



## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimants**

C1 – Miss Sidra Rana  
C2 – Miss Mobina Saif

and

**Respondent**

ILA Spa Limited

**Full Merits Hearing  
held at Reading on**

27 & 28 March 2018

**Representation**

**Claimants:** Mr D Parry, solicitor  
(Assisted by Mr F Ijaz (27 March 2018)  
and Mr T Ahmed (28 March 2018)  
interpreters in the Urdu language)

**Respondent:** Mr T Perry, counsel

**Employment Judge**

Mr S G Vowles (sitting alone)

## RESERVED JUDGMENT

**Evidence**

1. The Tribunal heard evidence on oath and read documents provided by the parties. From the evidence heard and read the Tribunal determined as follows.

**Miss Sidra Rana: Unfair Dismissal – section 98 Employment Rights Act 1996**

2. The Claimant was dismissed by reason of misconduct on 21 December 2016 and that was the effective date of termination. The dismissal was not unfair. This complaint fails and is dismissed.

**Miss Sidra Rana: Wrongful Dismissal – article 3 Employment Tribunals Extension of Jurisdiction (E&W) Order 1994**

3. The dismissal was not wrongful. This complaint fails and is dismissed.

**Miss Mobina Saif: Unfair Dismissal – section 98 Employment Rights Act 1996**

4. The Claimant was dismissed by reason of misconduct on 21 December 2016 and that was the effective date of termination. The dismissal was not unfair. This complaint fails and is dismissed.

**Miss Mobina Saif: Wrongful Dismissal – article 3 Employment Tribunals Extension of Jurisdiction (E&W) Order 1994**

5. The dismissal was not wrongful. This complaint fails and is dismissed.

**Reasons**

6. This judgment was reserved and written reasons are attached.

## **REASONS**

### **SUBMISSIONS**

1. Claimant On 12 May 2017 the Claimants presented complaints of unfair dismissal and wrongful dismissal to the Employment Tribunal.
2. Respondent On 14 June 2017 the Respondent presented responses and the complaints were resisted. The Respondent claimed that both Claimants had been fairly and lawfully dismissed on 21 December 2016 by reason of misconduct.

### **EVIDENCE**

3. The Tribunal heard evidence on oath from the Claimants Miss Sidra Rana ((Production Coordinator) and Miss Mobina Saif (Production Assistant).
4. The Tribunal also heard evidence on oath on behalf of the Respondent from Mrs Stacey Steedman (Head of Marketing / investigating officer), Mr Michael Simpson (Director / dismissing officer) and Mrs Sarah Hyde (HR Consultant / appeal officer).
5. The Tribunal also read documents in a bundle provided by the parties.
6. From the evidence heard and read the Tribunal made the following findings of fact.

## FINDINGS OF FACT

### Background

7. The Respondent is a small company which manufactures, markets and sells organic skin care products. It has one office in Kiddington with 23 employees, both full time and part time.
8. There were a number of staff members who were part of the same family. Atiq Rana (Chief Operating Officer), Saeeda Rana (Orders & Despatch – self-employed), Sidra Rana (Production Co-ordinator) and Mobina Saif (Production Assistant).
9. At the beginning of October 2016 concerns were brought to the attention of Mr John Leicester (CEO and Managing Director) that Saeeda had been falsely claiming payment for hours not worked and that Atiq had been signing off payment of invoices which were false. A news article was also brought to Mr Leicester's attention which showed that Saeeda had a previous conviction for fraud as director of a charity. Atiq was invited to a disciplinary hearing but resigned before the hearing took place. Saeeda's engagement was terminated.
10. Following Atiq's departure, Mrs Steedman took up responsibility for HR matters although she had no HR training or experience.
11. Because of the circumstances of the departure of Atiq and Saeeda, Mrs Denise Leicester (John Leicester's wife and the founder of ILA-Spa) invited staff to meet with her to talk confidentially about their experiences at work. Meetings were held on 25 and 26 October 2016. Although the meetings primarily concerned Atiq and Saeeda, concerns were also raised in relation to the conduct of the Claimants. There were allegations that the Claimants were either involved in or knew about thefts from the company. Miss Saif was suspended by John Leicester on 25 October 2016 and Miss Rana was suspended by Denise Leicester on 26 October 2016. Both suspensions were on full pay. The police were consulted about the allegations of theft by Saeeda and Atiq and by Miss Saif and Miss Rana. Saeeda was prosecuted for fraud but on 7 July 2017 at Oxford Crown Court the CPS discontinued the case due to an unrealistic prospect of conviction.
12. Mrs Steedman conducted further interviews with the staff on 9 November 2016. The statements of four witnesses implicated the Claimants' wrongdoing but only two witnesses, Gemma Norville and Rosanna Wilkins, were prepared to have their statements disclosed to the Claimants. The other two witnesses

stated that they were frightened about their statements being seen by Atiqa or her family members and referred to instances of threatening behaviour.

### Disciplinary Action

13. Mr Leicester appointed Mr Michael Simpson (Director) to conduct disciplinary hearings into the allegations of misconduct. On 28 November 2016, he sent separate invitation letters to both Claimants. The letter to Miss Rana included the following:

*"I am writing to inform you that you are required to attend a disciplinary hearing on 06/12/2016 at 2.30pm. This will take place at Jurys Inn Oxford, Godstow Rd, Oxford, OX2 8AL.*

*The purpose of the hearing is to consider an allegation of misconduct against you. The allegation is that you assisted in (or were negligent in relation to) the misappropriation of stock. Specifically, on or about June/July 2016, members of staff saw you assisting Saeeda by transferring a container of oil from stock to the boot of her car. If this allegation is upheld it may constitute gross misconduct.*

*I have set out above a summary of the findings of the investigation to date and I have enclose copies of relevant documents which may be used at the disciplinary hearing. If there are any further documents you wish to be considered at the hearing, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained.*

*The hearing will be held in accordance with the Disciplinary Procedure which is attached. If you are found guilty of gross misconduct we may decide to dismiss you (without notice).*

*The hearing will be conducted by Michael Simpson and the following people will also be present: Lauren Greenaway.*

*You are entitled to bring a fellow employee or a trade union representative to the meeting in accordance with our Disciplinary Procedure. If you wish to bring a companion, please let me know their name as soon as possible."*

14. The letter to Miss Saif included the following:

*"I am writing to inform you that you are required to attend a disciplinary hearing on 06/11/2016 at 3.30pm. This will take place at Jurys Inn Oxford, Godstow Rd, Oxford, OX2 8AL.*

*The purpose of the hearing is to consider allegations of misconduct against you. The allegations are that:*

1. *You assisted in or were negligent in relation to) the misappropriation of stock. Specifically, on or about June/July 2016, members of staff saw you assisting Saeeda by transferring a 5 ltr container of toner oil from stock to the boot of her car; and*
2. *That you deliberately damaged an order after it was packed.*

*I have set out above a summary of the findings of the investigation to date and I enclose copies of relevant documents which may be used at the disciplinary hearing, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained.*

*The hearing will be held in accordance with the Disciplinary Procedure which is attached. If you are found guilty of gross misconduct we may decide to dismiss you (without notice).*

*The hearing will be conducted by Michael Simpson and the following people will also be present: Lauren Greenaway.*

*You are entitled to bring a fellow employee or a trade union representative to the meeting in accordance with our Disciplinary Procedure. If you wish to bring a companion, please let me know their name as soon as possible."*

15. Both letters were accompanied by statements from Gemma Norville and Rosanna Wilkins containing allegations against both Claimants.
16. Mr Simpson held one disciplinary meeting on 6 December 2016 with both Claimants present. Both were accompanied. A note-taker was present to record what was said.
17. On 21 December 2016, Mr Simpson sent separate dismissal letters to the Claimants. The letter to Miss Rana included the following:

*"I write further to Lauren Greenaway's email dated 29 November 2016 inviting you to a disciplinary hearing on 6 December 2016. I have now had an opportunity to consider all the documentation relating to the disciplinary charges and the content of our discussion.*

*You will recall that the relevant disciplinary charge: "The allegation is that you assisted in (or were negligent in relation to) the misappropriation of stock.*

*Specifically, on or about June/July 2016, members of staff saw you assisting Saeeda by transferring a container of oil from stock to the boot of her car. If this allegation is upheld it may constitute gross misconduct”.*

*As you are aware, three separate witnesses attested that you had assisted Saeeda to load a 5 litre unlabelled can of toner to her car. Specifically, Gemma Norville, Rosanna Wilkins and Mobina Saif.*

*You rejected these accounts stating during the course of our meeting: “I handed over stock to Saeeda and did not know where it went to”. “I did not leave the building at any point... I never left the building and never went to the car”.*

*Three witnesses gave an entirely consistent account of you assisting Saeeda to load her car with company property. I find on the balance of probability that those individuals are telling the truth and that your account is not truthful.*

*As you will appreciate, taking stock from the business is an extremely serious offence. On that basis, and having considered the information carefully, I have decided these actions constitute gross misconduct and that you are to be dismissed with immediate effect.”*

18. The letter to Miss Saif included the following:

*“I write further to Lauren Greenaway’s email dated 29 November 2016 inviting you to a disciplinary hearing on 6 December 2016. I have now had an opportunity to consider all of the documentation relating to the disciplinary charges and the content of our discussion.*

*You will recall the relevant disciplinary charge: “The allegation is that you assisted in (or were negligent in relation to) the misappropriation of stock...”.*

*During the investigation prior to our meeting, Rossana Wilkins stated that you gave company property to Saeeda, without any of the appropriate paperwork being completed. Ms Wilkins also alleged “Mobi was stood next to Sidra on many occasions when she gave the products to Saeeda.” You rejected this account. In response, you stated that: “everyone saw that Saeeda took the... toner”.*

*As you will appreciate, taking stock from the business is an extremely serious offence. On your own evidence, you witnessed an employee stealing stock, and decided not to report the matter. I consider that this was a breach of your duty to the business. On that basis, and having considered the information*

*carefully, I have decided this constitutes gross misconduct and that you are to be dismissed with immediate effect.”*

### Appeals

19. Both Claimants appealed against the decision to dismiss them. Mrs Sarah Hyde, an independent HR consultant, was engaged to conduct the appeals. She had concerns regarding the earlier investigations and the outcome of the disciplinary hearings and decided that it was necessary for her to conduct further investigations and to conduct a re-hearing for both Claimants. On 13 January 2017 Mrs Hyde conducted separate interviews with the Claimants. She also conducted further interviews with Emma Norville and Rosanna Wilkins and also spoke to other employees who had given statements but were not prepared to go on the record. As before, only Ms Norville and Ms Wilkins agreed to allow their statements to be disclosed.
20. On 30 January 2017 Mrs Hyde e-mailed both Claimants and provided them with copies of the evidence she had gathered and invited them to further meetings on 7 February 2017. Following the meetings, she reached a decision and provided her outcome in writing on 16 February 2017 as follows.
21. The letter to Miss Rana included the following:

*“Thank you for attending the meetings on 13<sup>th</sup> January and 7<sup>th</sup> February, which gave you an opportunity to respond to the investigation notes. I have now considered all of the documentation and our discussions.*

*You were dismissed due to “The allegation is that you assisted in (or were negligent in relation to) the misappropriation of stock. Specifically, on or about June/July 2016, members of staff saw you assisting Saeeda by transferring a container of oil from stock to the boot of her car”.*

*At the meeting on the 13<sup>th</sup> January it was recognised that you did not assist Saeeda to her car but did help her fill the can. Unfortunately, the outcome letter did not correspond to the witness statements, and a further investigation was required, as it was felt we did not have the full picture.*

*During the appeal hearing it was clear that you did help Saeeda fill the 5ltr can and there is a reasonable belief that this was not normal practice. Witnesses confirm that this action was suspicious and the filling of the can was rushed. There was no batch number or label, and was not logged anywhere, which you yourself admitted to. ...*

*You were witnessed on a regular basis giving products Saeeda. There seems to be common knowledge that Saeeda was stealing but no one reported it. ...*

*On a regular basis you were witnessed with Saeeda, in Unit 5 unpacking bits from already packed order. ...*

*In the notes taken on 25<sup>th</sup>/26<sup>th</sup> and clarified in my investigation "Atiqa told Sidra to make mistakes on purpose while she was on holiday to prove how much she is needed. Sidra said not to do any work and mess up any work whilst Atiqa is away. In the meeting, you did not deny this, it was questioned though how Gemma knew Atiqa and Denise/John had an argument. ...*

*After careful consideration, I have reasonable belief that you assisted Saeeda stealing the 5ltr toner can from the company and there is a reasonable belief that you assisted Saeeda take products out of production on a regular basis. Therefore I recommend to uphold the dismissal for gross misconduct.*

*In any event, if I had not reached the conclusion that your employment should be terminated on the grounds of conduct, I would have recommended dismissal on the grounds of some other substantial reason (SOSR). ...*

*You witnessed at least one member of your family engaged in suspicious behaviour (i.e. behaviour that was consistent with the theft of stock), and there was corroborative evidence that indicated that members of your family were working in cooperation to misappropriate from the business. Against this context, and given your failure to report suspicions or wrongdoing, it is difficult to see how a relationship of trust and confidence could be maintained."*

22. The letter to Miss Saif included the following:

*"Thank you for attending the meetings on 13<sup>th</sup> January and 7<sup>th</sup> February, which gave you an opportunity to respond to the investigation notes. I have now considered all of the documentation and our discussions.*

*You were dismissed due to "allegation that you assisted on (or were negligent in relation to) the misappropriation of stock".*

*Within the meeting on 13<sup>th</sup> January you said you were one step removed from the order form and what Sidra did; however, in the investigation it was clear that you and Sidra would work side by side and aware of what is happening around you. In the notes taken 25<sup>th</sup>/26<sup>th</sup> you stated that Saeeda would come over and steal from production". In the disciplinary meeting and the appeal meeting on 13<sup>th</sup> January you denied that you gave out products; however,*



*within the investigation notes you were witnessed giving Saeeda products on various occasions, Sidra also stated this in her appeal. ...*

*By your own admittance, you were aware of Saeeda stealing from the company and after careful consideration, I have reasonable belief that you took a more active role in assisting her, whether this was on your own account or pressure from your family. Therefore I recommend to uphold the dismissal for gross misconduct.*

*In the event, if I had not reached the conclusion that your employment should be terminated on the grounds of conduct, I would have recommended dismissal on the grounds of some other substantial reason (SOSR). ...*

*You confirmed that you had witnessed at least one member of your family engaged in suspicious behaviour (i.e. behaviour that was consistent with the theft of stock), and there was corroborative evidence that indicated that members of your family were working in cooperation to misappropriate from the business. Against this context, and given your failure to report suspicions or wrongdoing, it is difficult to see how a relationship of trust and confidence could be maintained.”*

## **RELEVANT LAW**

### Unfair Dismissal – section 98 Employment Rights Act 1996

#### 23. Section 98. General

- (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 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.*
- (2) *A reason falls within this subsection if it-*
  - ... (b) *relates to the conduct of the employee, ...*
- (3) *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.*

24. Under section 94 of the Employment Rights Act 1996 an employee has the right not to be unfairly dismissed by his employer.
25. The Respondent claimed that the Claimant was dismissed by reason of misconduct.
26. For cases involving misconduct, the relevant law is set out in section 98 of the Act and in the well-known case law regarding this section, including British Home Stores v Burchell [1978] IRLR 379, Post Office v Foley [2000] IRLR 827, and Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23. From these authorities, the issues for the Tribunal to determine were as follows.
27. Firstly whether there was a potentially fair reason for the dismissal under section 98(2) and did the employer have a genuine belief in the misconduct alleged. The burden of showing a potentially fair reason rests with the employer.
28. Secondly whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating the misconduct as a sufficient reason for dismissing the employee under section 98(4), in particular did the employer have in mind reasonable grounds upon which to sustain a belief in the misconduct and, at the stage at which the employer formed that belief on those grounds, had it carried out as much investigation into the matter as was reasonable in all the circumstances of the case. Did the investigation and the dismissal fall within the range of reasonable responses.
29. Thirdly the Tribunal must not substitute its own view for that of the employer, but must assess the actions of the employer against the range of reasonable responses test. That test applies to all stages in the procedure followed by the employer, including the investigation, the dismissal and the appeal.
30. In Santamera v Express Cargo Forwarding [2003] IRLR 273 the EAT said that fairness does not require a forensic or quasi-judicial investigation for which the employer is unlikely in any event to be qualified and for which it may lack the means. In each case the question is whether or not the employer fulfils the test laid down in British Home Stores v Burchell and it will be for the

Tribunal to decide whether the employer acted reasonably and whether or not the process was fair.

31. In Taylor v OCS Group Ltd [2006] ICR 1602 the Court of Appeal held that an Employment Tribunal is required to assess the fairness of the disciplinary process as a whole. Where procedural deficiencies occur at an earlier stage the Tribunal should examine the subsequent appeal hearing, particularly its procedural fairness and thoroughness, and the open-mindedness of the decision-maker. Accordingly, defects in the original disciplinary procedures may be remedied on appeal. It is irrelevant whether the appeal hearing takes the form of a rehearing or a review, so long as it is sufficiently thorough to cure the earlier procedural shortcomings.
32. The ACAS Code of Practice on Disciplinary and Grievance Procedures sets out the steps which employers must normally follow in such cases. That is, establish the facts of each case, inform the employee of the problem, hold a meeting with the employee to discuss the problem, allow the employee to be accompanied at the meeting, decide on appropriate action and provide the employee with an opportunity to appeal.

## **DECISION**

### Unfair Dismissal

33. The complaint of unfair dismissal was put by the Claimants as follows.
34. *“Misconduct was not the true reason for the dismissals in this case. The true reason was the Claimants’ family connection with Saeeda and Atiqa.”*
35. The Tribunal did not accept this submission. There was ample evidence to support the allegations against the Claimants, based in part upon their own admissions, and to support the dismissals and the decision to reject the appeals. Although it is true that both Claimants were related to Saeeda and Atiqa and to each other and Mrs Hyde found that members of the family were “working in cooperation”, there was no reliable evidence to support the assertion that the Claimants were dismissed solely because of the family connection. The Tribunal found that the Respondent had a genuine belief in the guilt of the Claimants and that the true and sole reason for dismissal was misconduct.
36. The Claimants also alleged procedural unfairness as follows:
  - 25.1 There was no reason to suspend either Claimant;

- 25.2 The matter was not dealt with promptly;
  - 25.3 There was no investigation meeting with either Claimant'
  - 25.4 The investigation was not even-handed and leading questions were asked of witnesses;
  - 25.5 Not all evidence was disclosed to the Claimants;
  - 25.6 The Claimants were dismissed for different reasons than those set out in the disciplinary invitation letters;
  - 25.7 There were no reasonable grounds to believe either Claimant was guilty of misconduct;
  - 25.8 The decision to dismiss fell outside the range of reasonable responses;
  - 25.9 The decision to dismiss was predetermined;
  - 25.10 Sarah Hyde was not impartial;
  - 25.11 New allegations were raised at the appeal stage;
  - 25.12 There were no reasonable grounds for Sarah Hyde to believe either Claimant was guilty of the new allegations'
  - 25.13 The decision on appeal was outside the range of reasonable responses;
  - 25.14 The Claimants were collateral damage in a falling out between directors.
37. The Tribunal considered the procedure adopted by the Respondent as a whole, and did not accept the above assertions of procedural unfairness.
38. There is no doubt that there was a falling out between directors in the company and allegations of misconduct, hence the wide-ranging investigation undertaken by Mrs Steedman in October 2016. The criticisms made of Mrs Steedman's investigation and that conducted by Mr Simpson during the disciplinary hearings were not unfounded. Leading questions were asked of witnesses (e.g. "Did you see Sidra stealing?") and two of the main witnesses were not prepared to have their statements or identities disclosed for fear of reprisals. Mr Simpson's outcome letter referred to Miss Rana having assisted Saeeda to load the 5 litre can of toner into her car and he accepted there was

no evidence to indicate that she did more than fill the can of toner for her. However, as stated in the Santamera case referred to above, an employer is unlikely to be qualified to conduct a forensic investigation, particularly a small employer as in this case. There was no evidence that the suspensions, investigations, and disciplinary outcomes were motivated by anything other than a desire to establish whether the allegations of theft and malpractice were true and to take appropriate action.

39. Additionally, and importantly, Mrs Hyde recognised there were shortcomings in the earlier investigation and disciplinary process. She was independent of the Respondent (though she had previously done some work for them) and there was no evidence of predetermination on her part, quite the contrary. In order to ensure that a fair process was followed, she decided it was necessary for her to conduct further investigations and a re-hearing for both Claimants. The Tribunal found that Mrs Hyde's investigations and conclusions set out in the appeal outcome letters were reasonable and fair.
40. She said that the reason for her decision was that in particular the Claimants themselves had not been interviewed as part of the initial investigation and Mr Simpson's disciplinary outcome letter said that the witness evidence suggested she had been seen assisting Saeeda to load her car with company property when in fact the witness had seen her assisting Saeeda to fill up a 5 litre can of toner and Saeeda then took it to the car herself. Mrs Hyde thereupon took further statements from Rosanna Wilkins and Gemma Norville and from the other employees who were willing to speak to her but were still not willing to put their names to statements. Mrs Hyde provided the Claimants with copies of the new evidence she had obtained and then invited them to attend a further meeting to allow them to respond to the further evidence obtained. Both were fully aware of the allegations they faced. They were accompanied and both accepted that they were given a full opportunity to put their case. The outcome letters to both Claimants were detailed and reasoned. They are quoted extensively above.
41. The Tribunal found that so far as there was any procedural irregularity in the initial investigations and disciplinary process, these were rectified by the re-hearings conducted by Mrs Hyde (see the Taylor case above).
42. Looking at the procedure as a whole, that is the investigations, disciplinary procedure and appeals, the Tribunal concluded that the Burchell tests had been complied with by the Respondent, as had the basic requirements of fairness set out in the ACAS Code of Practice. The procedures were well documented and transparently conducted.

43. There was sufficient reliable evidence for the Respondent to reasonably conclude that both Claimants had been involved in the misappropriation of the Respondent's property and interference with stock. This fell within the scope of misconduct and the dismissals were within the range of reasonable responses. They were not unfair.

Wrongful dismissal

44. The test for wrongful dismissal is different to the test for unfair dismissal. In the former the reasonableness or otherwise of the employer's actions is irrelevant. The question is whether the employee was guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract.
45. The Tribunal looked objectively at the evidence placed before it and found evidence of gross misconduct such as to justify summary dismissal.
46. The evidence gathered by Mrs Steedman, Mr Simpson and Mrs Hyde, in the form of witness statements and from interviews provided sufficient evidence of misappropriation of the Respondent's property and interference with stock. This fell within the scope of gross misconduct amounting to a repudiatory breach of contract entitling the employer to treat the contracts as terminable without notice by reason of the conduct of the employees.
47. The dismissals were not wrongful.

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Employment Judge Vowles  
19 April 2018

Sent to the parties on: .....

.....  
For the Tribunals Office