



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Wharton

**Respondent:** GPC SIPP Limited

**HELD AT:** Manchester

**ON:** 30 - 31 August 2018

**BEFORE:** Employment Judge B Hodgson

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr David Jones, Solicitor

# JUDGMENT

The Judgment of the Tribunal is that:

1. The claim of unfair dismissal is well founded and succeeds.
2. The claim of unlawful deduction from wages is well founded and succeeds.

# REASONS

## Background

1. This was a hearing to consider two claims, namely one of unfair dismissal and one of unlawful deduction from wages.

2. The primary reason given by the respondent for the decision to dismiss was "gross misconduct". The respondent had however purported to amend the ET3 response form to include, within the Grounds of Resistance, an alternative reason for dismissal as "some other some substantial reason". For the avoidance of doubt, the Tribunal permitted the ET3 to stand in the amended form, the claimant having no objection to this course of action.

### Issues

3. The issues raised for the Tribunal to determine in summary were agreed at the outset of the hearing as follows:
  - 3.1 What was the reason for dismissal?
  - 3.2 If conduct, was such dismissal fair under the provisions of section 98(4) of the Employment Rights Act 1996 taking account of the following guidelines:
    - 3.2.1 Did the respondent hold a genuine belief in the reason for dismissal at the time it took its decision?
    - 3.2.2 Was there a proper and reasonable investigation into the allegations of gross misconduct?
    - 3.2.3 Was the respondent's decision to dismiss one which was reasonably available to it to reach?
  - 3.3 Was summary dismissal a reasonable sanction in all the circumstances?
  - 3.4 If, in the alternative, the respondent was dismissed for "some other substantial reason", namely the breakdown of the working relationship, was such dismissal fair in all the circumstances under the provisions of section 98(4)?
  - 3.5 Did the respondent unlawfully deduct from wages monies contractually due to be paid to the claimant?

### Facts

4. The claimant gave evidence on his own behalf and also called Ms Jessica Aspinall, a former employee of the respondent. He also tendered in evidence two written statements from Ms Lauren Jackson and Mr Michael Baratinsky. The respondent gave evidence through its owner, Ms Kathryn Taylor, two managers, Ms Fiona McGrail and Mr Philip Walsh, and an external HR consultant, Ms Sally Grundy.
5. The parties had agreed a joint bundle of documents and references within this Judgment to documents are by reference to such bundle as paginated.
6. The Tribunal reached its conclusions on the following relevant facts having considered all evidence, both oral and documentary, and based on the balance of probabilities.

7. The respondent is a small company specialising in the provision of self-administered pension schemes for clients, with approximately 15 members of staff. Ms Kathryn Taylor is the founder and owner of the business.
8. The claimant was first employed by the respondent on 9 May 2011 as an Accounts Administrator. His contract of employment was signed on 5 September 2012 with a starting annual salary of £12,000 (pages 25 – 33). There were two subsequent increase documented within the claimant's personnel file, to £12,500 (page 312j) and then to £15,000 (page 312k) both in 2012.
9. The relationship between the claimant and the respondent, however, is not simply one of employer/employee. There is a very close personal background arising from the relationship between the claimant and Ms Taylor.
10. The claimant is considered by Ms Taylor to be her nephew, in effect, being the son of her sister's partner. He was 12 years old when they first met when Ms Taylor's sister commenced her relationship with the claimant's father. Following the completion of his university education, the claimant lived with Ms Taylor for some five years between the ages of approximately 20 and 26, subject to a break of about a year when the claimant lived temporarily with a partner.
11. The claimant and Ms Taylor had a very close relationship including socialising together and going on holiday together. There was no rent asked for by Ms Taylor in respect of him living with her. Ms Taylor summarises their relationship at the time they lived together by reference to a greetings card sent by the claimant to her in 2016 describing her as his mother, auntie and best friend all rolled into one.
12. As indicated, the claimant commenced his employment as an Account Administrator, principally assisting the then Finance Manager. As a result of a difficult relationship between the two, he was transferred to the administration team managed by Ms Fiona McGrail in the latter part of 2015.
13. In September 2016 the Finance Manager commenced a period of sickness absence and ultimately resigned in November 2016. At the time her employment ceased the Finance Manager was paid a salary of £62,000 per annum together with additional employer pension contributions. (There were two members of staff at the time considered to hold senior managerial roles, the Finance Manager and Ms Lisa Farrimond who also had the benefit of the same salary package).
14. By this time the claimant's salary had increased to £20,000 per annum and his title was SIPP Administrator.
15. As a consequence of the resignation, Ms Taylor entered into discussion and came to an agreement with the claimant and Mr Philip Walsh (Accounts Administrator) about them covering the duties of the Finance Manager's role rather than seek a direct replacement. Nothing was documented with regard to their respective roles going forward.

16. Both sides sought to address the Tribunal on the specifics of precisely what the claimant's (and Mr Walsh's) responsibilities were following the Finance Manager's departure. There was also the indication that some of the Finance Manager's responsibilities were out-sourced. The claimant referred to documentation within the bundle indicating that he undertook personnel functions (see for example page 200) and also it was agreed that only he and Ms Farrimond could sign off on IT contracts (see for example page 67). Conversely Ms Taylor was clear in her evidence that the claimant was not intended to and did not have a senior role, and certainly not at the level of the previous Finance Manager. The Tribunal does not – in the light of the background of the close personal relationship - regard the precise division of duties to require detailed analysis to support or counter the contrasting versions of the future events. The fact that Ms Taylor was without question in sole command of a relatively small operation, which - without this being intended as a criticism of the professionalism or otherwise of the business - appears to have been operated by her as a "life-style" business, she having a number of outside interests, both business and leisure, meant that any arrangement between her and the claimant as to his terms and conditions of employment – given the close personal relationship between the two - would not necessarily be reflective of his precise job role.
17. The salaries of both the claimant and Mr Walsh were increased at that time – Mr Walsh from £22,000 (or possibly £24,000 – there was conflicting evidence but the point is not material) and, the claimant, from £20,000 – both to £28,000 per annum.
18. Soon afterwards, in November 2016, the claimant approached Ms Taylor to suggest that in light of his changing responsibilities, his job title should change to reflect this. Between them, it was agreed that his job title would be amended to "Financial Controller". Ms Taylor's position is that this was purely a change of job title which she was happy to agree to but it was not reflective of itself of the claimant holding a senior position. There is no suggestion that, at that stage, there was any further discussion over his salary package.
19. One of the claims to be determined by the Tribunal is whether or not the respondent has made unlawful deductions from wage. This claim, as will be seen, concerns the period when the claimant was suspended on "full pay" to the date of his dismissal, 11 August 2017. Although suspended on 15 June, his salary was in fact reduced for the entire month of June (page 306) and the lower level continued through to termination.
20. During that period, the claimant's wages were paid at the rate of £28,000 per annum. The claimant contends that he was entitled to continue to be paid at the contractual rate of £62,000. The Tribunal has to determine what his contractual entitlement in fact was at the relevant time.
21. The claimant and Ms Taylor have very different views as to that issue.
22. The claimant's position is that he had a meeting with Ms Taylor in February 2017. She expressed herself to be very happy with the way the claimant was performing in his new role and proposed to him a pay increase to the same level as Ms Farrimond, namely £62,000 plus employer pension contributions.

He was asked to check what that meant in net terms with Ms Farrimond, which he did, and Ms Taylor then confirmed the agreement. It is agreed that the claimant, given his position with responsibility for administering payroll, put that new figure through payroll so that he was paid at that level for the month of March and onwards (see pay slips at pages 303 – 305) believing, in the light of the discussion, that this was his contractual entitlement. Ms Taylor denies that any such meeting took place and is categorical that such increase was not proposed and certainly not agreed by her. The Tribunal will revert to its findings in this regard later in the Judgment having continued to set out the findings of fact chronologically.

23. In his role, Mr Walsh was aware of all salaries within the respondent company. It is agreed that the claimant immediately advised Mr Walsh of the salary increase that he (the claimant) was putting through the records, that this had been agreed with Ms Taylor and that, if he (Mr Walsh) wished, it was of course open to him to check that position with Ms Taylor. Mr Walsh's evidence was that he did not in fact check the position with Ms Taylor or raise the matter with her at all - his evidence being that at the time he felt that it was "in order". Ms Taylor in her own evidence (paragraph 36) comments that, as a "loyal employee", Mr Walsh would advise her "if there was anything out of the ordinary". The claimant also notified the respondent's accountants of the change (see for example page 149)
24. In or about January 2017, the claimant had been asked and agreed to assist Ms Taylor in a personal capacity with her private financial affairs. It was agreed that the claimant would manage her personal finances including her bank accounts and some personal contracts, for example TV and Internet, and that the various debts that she had would be structured in a way to enable them to be paid off in a set timescale (see page 69).
25. On 23 May 2017, Ms Taylor requested from the claimant a number of pieces of financial information including a complete breakdown of all salaries paid to staff (page 216). The claimant responded by email sent to Ms Taylor on 24 May (page 214 - 215). One of the attachments the claimant sent was the salary breakdown of all employees, including the claimant which set out his annual salary as £62,000 (page 217).
26. In or about May 2017 issues started to come to a head between the claimant and Ms Taylor when they fell out over her personal financial arrangements. Ms Taylor's credit card had been declined when seeking to make a payment at a hotel which had caused her embarrassment. The claimant felt that he had endeavoured to put everything in place as best he could to avoid such a scenario but, as he saw it, he was finding it increasingly difficult and ultimately impossible to manage Ms Taylor's personal financial affairs given the way in which she used her credit cards and spent money generally.
27. As a consequence the claimant and Ms Taylor had a major argument on 22 May 2017 and the claimant left her property with some belongings.
28. They decided that it would perhaps be better from both of their points of view that the claimant no longer take responsibility for administering Ms Taylor's personal affairs

29. Ms Taylor followed up this meeting up with messages being exchanged between the two and a further discussion took place between the two individuals on 30 May. The claimant sought to return to Ms Taylor's property and she agreed but said that they would need to be sure that their relationship improved.
30. Ms Taylor subsequently became disappointed with various messages that the claimant had posted on Facebook which suggested that, as far as she was concerned, his "loyalties were divided" and as a consequence the claimant was told by Ms Taylor that she did not want him to move back in.
31. This resulted in a further exchange of messages which, on the face of matters and supported by the evidence given to the Tribunal, were basically amicable (pages 279 – 283).
32. On 12 June 2017, however, Ms Taylor sent a message by text to the claimant as follows: "hey, did we put ur salary up? If we did could we reduce it back down to the same level as Phil's was please and put the savings in my account. Thanks huni xx" (page 285).
33. The claimant responded the following day, 13 June, by e-mail and included the phrase "we agreed to increase my salary to a senior management level (same as Lisa's)" (page 221).
34. This response clearly aggravated Ms Taylor and she decided to confront the claimant. She understood he was then living at his brother's house but, although aware of the street, did not know the precise address.
35. The Tribunal viewed CCTV of the visit by Ms Taylor which shows her driving up in her car, knocking on what turned out to be the wrong door, and then waiting for a short period of time. The claimant emerged from his brother's house, they both went back into the house and then Ms Taylor emerged and drove away. The exchange between the two was recorded by the claimant on an audio basis and the Tribunal both heard the audio recording and was referred to a transcript (page 334).
36. It is clear that Ms Taylor was in a very agitated and emotional state, making repeated threats to the claimant ("I will squash you...") with expletives, and the confrontation culminated with the statement "you will regret that email for the rest of your life". This had followed eight missed calls from Ms Taylor to the claimant's mobile number in four minutes (page 272).
37. Ms Taylor then sent a text message to the claimant on 13 June 2017 – "put the money in my account tonight or I'll make it a police matter" (page 286). She also put a message on Facebook setting out the background to their relationship and then stating that "I learnt today that Chris Wharton has stolen monies from me of up to about £10k. Mortified isn't the word. How low can a person get" (page 287). This produced a series of responses which may be categorised as adverse to the claimant.
38. On reflection, Ms Taylor says, she then decided that it would be more appropriate to take the matter through a formal disciplinary process and that she should have no involvement in this. She purported to step back from the

process and instructed Mr Philip Walsh to deal with the company's external HR advisers (Alcumus) and take the matter forward.

39. Ms Taylor however accepts that it was she took the decision to suspend the claimant and instructed her employee Jacqui Dowling to action this. She also took the decision to reduce his pay at that point to £28,000 pending the outcome of the disciplinary process. The evidence from Mr Walsh was that Ms Taylor sent him an e-mail to that effect so he could amend pay-roll accordingly although that e-mail has not found its way into the bundle of documents.
40. A letter was sent to the claimant signed off by Jacqui Dowling on 20 June (pages 34 – 35) confirming his suspension and setting out two allegations as follows:  
  
appointing yourself as a senior manager without authorisation; and  
  
increasing your salary in line with this self-promotion and arranging payment of this increased salary without authorisation
41. These allegations were framed by Ms Taylor herself with assistance from Alcumus.
42. Mr Walsh took then commenced an investigation with Alcumus advising. (see pages 225 – 228).
43. He interviewed the claimant on 30 June (pages 36-38).
44. He interviewed Ms Lisa Farrimond on 3 July (page 39).
45. He interviewed Ms Taylor also on 3 July (40-41).
46. The claimant raised issues as to the accuracy of the minutes of his meeting (pages 42 – 43) but these are not material to the outcome.
47. Following the meetings with Ms Farrimond and Ms Taylor, Mr Walsh held a follow-up meeting with the claimant on 17 July (pages 47 - 48) and then also a final follow up meeting with Ms Taylor on 31 July (page 49).
48. A letter dated 1 August (pages 50 – 51) was sent by Mr Walsh calling the claimant to a disciplinary hearing. In addition to the previous two allegations, two further allegations were now set out without explanation:  
  
increasing your pension payments in line with the salary increase and arranging payment of these increased pension payments without authorisation  
  
a loss in trust and confidence in you as a result of the above
49. There then proceeded a disciplinary hearing on 10 August (pages 229 – 232). This meeting was conducted by Ms Fiona McGrail although Mr Walsh was in attendance as a notetaker. Ms McGrail accepts that she had been aware at that stage of the Facebook entry on the matter that had been posted by Ms Taylor

50. It was agreed that both Mr Walsh and Ms McGrail took no steps in the process without discussing and being advised by Alcumus who also drafted all documentation.
51. Ms McGrail telephoned the claimant on 11 August advising him of her decision to dismiss him summarily (page 233) and subsequently wrote a confirmatory letter to him dated 15 August 2017 (pages 234 – 236) which sets out her reasoning for that conclusion.
52. The claimant appealed against that decision by email dated 23 August 2017 (pages 240 – 241) setting out his grounds of appeal.
53. Ms McGrail responded by email dated 24 August 2017 (page 239) and the parties exchanged e-mails on the detail of the grounds of appeal (pages 244 – 247).
54. There also followed an exchange of emails with regard to the person who most appropriately should deal with the appeal. The respondent was proposing a Ms Cecelia Phillips. Ms Taylor confirmed that it was she who had proposed Ms Phillips. The claimant objected referring to the fact that Ms Phillips had engaged in the Facebook exchanges instigated by Ms Taylor saying " ...I hope you admit to yourself how stupid and greedy you have been and that all you have achieved is to lose everything most of all your best supporter of all time Kat Taylor" (page 292).
55. The respondent accepted the claimant's objection and appointed Ms Sally Grundy who worked for the respondent's HR advisor Alcumus.
56. Ms Grundy wrote to the claimant by letter dated 26 October (pages 261 – 262) confirming an appeal hearing would take place and seeking agreement as to the date. The hearing subsequently proceeded on 3 November and Ms Grundy prepared notes of the meeting (pages 263 – 266).
57. This concluded (page 266) with an indication that Ms Grundy would endeavour to respond with a decision as soon as possible ... "This would normally be within 5 days but there were questions she [Ms Grundy] had to put to employees at [the respondent] including [Ms Taylor] herself".
58. In the event, it was accepted by Ms Grundy that she did not speak to anyone involved subsequent to that hearing, simply carrying out what she described as "a further review of the investigation material".
59. Ms Grundy confirmed in her letter dated 21 November 2017 (pages 267 – 271) that the appeal was rejected setting out the reasons for her decision.
60. To reach its conclusion on whether or not the claimant's claim of unlawful deduction from wages succeeds the Tribunal must determine his contractual entitlement. Essentially, did the meeting take place in February 2017 in accordance with the claimant's version of events or does the Tribunal accept Ms Taylor's denial of that meeting ever taking place and any such increase in salary being agreed?



61. Neither party gave their evidence in such a way as to clearly lead the Tribunal to a conclusion that either of them lacked credibility.
62. In support of her argument, Ms Taylor seeks to rely on what may be termed the incongruity of the alleged increase (in terms of how large the alleged increase is said to be) and her extreme reaction on 14 June to the claimant's e-mail. She explains her reference to a reduction in pay as being to an arrangement she had proposed that the claimant's salary be increased by £5,000 (or potentially the equivalent by putting his car insurance through the respondent's fleet policy) to reflect his additional work in managing her personal affairs. The Tribunal notes that this explanation was only given in her second investigation meeting once the wording of her text had emerged and she had not considered it relevant to mention at the first meeting notwithstanding that being concerned totally with the claimant's salary arrangements.
63. The claimant states that he had a follow up meeting at the request of Ms Taylor with Ms Farrimond to check what the increase would mean in net terms. In her investigative interview, Ms Farrimond neither confirms nor denies the discussion, indicating that she does not recall it. The claimant asserts that this response is due to Ms Farrimond not wishing to be dishonest in her reply but also not wishing to directly contradict Ms Taylor. Ms Farrimond's response is inconclusive one way or the other.
64. As indicated, it is agreed that the claimant very quickly afterwards made Mr Walsh aware of the increase and he [Mr Walsh] did not consider this to be a matter that he needed to bring to Ms Taylor's attention. The claimant also discussed the increase with the respondent's accountants. He also responded to a request from Ms Taylor herself specifically to let her have the details of all employees' salaries which showed his at the increased rate. Ms Taylor's response to this is that she "did not clock" those figures. She makes reference in the investigative process to not having time to look at the e-mail despite the timings.
65. Again as indicated, the Tribunal does not believe a detailed analysis of whether the job role justifies or merits the increase claimed, is of value given the special relationship going well beyond the standard employer/employee relationship. There was speculation put forward by the claimant as to possible reasons for the increase beyond straightforward pay including potentially assisting the claimant to get on the property ladder or making sure there was alternative accommodation for Ms Taylor in the event that her business folded (it being clear from the evidence that the respondent was subject to various official investigations with references to financial penalties).
66. If it were the case that Ms Taylor was "doing him a favour" by giving the increase or had done so for some other (lawful) motive, that would not negate in any way the contractual position. Her extreme reaction could well be explained as extreme rage at him seeking to wrongly extract money from her and the business but lends itself also to other equally plausible explanations. For example, anger that the claimant was insisting on his contractual right to continue to be paid at the higher rate and was not prepared to voluntarily agree to it being reduced

67. Balancing the two positions, the Tribunal concludes that the evidence produced before it comes down clearly in favour of the claimant's assertion of the contractual position. All of his subsequent actions were consistent with the agreement he contends for having been reached between the two of them.

68. The Tribunal finds accordingly as a fact.

### Law

69. Section 98(1) of the Employment Rights Act 1996 states:

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 subsection 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.

70. The "conduct of the employee" is one of the reasons set out in subsection (2)

71. Section 98(4) of the Employment Rights Act 1996 states:

Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

72. It is for the employer to prove the reason for dismissal. The application of section 98(4) has a neutral burden of proof.

73. There is well-established case law setting out the guiding principles for determining an unfair dismissal claim based upon a dismissal by reason of conduct.

74. The case of *British Home Stores Limited v Burchell (1980) ICR 303* proposes a three-fold test. The Tribunal must decide whether:

74.1 the employer had a genuine belief that the employee was guilty of the misconduct alleged;

74.2 it had in mind reasonable grounds upon which to sustain that belief; and

- 74.3 at the stage at which that belief was formed on those grounds it had carried out as much investigation into the matter as was reasonable in the circumstances (which include the gravity of the charges and the potential impact upon the employee – *A v B 2003 IRLR 405*).
75. The Tribunal must then consider whether the sanction of summary dismissal was reasonable in all the circumstances
76. The Tribunal must not substitute its own view for that of the employer unless the latter falls outside the band of reasonable responses (*Iceland Frozen Foods v Jones 1983 ICR 17*). This applies to procedural as well as substantive matters (*Sainsburys v Hitt 2003 ICR 111*).

### Submissions

77. The claimant made oral submissions.
78. He stated that Ms Taylor had given him the increase in February 2017 and their relationship was fine until their fall-out arising out of his Facebook entries. The disciplinary process was flawed because those involved were guided by Ms Taylor's wishes. At no time did he adjust his salary without the authorisation of Ms Taylor nor did he hide his actions at any time.
79. The respondent's representative made oral submissions which are summarised as follows.
80. In respect of unfair dismissal, the process was a proper process and procedurally, he asks rhetorically, what more could have been done?
81. In terms of substantive fairness, the issue turns on the alleged meeting occurring in February 2017. There is no contemporaneous evidence that such a meeting took place and Ms Taylor denies the content of it. The text message at page 285 is not evidence of the meeting, being largely inconclusive. If seen in the context of the prior texts, it indicates a connection with personal rather than business matters.
82. It flies in the face of logic following the departure of the Finance Manager that the claimant would at any point be given a pay rise to the level that he claims, namely more than double some three months later. The claimant had the power and the position to amend salaries without authorisation.
83. In respect of the extreme reaction of Ms Taylor, this shows how annoyed she was, exploding as a result of what was clearly something that upset her enormously and this is the most compelling evidence of the claimant's actions. This was supported by Ms Grundy on appeal.
84. Looking at the Burchell tests, these have all been met.
85. In the alternative the family unit had broken down, the breakdown was clearly irretrievable and his employment could not continue.
86. In what the representative described as a "win-win" situation, it is conceded that the claimant should have been paid at the rate of £33,000 from

suspension through to dismissal, this recognising the £5,000 increase that had been agreed by Ms Taylor.

87. The claimant's evidence was light and inconsistent. On the contrary, the evidence of the respondent's witnesses was balanced and reasoned. Whatever character traits may have been displayed by Ms Taylor at the point of her confrontation with the claimant, there had been no suggestion that she was in any way dishonest.
88. The claimant briefly responded that it could not be correct that he had stolen any money and that he was happy to rely upon the evidence that had been given. If he had stolen up to £10,000 why, he rhetorically asked, was it not now a police matter?

### Conclusions

89. The Tribunal has found as a fact that the claimant was given the increase as contended for by him and that this was his contractual entitlement effective from March 2017. It is not in dispute that he was not paid that at that level following his suspension and accordingly the unlawful deduction of wages claim succeeds.
90. The claim of unfair dismissal needs to be looked at separately and through a different prism. As indicated, it is not for the Tribunal to substitute its own decision.
91. These are serious allegations, particularly for a person involved in the accountancy profession, and needed to be given full and proper consideration
92. The Tribunal looked firstly at the question of the procedure followed. On the face of matters, a proper procedure was followed: the claimant was suspended pending investigation, all relevant witnesses were interviewed, all relevant documentation was produced, a hearing was held culminating in the decision to dismiss. The claimant was then given the opportunity to appeal which he exercised.
93. The claimant's position however is that, while accepting that his employment technically ran until 11 August 2017, he believed his dismissal was inevitable from the moment Ms Taylor appeared at his house and confronted him in the way that she did, in the sense that she was never going to permit him to return to work. This would mean that what happened subsequently, by way of investigation and decision to dismiss, was a sham – those involved simply accepting that what Ms Taylor said must be correct and therefore what the claimant said must be incorrect, leading to a justification to dismiss.
94. The Tribunal considers it impossible to accept Ms Taylor's contention that she separated herself out and had no material input into the process, particularly given her own evidence. On the face of the outburst at the claimant's home she gives every impression that she had clearly come to the conclusion that the claimant's employment with her company was finished, including the words that the claimant would "regret that email for the rest of his life".

95. In fact the hand of Ms Taylor appears overall throughout the process. It was she who decided on the suspension of the claimant and that his pay should be reduced during his suspension. She had formulated the allegations put to the claimant and it is clearly indicated in the documentation that she was in contact with the respondent's HR advisors – the contact being identified as "Anil". In her first investigative interview (pages 40 – 41), when discussing the confrontation with the claimant, she says that "Anil knows". In that same meeting she instructs Mr Walsh to finalise the matter quickly – "present what you have to Anil, I want it done this week". With input from Alcumus, the allegations were expanded in the disciplinary meeting invite letter. As the process continued, it was Ms Taylor who put forward her friend to conduct the appeal, that individual's prior involvement showing it to be utterly inappropriate for her to carry out that role (acknowledging that this was not followed through, presumably upon advice, once the claimant raised his objection).
96. At the disciplinary hearing, Ms McGrail, on any proper analysis, did not take a neutral stance in the way she questioned the claimant - the notes of the meeting show clearly that she was in effect putting Ms Taylor's case for her.
97. The Tribunal then looked at the substance of what is said in Ms McGrail's outcome letter (pages 234 – 236). The Tribunal's conclusion is that the reasons given by Ms McGrail, which are concise, do not stand up to any scrutiny from an objective and reasonable point of view.
98. The Tribunal has difficulty understanding precisely what the first allegation amounts to beyond the question of the salary package. It is not in dispute that the change of role and job title were agreed and it is difficult to follow the reasoning for upholding the allegation. The suggestion that a failure to announce supports the allegation is inconsistent with the evidence given that not all job changes were announced.
99. The crucial allegation is the second one concerning the dispute over the correct level of pay. The rationale for upholding this decision effectively is that Ms Taylor has given a contrary view and explains the reference in her text to reducing the claimant's pay to the £5,000 increase she alleges was given in consideration of the claimant handling her personal financial affairs. There is no mention that this proposal was only made at the second interview with Ms Taylor after sight of the text in question and that she had made no reference to it at the first meeting. Ms McGrail indicates that "there is no documentary evidence to suggest otherwise". This is clearly not correct, there being documentary evidence that the claimant was open with the respondent's accountants about his salary and that Ms Taylor herself had been e-mailed the details of his salary by the claimant. Ms McGrail further makes no mention of the agreed position that the claimant notified Mr Walsh of the alleged change very soon after the meeting said to have occurred in February. This evidence flies in the face of what amounts to an allegation that the claimant fraudulently and/or secretly awarded himself and caused to be paid a significant pay rise without authority. It can however be correctly said that there is no documentary evidence to support Ms Taylor's contention that the claimant was given a £5,000 salary increase. The Tribunal rejects the respondent's submission that the content of an earlier text (page 281) supports the respondent's position in this regard – there is nothing more in

this than the coincidence of the figure of £5,000 being mentioned as one of the payments Ms Taylor wishes to have transferred from her office account to her personal accounts.

100. The third allegation with regard to pension payments effectively must stand or fall with the second allegation.
101. The finding as to loss of trust of confidence is predicated on the basis that the claimant has committed the act of gross misconduct alleged.
102. The Tribunal's conclusion on the question of procedure is that the claimant's analysis is correct and the disciplinary process, whilst on its face ticking the technical boxes, amounted to a sham in the sense that the outcome was predetermined and inevitable. Even were the process to be considered proper and reasonable, no reasonable employer acting reasonably could have come to the conclusions reached by Ms McGrail on the basis of the evidence before her.
103. The Tribunal then considered the appeal conducted by Ms Grundy, an employee of Alcumus. In her introductory letter (pages 261 – 262), Ms Grundy states that "the aim of the appeal hearing is not to be a complete rehearing of the original decision but should be a review of the grounds on which your appeal is based". The Tribunal was careful not simply to accept that label but a consideration of the content of the appeal process shows that it was not a rehearing and did amount purely to a review.
104. The outcome letter (pages 267 – 271) is circular, discursive and gives no logical rationale for its conclusions. The Tribunal is puzzled by Ms Grundy's analysis of the admissibility of the events when Ms Taylor confronted the claimant. The appeal hearing ends with the indication by Ms Grundy that "there were questions [she] had to put to employees at [the respondent] including Kat herself". In the event, Ms Grundy did not speak or put any questions to any witnesses whether Ms Taylor or otherwise which she confirms in the first paragraph of her witness statement (paragraph 8) and in her evidence to the Tribunal. This, coupled with the content of the outcome letter, is in the Tribunal's view indicative of her simply accepting Ms Taylor's version of events, as with Ms McGrail. Again, none of the contrary evidence is referenced.
105. The Tribunal concludes that the appeal cannot in any way be seen reasonably to correct any of the defects of the decision to dismiss.
106. The overall conclusion reached by the Tribunal therefore is that, for the reasons given above, the respondent fails on all three of the Burchell tests.
107. The Tribunal finally considered the alternative defence of "some other substantial reason". It is clear that a breakdown in the working relationship can amount to "some other substantial reason". It is not in dispute that this working relationship did break down. Was it fair to dismiss? Having reached the decision that the salary increase had been given, the Tribunal finds that Ms Taylor herself reacted extremely to the claimant not agreeing to have this rescinded. On the Tribunal's findings, this was a unilateral attempt at reducing

salary significantly which was rejected. The ensuing breakdown therefore has been entirely occasioned by that attempt and Ms Taylor's reaction to it not being accepted. It cannot be correct that, when Ms Taylor is entirely responsible for the breakdown, she can rely upon it as the reason for the dismissal without that being unfair.

108. In all the circumstances, the Tribunal's conclusion is that claim of unfair dismissal succeeds.
109. The matter will now be set down for a remedy hearing.

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Employment Judge B Hodgson

Date: 02 November 2018

JUDGMENT SENT TO THE PARTIES ON

7 November 2018

FOR THE TRIBUNAL OFFICE

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