

# THE INDUSTRIAL TRIBUNALS

CASE REF: 5988/18

**CLAIMANT:** Lisa Rooney

**RESPONDENT:** Retail Zoo Limited

## DECISION

The unanimous decision of the tribunal is that the claimant's claim for an unfair constructive dismissal is dismissed.

### Constitution of Tribunal:

**Employment Judge:** Employment Judge Greene

**Members:** Ms E McFarland  
Mrs M O'Kane

### Appearances:

The claimant was represented by Mr P Moore of Copacetic Business Solutions Ltd.  
The respondent was represented by Mr C Foote of Colin Foote Employment Law.

### SOURCES OF EVIDENCE

1. The tribunal heard evidence from the claimant and on behalf of the respondent from Gavin Adair, Collette McLarnon and Claire Hyndman. The tribunal also received seven bundles of documents amounting to 379 pages approximately, a Schedule of Loss in which the mathematical calculations are agreed and three submissions from the claimant and the respondent.

### THE CLAIM AND THE DEFENCE

2. The claimant claimed that she was unfairly constructively dismissed. The respondent denied the claimant's claim.

## THE ISSUES

### 3. (1) Legal Issues

Whether the claimant has been unfairly dismissed by way of constructive dismissal, contrary to Articles 126 and 127(1)(c) of the Employment Rights (Northern Ireland) Order 1996 as amended?

## FINDINGS OF FACT

4. (1) The claimant was born on 22 April 1985.
- (2) The respondent operates five convenience stores and employs approximately 105 employees. Gavin Adair is the sole director of the respondent company.
- (3) The claimant worked for the respondent as an Administrative Assistant from 30 April 2007 until 8 May 2018 when she resigned and claimed constructive unfair dismissal.
- (4) The claimant worked as an Administrative Assistant at the respondent's premises at the Park Centre, Belfast. Her weekly earnings were £307.20 gross, £240.00 net. She was considered by the respondent to be part of the management team and was provided with a company car.
- (5) The claimant's husband and Gavin Adair's late wife were brother and sister.
- (6) The claimant returned to work on 25 May 2017 at the end of her maternity leave. On return she felt a colleague, and friend, BF was very dry with her. From a third party the claimant was told that she was alleged to have spoken badly about BF. The claimant says that BF informed her that Gavin Adair was the source of the information.
- (7) A few days later the claimant told a colleague, Colette McLarnon, that someone was out to get her and was trying to push her out of the business. On return from maternity leave, rotas and wages which she had previously prepared had been removed from her. She was further told that she could no longer finish at 4.00 pm as she had done prior to her maternity leave. The claimant did not do anything about not finishing at 4.00 pm as by that time, she says, Gavin Adair had stopped speaking to the claimant and her family and she did not want to create an atmosphere in work.
- (8) Following a disciplinary action in February 2018 against an employee of the respondent in another shop for which the employee received an informal warning for unreasonable use of a company computer Clare Hyndman, (nee McCullough) proposed to Gavin Adair, which he accepted, that a review be undertaken of all working practices of staff including the use of company computers which review was carried out by Colette McLarnon.
- (9) On 6 March 2018 the claimant's printer was broken and Gavin Adair was in the office trying to fix it. The claimant had left the office and her emails were open.

- (10) Around 1.00 pm on 6 March 2018 the claimant heard Gavin Adair tell BF that there was going to be “a revolution”, that “he had just scooped someone” and that there were going to be “big changes”.
- (11) After covering for the lunchbreak for colleagues the claimant returned to her office on 6 March 2018. She found Gavin Adair seated at her desk. She stated that her personal emails had been open.
- (12) Later that night she discovered Gavin Adair had deleted her from Facebook.
- (13) At 4.41 pm on 7 March 2018 a Whatsapp message was received by the claimant and all the managers in the managers’ group from Colette McLarnon regarding company computers. The message stated:-

“Just letting you all know ....

Following a recent disciplinary surrounding the misuse of a company computer and the inappropriate use of the internet during working hours, I will be carrying out a full audit of all computers from tomorrow.

Please make sure that the internet history is not cleared and no files are deleted from ANY company computer. ...”

- (14) The claimant believed that the email was the result of Gavin Adair having read her emails on 6 March 2018. Colette McLarnon denies having personally targeted the claimant with this audit.
- (15) The respondent does not have a specific policy on the use of company computers. All the respondent’s staff are advised at induction that computers should be used for work purposes only during their hours of work according to the respondent. The claimant denies that she was ever so informed. However, this statement implies that computers may be used for personal purposes in non-work time.
- (16) On Thursday 8 March 2018 at 4.00 pm Colette McLarnon asked to look at the claimant’s computer. She asked the claimant to leave the room. Some 20 minutes later she told the claimant she could go back to her room.
- (17) Colette McLarnon has also checked the respondent’s computers at the convenience stores at the Royal Victoria Hospital, The Mace, Ormeau Road and at the Centra Store on the Ormeau Road. She did not find any significant personal use of the respondent’s computers. However, in the Park Centre there are two computers. One of the computers did not have any significant personal usage though it had crashed the previous week and the hard drive had been replaced, but the other computer had a significant number of documents on it, and it was the computer used by the claimant. Collette McLarnon discovered that the documents were not related to the respondent’s work. Among the documents saved by the claimant there were documents in her name and the names of her family members. There were documents in the names of 16 other persons. The documents included travel and insurance documents, boarding passes and tickets, letters to suppliers, documents relating to the claimant’s husband’s business and applications

which the claimant had completed for other jobs. Colette McLarnon discovered that these documents had been worked on and saved during the claimant's hours of work.

- (18) The claimant turned on her computer at work on 9 March 2018. She was looking for work from the previous day. A file kept appearing on her desktop entitled, "DS STORE ON YOUR MAC" which alluded to something about hidden files. The claimant deleted it and tried to remove it from her trash box on the computer but the file continued to appear.
- (19) On 9 March 2018 Colette McLarnon reported to Clare Hyndman that she had found a significant number of documents of concern on the claimant's computer which appeared to have been created and saved by the claimant herself in relation to members of her family and friends. The extent of the documents raised suspicion that they were created during working hours. She also found a letter on headed paper saying that a colleague MM earned £28,000.00 per annum which she knew was not correct. Clare Hyndman decided to suspend the claimant.
- (20) Gavin Adair was made aware of the claimant's suspension, though he did not take the decision to suspend the claimant.
- (21) Clare Hyndman, the respondent's Operations Manager, told the claimant at 11.30 am on 9 March 2018 that she was suspended and would receive a letter in the post and an email copy.
- (22) The claimant closed her files on her computer and left. It was only when outside that she realised she did not have any written explanation for her suspension, so she texted Clare Hyndman at 11.49 am asking for the reason for her suspension. Clare Hyndman replied saying that it would be in the letter.
- (23) At 4.50 pm on 9 March 2018 the claimant received an email from Clare Hyndman with an attached letter explaining why she was suspended. The letter stated:-

"I am writing to confirm my decision to suspend you on full pay on Friday 9 March in accordance with your terms and conditions of employment as Gross Misconduct has been suspected. As I explained to you today this is to enable me to carry-out a speedy and thorough investigation into the following misconduct:

Gross Misconduct:

Suspected falsification of records.

General Misconduct:

Suspected excessive use of a company computer and IT equipment for non-work related activities for yourself, individuals unconnected to the company, outside organisations and other companies within your working hours over the last

few days, weeks, months and years.

...”

- (24) The claimant found it hard to believe how Colette McLarnon had gathered information from her computer going back years in 20 minutes. She felt it was attempt to remove her from her employment. The letter also asked her to attend an investigation meeting on 13 March 2018.
- (25) The claimant received a text message from BF on 9 March 2018 suggesting that this was another mess to push the claimant out of the respondent company or so it looked.
- (26) Colette McLarnon conducted an investigation. Clare Hyndman prepared a report and drew on Colette McLarnon’s investigations and findings.
- (27) At paragraph 4.1 Clare Hyndman’s states:-
- “● Colette had discovered light use of internet during break and lunchtimes and a few personal documents such as payslips and boarding passes on all company computers with the exception of the computer behind the tills in Park Centre which had crashed and had been replaced and the computer in Centra which had none whatsoever.
  - Colette has discovered that Lisa Rooney has been deleting her internet browser history regularly on the office computer.
  - Colette has found an excessive amount of personal documents relating to Lisa Rooney and her family and friends on the office computer, many of which show the time as during working hours.
  - Colette has found a letter written by Lisa Rooney for MM which she believes contains inaccurate salary information of £28,000.00 and none of our staff are paid this much. The letter was opened on 10 October 2017 but created on 14 October in 2014.
  - Colette then went back to October 2014 and found two other letters written for BK, both with conflicting salary information. One stating £9,900.00 and another stating £11,000.00.
  - On 9 March Colette informed me of her concerns regarding Lisa and as the nature of part of her concerns would appear to be falsification of records which is gross misconduct I have suspended Lisa Rooney and will investigate this further”.
- (28) In a further section of the report entitled “Facts and evidence”, Clare Hyndman records:-

“ ...

- By comparison I looked at the period when Lisa was off on

maternity leave and found two documents belonging to NR and none of ED. Both of these girls covered Lisa during this time.

- I found one set of boarding passes and a school timetable relating to Colette McLarnon and two documents relating to SS.
- I have said that Lisa appears to be using the computer as a virtual office for her husband Brian, printing installation guides and storing/printing customer receipt details including their personal information, etc. Lisa claims anything she would have opened would be saved to the computer and it does not mean she printed it out.

...

- When asked why she has written a letter confirming M's salary at £28,000.00 and not £20,000.00, Lisa has said she must have been told to do it by Gavin or D.
- I asked Lisa how she got a copy of B's contract, she said she did not know and must have got it from management.
- I asked Lisa why did she type two letters both with different hourly rates. She said she did not know the figure was given to her by someone else.
- When asked about the two letters relating to B's salary Lisa has said it must have been for a mortgage and there was no gain for her. She has said she would have got the figures from Gavin or D and that she must have been told to overestimate the salary.
- I asked Gavin did he provide any salary information and he said he did not and correspondence to D would be via email.
- In looking for an email between Lisa and D, I have found an email from Lisa to MK, B's husband confirming she has attached two letters for him to use whichever is better for him. I did not find any communications between Lisa and D.
- Lisa feels there is a personal vendetta against her, which there is clearly not – my reasoning behind the investigation is explained in the introduction”.

(29) In the section on findings and conclusions drawn from the evidence Clare Hyndman states:-

“... Lisa is a member of the management team and knows that no one is allow to misuse company time or resources. Lisa has clearly misused both”.

- The number of documents relating to Lisa, her family, friends and other companies is insignificantly in excess of 100. This is in comparison to one or two belonging to a small handful of other staff members”.
- (30) Clare Hyndman stated a number of other conclusions.
- (31) The claimant attended an investigation meeting on 13 March 2018. She was accompanied by a union representative, Hugh. Clare Hyndman and Luke Robinson were there for the respondent. Clare Hyndman explained that the gross misconduct was a letter that the claimant had prepared for another employee, BK, setting out the latter’s gross earnings for the year. The claimant alleges that it was normal to do this type of letter for people wanting to re mortgage or rent.
- (32) At the meeting Clare Hyndman raised about another letter written on behalf of another employee MM, stating an amount she earned which was not correct. The respondent was treating the inaccuracy as a typing error, but the claimant doubted it was her error and she suggested that the error was from information supplied to the claimant by management.
- (33) Clare Hyndman also raised about Pretty N Pink documents, ie, car insurance. Pretty N Pink was a charity started by Gavin Adair’s late wife. When Pretty N Pink was mentioned the claimant said she felt this was a personal attack on her as both BF and MM worked for Pretty N Pink.
- (34) The issue of deleting internet history was raised. The claimant accepted that she always did that as she was not the only person using her computer. Other colleagues used it at lunchtime and on Wednesday which was the claimant’s day off. She accepted that she had printed material for personal reasons. The claimant believed that this disciplinary issue was Gavin Adair waging a vendetta against her. Clare Hyndman disputes that as the discovery of the personal use of the computer by the claimant was the result of a company-wide audit into the use of company computers.
- (35) Following the investigation meeting Clare Hyndman concluded that disciplinary action should be considered in relation to the claimant.
- (36) Colette McLarnon sent a letter to the claimant via email on 14 March 2018 inviting her to a disciplinary meeting on 16 March 2018 to consider the following:-

**General Misconduct**

**Failure to behave in a suitable manner**

- (37) Miss-using the company computer in company time on numerous occasions. As the number of identified occasions of suspected misuse is well in excess of 100, we have selected a few examples namely:

1. 6th November 2017 – documents relating to SCS and Argos Installation which I believe were for the company your husband is employed by, were downloaded, viewed and printed between 8.06 am and 8.11 am in company time.
2. 8th January 2018 – An iPhone replacement note for your husband was downloaded, viewed and printed at 8.20 am in company time.
3. 30th January 2018 – Documents relating to your job application downloaded and viewed between 8.40 am and 8.50 am in company time.

### **Gross Misconduct**

#### **Falsification of records**

- (38) In an email to MK you state that you have produced two letters confirming the annual income of BK both with different salary information to that detailed in her employment contract and offer him the choice to use whichever was better for him.
- (39) The alleged general misconduct had changed from general misconduct alone at the investigation meeting to general misconduct and failure to behave in a suitable manner. The details of the alleged misuse on which the respondent relied were set out in the letter, as above.
- (40) At the preliminary hearing the claimant did some research on the falsification allegation. She discovered a number, of what she considered relevant emails, which she set out at her witness statement between paragraphs 24 and 27.

At paragraph 24 she states:-

“... Hi Gavin sorry to txt you I've to do M a letter up to say she works here and what she earns do you know how much her annual income is for the year so I can put it in the letter as they need to know what she earns.”

At paragraph 25 she records a reply from Gavin Adair which stated:-

“Just multiply her hourly rate (from des if you don't have it) x 40 and x 52 “.

She also referred to an email sent to N McE dated 20 January in which she said:-

“Hi N, Gavin said will you check your car insurance as he thinks it will be up soon, also there is a recall on cars, so you have to phone Renault to book it in, it is something to do with breaks. Thanks Lisa”.

She records at paragraph 27:-



“There were two letters done; firstly her annual income from the previous year and secondly, BK took on extra hours in the shop – 6.5 hours on a Friday and was on a higher rate of pay than the previous year. B asked for a new letter to be done up with this income on it, which was done and sent it to M, B’ husband.”

- (41) The disciplinary hearing was re-scheduled to 19 March 2018. The claimant attended with her union representation, Huguette McLarnon, Loss Prevention Manager, and Bronagh Creanie were there for the respondent.
- (42) Huguette McLarnon raised about the claimant using the respondent’s computer to print materials. The claimant accepted that she had done so and she alleged that everyone had done that. When questioned by the claimant’s union representative did the respondent have a limit on printing materials Huguette McLarnon said no. Nor was there any limit on printing materials contained in her contract of employment. The claimant alleges that printing personal materials was common place.
- (43) The claimant also brought forward evidence in relation to the falsification of records for BK. On questioning she was told no one had spoken to BK. Huguette McLarnon gave the claimant a recorded final warning for gross misconduct and recorded written warning for general misconduct and recorded written warning for general misconduct. Formal notification of the outcome of the disciplinary hearing was given on 20 March 2018. In that letter she was told that she had the right of appeal.
- (44) The claimant alleges that there was a vendetta against her. Claire Hyndman denies this and says that the letters on which the salary information was printed were on the respondent’s headed paper. They provided two accounts of BK’s salary which were wrong. The claimant could not explain this error to Claire Hyndman’s satisfaction. The claimant had access to the payroll and would have been able to get the correct figures. She further says that the particular documents were only discovered by the respondent following a company wide review of computer use. Claire Hyndman felt the sanction that she had imposed was fair as the claimant had accepted that she had created the documents.
- (45) The claimant contacted Gavin Adair on 23 March 2018 when she lodged her appeal.
- (46) Gavin Adair wrote to the claimant on 28 March 2018 acknowledging her appeal. The claimant had submitted a sick line at that time which ran until 17 April 2018. Gavin Adair proposed that the appeal hearing take place on 5 April 2018 but the appeal was re-scheduled, at the claimant’s request, to 2 April 2018 after a number of emails between the claimant and Gavin Adair. The claimant attended the appeal unaccompanied on 12 April 2018. She admitted printing personal materials. She alleged everyone was doing that. She denied falsification of records and she said she had evidence that she had asked senior management before writing the letter for other staff members about their income. Gavin Adair heard the appeal. At the appeal he went through the matters in detail with the claimant.

(47) The claimant did not deny writing the two letters for BK. She could not explain the wrong figures representing BK's salary neither of which was accurate. She further asserted that there was no benefit to her to falsify such figures. Neither could the claimant explain the two letters to MK showing different figures for his wife's earnings. The claimant suggested that there was some confusion on the hours worked by BK but Gavin Adair was unconvinced by anything the claimant said on this point. Mr Adair states in his witness statement at paragraph 14:-

“... She said that if she had thought it was wrong to do it, she would have done it more discretely, and/or, that she would not have sent it from the office computer and company headed notepaper. I felt this was an unsatisfactory response. I was also concerned that BK (who is a personal friend of the claimant) had disclosed to myself and others at the outset of her employment that she had previously claimed family tax credit to which she had not been entitled to and as a result she had had to repay a significant sum back to the authorities.”

(48) The claimant had access to all payroll information but could not explain why she did not avail of that information which was available to her. There was not any relevant calculation that produced the figures the claimant had included in the letter nor any reason why BK's husband should be given two letters with different calculations as to BK's earnings. The disciplinary hearing had not found falsification in relation to the letter regarding MM though the claimant had sought information from Gavin Adair about the calculation of her earnings but arrived at a wrong figure. Gavin Adair did not consider this matter further as at the disciplinary hearing Collette McLarnon had given a final written warning in relation to the BK's letters only.

(49) The claimant accepted that she had printed a huge amount of personal documents for herself, her friends, her family, applied for jobs and in connection with her husband's business. She said everyone was doing it but did not provide any evidence of this. When she was informed that the investigation had not shown others doing it the claimant apologised.

(50) The claimant suggested that there was a personal vendetta against her by Gavin Adair. She said Collette McLarnon only took 45 minutes on her computer on 9 March 2018 which was not long enough. However Claire Hyndman spend over six hours investigating the claimant's computer. The claimant could not offer a rational explanation for the vendetta.

(51) There was a break in the appeal hearing. After the break Gavin Adair said that he had dropped the final written warning for falsification of records and accepted it was a mistaken estimate of BK's salary. He ordered a written warning for general misconduct in relation to this offence. As regards the other offence of general misconduct he awarded a written warning. He reduced the duration of both warnings from 12 months to six months. As there was a large number of documents which would have taken a lot of time during working hours he felt the sanctions appropriate. He was further satisfied that the claimant knew not to do that.

- (52) The claimant complained about what people in work were saying about her and how this impacted on her. She subsequently handed in a sick line for stress and anxiety and resigned on 30 April 2018. Her letter of resignation which is undated stated:-

“Dear Gavin,

Due to recent events of which you are aware, I feel I can no longer continue my employment with Retail Zoo. As you know I raised various issues as to how I have been made to feel since returning to work in May 2017 after my maternity leave. I feel I was treated unfairly during recent investigation and disciplinary process.

Please accept this letter as my formal resignation. My sick line will cover my notice pay.

Thanks.

Lisa”

- (53) The claimant told the tribunal that she had lost confidence in her employer that the disciplinary procedure and sanctions were manufactured against her.
- (54) The claimant was interviewed for another job on 25 April 2018 and was offered the post on 26 April 2018, which she accepted. Her new job is with Coral Environmental.
- (55) Gavin Adair denied any vendetta against the claimant. He regarded her as a valued and trusted member of the respondent’s management team. Since his wife’s death in 2014 he had tried to follow his late wife’s wishes as regards her own family. He gave the claimant and her husband £18,869 from the business to buy a caravan in Ballycastle in 2016. Later in 2016 he gave £12,000 to the claimant and her husband for a hot tub and sauna. He further set up a discretionary trust fund of £10,000, which has increased since, for the claimant’s eldest daughter. He also believed members of his late wife’s family have found it difficult to come to terms with Gavin Adair meeting and beginning a relationship with someone else sometime late in 2014 which has resulted in the birth of a child.

## **THE LAW**

5. (1) A breach of contract arises when the employer breaches any term of the claimant’s contract of employment whether that term is an express term or an implied term which arises by operation of law.
- (2) To establish a constructive dismissal that is unfair the claimant must prove that:
- (a) that there was a breach of her contract of employment, and
  - (b) the breach went to the core of the contract,

- (c) the breach was the reason or principle reason for her resignation,
  - (d) she did not delay in resigning after the breach occurred, and
  - (e) in all the circumstances the employer acted unreasonably.
- (3) The breach of contract can be a breach of an express term of the contract of a breach of an implied term or both.
- (4) Implied terms of the contract include:
- (a) a breach of the duty of trust and confidence;
  - (b) a breach of the duty of co-operation and/or support
  - (c) a breach in relation to the fairness of the disciplinary sanctions. (Harvey on Industrial Relations and Employment Law D1 paragraphs [429] to [465]);
- (5) A breach of the implied term of trust and confidence can be a single act of the employer or a course of conduct by the employer over a period of time;
- (6) Where a course or conduct is relied upon it is not necessary that any single act itself amounts to the breach of the implied term of trust and confidence but the course of conduct cumulatively must amount to the breach of the implied term;
- (7) Where a constructive dismissal claim arises from an alleged breach of the implied term of trust and confidence where the employer leaves in response to conduct carried out over a period of time the particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action but when viewed against a background of such incidences it may be considered sufficient by the court to warrant their treating the resignation as constructive dismissal. It may be the “last straw” which causes the employee to terminate a deteriorating relationship. [Harvey of Industrial Relations and Employment Law D1, [480)].
- (8) In **BBC v Beckett [1983] IRLR 43** the EAT accepted that it can be a breach of contract for an employer to impose a disciplinary sanction which is out of all proportion to the offence. The employee had been downgraded following disciplinary proceedings having been taken against him. Even though the contract of employment explicitly provided that demotion might be imposed for active misconduct, the tribunal held that it was far too harsh for the particular misconduct and that when the employer resigned he was entitled to treat himself as having been constructively dismissed. The EAT refused to interfere with their determination. This decision has been followed by the EAT in **Cawley v South Wales Electricity Board [1985] IRLR 89** (Harvey on Industrial Relations and Employment Law D1, [468]).

## APPLICATION OF THE LAW AND THE FINDINGS OF FACTS TO THE ISSUES

6. (1) The claimant has brought a claim for constructive unfair dismissal.

- (2) She grounds her claim for constructive unfair dismissal on a breach of an actual term of the contract and a breach of the implied term of trust and confidence.
- (3) The actual term upon which the claimant relies is that she was wrongly subjected to a disciplinary process. Effectively the claimant's claim is that the disciplinary process was a sham and was part of a vendetta to get rid of the claimant.
- (4) The breach of the implied term of trust and confidence is the result of the alleged sham and an unjustified disciplinary process which led to the claimant losing trust and confidence in her employer.
- (5) The tribunal is not persuaded that the disciplinary process to which the claimant was subjected was a sham. In so concluding the tribunal had regard to the following matters:-
  - (a) In February 2018 there was a disciplinary process against another member of staff for misusing the company computer at Queen's Post Office for which the employee was disciplined and received an informal warning.
  - (b) The respondent advanced the plausible reason that this incident caused the respondent to review all staff working practices including the use of company computers. The claimant has not rebutted or undermined this plausible reason.
  - (c) An investigation was held in relation to all the computers in the five convenience stores operated by the respondent.
  - (d) The claimant's computer was found to have a significant amount of personal documents saved on the computer for the use of the claimant's family, friends, colleagues, her husband's business and which included in confidential business information. They related to over 17 persons.
  - (e) Whilst there had been some personal use in other computers it was insignificant by comparison with that done by the claimant.
  - (f) The claimant admitted using the computer for personal documents.
  - (g) The amount of materials and the times they were created necessitated the use of the computer during working hours.
  - (h) The respondent's approval for light use on the computer on personal time was not frowned upon. The tribunal rejects Gavin Adair's suggestion that no personal use was permitted. This is clear from the investigation report and the disciplinary hearing in relation to the claimant.
  - (i) Whilst there was no written policy imposing limits on quantity, or time for

using computers for personal use the tribunal considers that someone who was part of the management should know that the quantity of use upon which the claimant engaged in the respondent's time was not acceptable.

- (6) Nor is the tribunal persuaded that there was a vendetta waged against the claimant. In so concluding the tribunal have regard to the following matters:-
- (a) That the investigation and main actor of the alleged vendetta was said to be Gavin Adair who was trying to get rid of the claimant.
  - (b) If he had organised a vendetta Claire Hyndman was clearly unaware of the vendetta and not part of it for though finding the claimant guilty of gross misconduct she did not impose the penalty of dismissal which is always a possible penalty for gross misconduct.
  - (c) At the appeal stage Gavin Adair reduced the penalty from a final written warning to a written warning and reduced the period of both warnings from 12 months to six months which actions suggest that he was not engaged in any vendetta against the claimant.
  - (d) Although not obliged to do so legally Gavin Adair has interpreted what he believes would have been his late wife's wishes in relation to the claimant, her sister-in-law and the claimant's husband, her brother. Gavin Adair has been very generous with gifts totalling some £30,000 and creating a trust fund for the claimant's eldest daughter of some £10,000. Again these actions are not consistent with the waging of a vendetta.
- (7) In light of this find in the tribunal considers that the disciplinary process was a reasonable one carried out reasonably and following proper procedures.
- (8) There is therefore no actual breach of a contractual term of the claimant's contract in relation to the disciplinary process followed by the respondent it as reasonable in the circumstances.
- (9) Although the disciplinary process was a reasonable one it is not surprising that the claimant was upset by it. However, that process which was carried out properly and reasonably and on a proper basis cannot amount to a breach of the implied term of trust and confidence.
- (10) There is therefore not any breach of contract of an actual term or implied term of the claimant's contract of employment.
- (11) That being the case it is unnecessary for the tribunal to consider the other ingredients necessary for a constructive dismissal claim as the absence of a breach of contract is a fatal omission in a successful claim for constructive unfair dismissal.

(12) Accordingly the claimant's claim is dismissed.

**Employment Judge:**

**Date and place of hearing: 27, 28 and 29 November 2018 and 11 and  
24 January 2019, Belfast.**

**Date decision recorded in register and issued to parties:**