catering company.

4. Concerns in relation to management/supervisory competency: this allegation raises a question about whether your demonstrated level of competency is sufficient in order to reach/maintain the required levels for your role. Due to the nature of the organisation, MPSSA need to have absolute confidence that you can be trusted to understand, maintain and facilitate the various duties of your role with minimum additional supervision.

36. The original complaint of aggressive conduct towards Ms Hayes did not feature as part of the disciplinary case that the respondent ultimately proceeded with.

37. Mr Herrity believed that Mr Lamb should not have been appointed as the disciplining officer, due to provision 17.4 in the Company Handbook which he had been issued with, which stated:

Who has the authority to deal with disciplinary decisions?

A formal decision about a disciplinary matter leading to dismissal (whether on notice or without notice) will only be made by a member of the Committee, whereas any other disciplinary action may be taken by your Line Manager.

38. Mr Lamb was a member of MPSSA, but not a committee member. He had been asked to act as the disciplinary officer by Assistant Chief Constable Roy, due to a concern that committee members may not be impartial. I will return to the effect of this provisions later.

39. In any event, the disciplinary hearing took place. It took place at the Riversdale club as Mrs Dean wanted to respond to Mr Herrity's concerns that the investigation interview had been overbearing and, to use her words before the Tribunal, "too police-y".

40. Mr Lamb recorded his outcomes in a letter dated 20 January 2023. This was a short period after the hearing, but I accept Mr Lamb's evidence that he felt it was important to recover some of the delay that had happened previously, and that he worked solidly on the outcome after the hearing. I do not find that the quick turn-around meant that the matter was pre-judged.

41. Allegation 1 related to missing stock. Mr Lamb's conclusions on this were more equivocal than Mr McCourt's had been. He could not conclude that

stock had been dishonestly removed, and, if it had been, he could not conclude who was responsible for that. However, he noted that stock control was part of Mr Herrity's responsibility and decided that, in view of the £2,000 deficit that had been identified, Mr Herrity had failed to meet the job description in that respect, and that that was gross misconduct.

42. Allegation 2 was described as VAT fraud. This arose from the MPSSA VAT number appearing on a Riversdale invoice to a corporate client. Mr Lamb decided that he could not conclude whether this was a deliberate or reckless act, but noted that it had arisen from the carelessness of Mr Herrity and Mr Woods and had caused reputational damage to MPSSA with the client and, potentially, HMRC. He concluded this was also gross misconduct.
43. Allegation 3 was described as misuse of MPSSA property, name and reputation. Factually, this allegation relied on the £40 electricity charge. Mr Lamb found that the decision to charge for electricity had not been cleared by the committee in the first place, and that the money had wrongfully gone into the Riversdale account. He also noted that there was a question mark over whether other funds may have wrongly gone into that account and that Mr Herrity had refused to allow him to inspect the Riversdale bank account to confirm this. There were further allegations about the use of MPSSA email address and information provided to customers. Mr Lamb acknowledged that the failure to put in place a comprehensive agreement between Riversdale and MPSSA had partly led to these matters, but also considered that Mr Herrity's failure to act appropriately had caused financial loss and reputational damage, and amounted to gross misconduct.
44. Allegation 4 was described as "concerns in relation to management competency". Mr Lamb concluded that Mr Herrity did not have the necessary skills to safeguard MPSSA in various respects. It is not stated whether this was viewed as gross misconduct or misconduct. Rather cryptically, the letter says that "such concerns surpass being remedied by the use of the capability Policy".
45. Mr Lamb's decision was that Mr Herrity should be dismissed. Although he had found gross misconduct had taken place, he decided the dismissal should be on notice, acknowledging that the situation had been contributed in some respects by committee mismanagement.
46. Mr Herrity appealed the decision. I will not set out the chronology of the appeal process, but I do note that he instructed a solicitor who helped him to put the grounds of his appeal in detail. The appeal was determined by Wendy Barlow, on the basis of a review, rather than a re-hearing.

Relevant Legal Principles

47. Section 98, so far as relevant, provides as follows:

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –
 - (a) the reason (or, if more than one, the principal reason) for the dismissal and

- (b) that it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
 - (2) A reason falls within this sub-section if it-
 - (b) relates to the conduct of the employee
 - (4) Where the employer has fulfilled the requirements of sub-section (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 reasonable 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
48. The respondent bears the burden of proving, on the balance of probabilities, that the claimant was dismissed for a potentially fair reason: s. 98 (1) ERA. In this case the potentially fair reason relied on is misconduct.
49. If a potentially fair reason is shown, then consideration must then be given to the general reasonableness of that dismissal under s.98(4) ERA.
50. In considering the question of reasonableness, I have had regard to the decisions in **British Home Stores v. Burchell [1980] ICR 303**; **Iceland Frozen Foods Limited v. Jones [1993] ICR 17**; **Foley v. Post Office and Midland Bank plc v. Madden [2000] IRLR 82**.
51. In summary, these decisions require that I focus on whether the respondent held an honest belief that Mr Herry had carried out the acts of misconduct alleged, and whether it had a reasonable basis for that belief. I must not, however, put myself in the position of the respondent and decide the fairness of the dismissal based on what I might have done in that situation. It is not for me to weigh up the evidence as if I was conducting the disciplinary process afresh. Instead, the Tribunal's function is to determine whether, in the circumstances, the respondent's decision to dismiss the claimant fell within the band of reasonable responses open to an employer.
52. In conduct cases, when considering the question of reasonableness, we are required to have regard to the test outlined in the '**Burchell**' case (the case is cited above). The three elements of the test are:
- 52.1 Did the employer have a genuine belief that the employee was guilty of misconduct?
 - 52.2 Did the employer have reasonable grounds for that belief?
 - 52.3 Did the employer carry out a reasonable investigation in all the circumstances?
53. In addition, the Tribunal will consider whether a fair dismissal process was followed.

54. It was confirmed in **Sainsbury's Supermarket v Hitt 2003 ICR 111** that the 'band of reasonable responses' test applies equally to the employer's conduct of an investigation as it does to the employer's decision on sanction.
55. Sections 122(2) and 123(6) ERA respectively provide that the tribunal may reduce the amount of the basic and/or compensatory awards payable following a successful unfair dismissal claim where it is just and equitable to do so on the grounds of the claimant's conduct. In the case of the compensatory award, the Tribunal can only take into account conduct which caused or contributed to this dismissal.
56. Under the principle in **Polkey v A E Dayton Services Ltd 1988 AC 344** the Tribunal may reduce the amount of compensation payable to the claimant if it is established that a fair dismissal could have taken place in any event – either in the absence of any procedural faults identified or, looking at the broader circumstances, on some other related or unrelated basis.

Submissions

57. The parties' respective submissions focused on the facts of the case and the factual findings each party wished me to make, rather than on any legal matters.

Discussion and conclusions

58. I first considered the reason for dismissal. The reason for the dismissal is the set of factual circumstances which gave rise to the dismissal. I am satisfied that the reason for dismissal was the four matters set out in Mr Lamb's letter. In his appeal, Mr Herrity suggested that the real reason for the dismissal was Ms Hayes' vendetta against him. It is true that it was Ms Hayes' complaint that gave rise to this disciplinary process. As I have said, I decline to make a finding as to whether that animosity was purely motivated by protecting the interests of the MPSSA, or whether there was bad faith involved. Even assuming in Mr Herrity's favour that there was bad faith involved on Ms Hayes' part, I am satisfied that there was no conspiracy between her, Mr McCourt, Mrs Dean, Mr Lamb and/or Mrs Barlow. The decision-making itself was not tainted by Ms Hayes' views of Mr Herrity, whatever those views may have been.
59. It is for the respondent to show that the reason falls within one of the potentially fair reasons in s98 ERA. Those include reasons relating to the capability of the employee and reasons relating to the conduct of the employee. This employer has nailed its colours to the mast of conduct.
60. In my view, that was incorrect. Mr Lamb's findings about the stock shortfall (in contrast to Mr McCourt's) cannot sustain a finding of misconduct, far less gross misconduct. A failure to perform adequately to one's job description is generally a matter of capability. Similarly, other issues raised around communications and record-keeping are capability matters. In capability cases, it is expected that the employer issues warnings to the employee and provides the support that they need to improve. Mr Lamb acknowledges that some information relevant to the stock discrepancies had been kept from Mr Herrity, so there was clearly room for more support with this part of

his role. It may be that the respondent's ability to provide that support in the way it should have been provided was hindered by the breakdown in relationship between Ms Hayes and Mr Herrity.

61. However, those were not the only matters relied upon by Mr Lamb. He also categorised the use of the VAT number as fraud and gross misconduct. It is not for me to say whether this amounted to 'fraud' in the criminal sense. However, I accept that it was reasonable for Mr Lamb to view it as a grave matter, and as misconduct. It did not help Mr Herrity's position during the disciplinary process that he seemed to be unable to understand why this was such a serious matter for the respondent, and that remained the case during this hearing.
62. In respect of the other matters, it was clear from Mr Lamb's evidence that the procurement of a £40 electricity fee for a bouncy castle, and having this paid into the Riversdale Account, was also seen by him as a particularly serious element of the case against Mr Herrity. Again, I find that this is properly characterised as misconduct. Although Mr Herrity has offered explanations as to why he says the practice of charging was agreed by the committee, and why the money was included as part of the Riversdale invoice but would nonetheless have been repaid to MPSSA, I find that Mr Lamb acted reasonably in rejecting those explanations.
63. I am satisfied, having heard from Mr Lamb, that the matters which were legitimately regarded as conduct matters were sufficient to cause him to dismiss Mr Herrity even if the capability matters were excluded. On that basis, I find that the respondent has shown that the reason for dismissal was potentially fair.
64. In considering misconduct dismissals, I must consider whether the respondent has formed a reasonable belief that misconduct has been committed. In this case, the underlying facts of the allegations were generally not in dispute, what was in dispute was Mr Herrity's level of responsibility, and whether his actions could properly be characterised as misconduct, or simply as administrative mistakes. For the reasons I have said, I find that Mr Lamb had a genuine belief, at least in respect of the VAT issue and the bouncy castle issue, that misconduct had been committed.
65. The second question is whether that belief is supported by a reasonable investigation. I have already made some comments about the investigation. I find that it was reasonable in the circumstances of the case.
66. The third question is whether the sanction of dismissal is within the band of reasonable responses. I take account of the fact that Mr Herrity had a clean disciplinary record as his warning had expired. I also take account of his exceptionally long service. Dismissal without a warning may have been harsh in respect of the VAT allegation alone, but in view the decision to dismiss in respect of the bouncy castle allegation would have been well within the range of reasonable responses. The fact that the two serious allegations arose together lends further credibility to the decision. I also consider that the respondent is entitled to take account of the backdrop to these allegations, which is a very marked level of administrative failing by Mr Herrity, alongside an inability to appreciate or acknowledge the seriousness of those failings during the process. Against that backdrop, I have no hesitation in deciding that the sanction of dismissal was within the band of reasonable responses.

67. The final – and slightly separate – part of the unfair dismissal test – is whether there have been procedural irregularities that make the dismissal unfair. The first point to deal with here is the fact that the decision was not made by a committee member, contrary to the handbook. I find that the provision in the Handbook was non-contractual, and Mr Herrity had no contractual right to insist that the decision was taken by a committee member. Clause 17.4 of the handbook simply provides an indication of what will normally happen, and is directed towards constraining the authority of (employed) line managers, rather than dictating the arrangements which the committee have to follow during a disciplinary process.
68. In some circumstances an employer's failure to follow its own procedural rules, even where those rules are non-contractual, can make a dismissal unfair. I find that this was not one of those cases. The club rules gave Mark Pedder the authority to commission a disciplinary procedure and that is what happened. It would have been infeasible and inappropriate for a committee member to have been asked to take the role of disciplining officer given the involvement of the committee in these matters and their potential partiality. If Mr Pedder and, in particular, Ms Hayes, had simply decided to conduct the process themselves then I would have viewed that as a serious procedural irregularity. ACC Roy acted correctly in identifying independent club members to take the various roles in the disciplinary process, and I am satisfied that the individuals who were asked to be involved were all suitably independent. There was no disadvantage to Mr Herrity that might have adversely effected the fairness of the decision.
69. I have made reference in the Judgment to other procedural failings – particularly the delay in the investigation stage of the process and the oppressive nature of some parts of it, particularly Mr McCourt's interviews with Mr Herrity. I can add to that list of concerns the characterisation of some capability issues as misconduct issues, which, as I have said was a mischaracterisation, and not appropriate. However, it is very rare to see a perfect disciplinary process. I have to consider, holistically, whether the defects in this process were such as to make the dismissal unfair. That means again, that it must be a process which no reasonable employer could have undertaken. In making that assessment I have to take into account the size and resources of the employer – effectively its sophistication as an organisation. In my judgment the defects in this case were not grave enough, by some distance, to justify the conclusion that this was a process which was outside the band of reasonable responses, and which made the dismissal unfair. I am further satisfied that, even without these defects, the MPSSA would have reached the same decision to dismiss.
70. In summary, therefore, my conclusion is that Mr Herrity's claim of unfair dismissal is not well-founded. That means that it does not succeed and there is no entitlement to compensation.

Employment Judge Dunlop

Date: 6 November 2024

WRITTEN REASONS SENT TO THE PARTIES ON
7 November 2024

FOR EMPLOYMENT TRIBUNALS

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>