



EMPLOYMENT TRIBUNALS

Claimant:
Ms S Purvey

v

Respondent:
Elstree School Ltd

Heard at: Reading

On: 10 April 2018

Before: Employment Judge Finlay

Appearances

For the Claimant: Mr D Meredith (Lay representative)

For the Respondent: Mr D Rees (Consultant)

RESERVED JUDGMENT

The complaint of unfair dismissal is not well founded and is dismissed.

REASONS

Introduction

1. This claim came before the tribunal on 10 April 2018. The Claimant brought a complaint of unfair dismissal and the tribunal heard evidence from the Claimant and from Ms Claire Chen, the dismissing manager on behalf of the Respondent. There was an agreed bundle of documents running to just over 100 pages and the parties were advised that the tribunal would read only those documents referred to in the evidence or referred to specifically by the parties' representatives. Evidence was heard as to liability and a provisional remedies hearing was fixed.
2. Each party had produced its own list of issues to be decided. Following a discussion with the parties' representatives, the following issues were identified:-
 - 2.1 Was the Claimant dismissed for a potentially fair reason under section 98 (2) ERA? The Respondent asserts that the reason for the Claimant's dismissal was redundancy, or in the alternative, a restructuring which qualifies as 'some other substantial reason'.

- 2.2 If so, did the Respondent act reasonably in accordance with section 98 (4)? The Claimant asserts that specific elements of unfairness were that the procedure adopted by the Respondent was manifestly unfair and that the Claimant was not given a right of appeal.
- 2.3 If not, to what extent, if any, should any compensation to the Claimant be reduced in accordance with the principles set out in the case of Polkey, on the basis that the Claimant could have been dismissed fairly by the Respondent because of the Claimant's conduct in paying expenses and overtime to herself in breach of her contract of employment and removing a confidential document belonging to the Respondent.
3. Following the hearing of the evidence, both representatives made helpful oral submissions and handed up written summaries of those submissions.
4. Mr Rees for the Respondent also handed up a bundle of the following authorities, all of which I considered prior to making my decision:
 - 4.1 Murray and Another v Foyle Meats Limited [1999] UKHL 30
 - 4.2 Safeway Stores v Burrell [1997] IRLR 2000
 - 4.3 Polkey v AE Dayton Services Limited [1987] IRLR 503
 - 4.4 Rowell v Hubbard Group Services Limited UKEAT/44/94
 - 4.5 O'Donohue v Redcar & Cleveland Borough Council [2001] EWCA Civ 701
 - 4.6 Neary and Neary v Dean of Westminster [1999] IRLR 288
 - 4.7 Lesney Products v Nolan and Others [1977] ICR 235
 - 4.8 Hakki v Instinctif Partners Limited UKEAT/0112/14
5. Mr Meredith for the Claimant referred to the case of Corus & Regal Hotels v Wilkinson UKEAT/0102/03, which I also considered.

Facts

6. Having heard the evidence and considered the documents to which I was referred, I make the following findings of fact.
7. The Respondent trades as a school from one location in Woolhampton, Berkshire. It employs around 100 employees.
8. The Claimant was employed by the Respondent as Assistant Bursar from November 2006 until 25 July 2017. She has no formal accountancy or finance qualifications. For the first ten years or so of her employment by the Respondent, she reported to Prue Matchwick who was the school Bursar, but in 2016 Ms Matchwick retired and was replaced as Bursar by Claire Chen. Ms Matchwick had been an experienced Bursar but she was not an accountant and the Respondent's governing body decided that it now needed a Bursar with a commercial accounting background. Ms Chen is a chartered certified accountant with 26 years' commercial accounting experience, albeit not in the education sector.

9. Within the bundle of documents was a Job Description for the role of Assistant Bursar. It is relatively brief and generic and was produced when the role of Assistant Bursar was a part time role. It had not been updated. It describes the main duties of the role under four headings: payroll, fees ledger, purchase ledger and nominal ledger. The document only goes so far in assisting to identify what the Claimant did on a day to day basis, but it states that no specific qualifications were required for the role, the requirements being an in-depth knowledge and experience of book-keeping and payroll and computer literacy with a good working knowledge of Excel and Word. In her witness statement the Claimant confirmed that she took on various accounting tasks as the assistant to the Bursar, but her precise role was a matter of dispute, to which I will return later. It is common ground, however, that amongst her duties were the responsibility for overseeing the school bus service. The other relevant document in this respect, in addition to the Job Description, was an extract from the Bursar's Handbook, prepared by the Claimant and Claire Chen, in which the Assistant Bursar was stated to be "responsible for payroll, purchase ledger, sales ledger, preparation of fee invoices, processing Extras, managing school runs and all vehicles". Whilst reporting to Ms Matchwick, the Claimant performed her role to the satisfaction of the Bursar.
10. Shortly after Ms Chen joined the Respondent, the school's (part-time) secretary left. She had been responsible for HR administration for the school and Ms Chen and the school's headmaster decided to create a full time HR position such that Maria Pountney was recruited to fill this position which had the title of 'Bursar's Assistant – HR'. The requirements of this post also included some financial and general administration duties and Ms Pountney took on responsibility for processing and recording of all purchase ledger financial transactions that formed the purchase ledger. This responsibility had been one of the Claimant's duties before the new appointment.
11. In 2017, Ms Chen obtained the Respondent's approval to outsource the processing of the payroll to an external payroll bureau. This too had been the Claimant's responsibility. There was a dispute about how much time the Claimant had spent on the payroll: Ms Chen stated that it took up on average about 20% of her time, averaged out over a month, whilst the Claimant claimed that the true figure was about half that. Having heard evidence from both, I find that the payroll took up at around 10% of the Claimant's time. I have no reason to disbelieve the Claimant in this respect and consider that she is more likely to know the detail than Ms Chen. In any event, the transfer of the payroll to the external payroll bureau took effect in April or May of 2017.
12. Ms Chen also obtained approval for a new finance system. This was not directly relevant to the Claimant's workload, but it meant that Karen Flanagan was engaged as a temp to migrate data from the old to the new system.

13. Ms Chen was also keen to reduce the (cost of) the Respondent's reliance on external accountants. Her long-term aim was to instruct them solely for the annual audit. However, Ms Chen had identified that there was a lack of what she described as 'qualified financial and management accounting skills' within the Respondent. She was also concerned by a number of operational financial issues and was keen to divest herself of some of her own financial and management accountancy responsibilities, freeing up time for work which she considered to be of a higher priority for the Respondent. She proposed that a new role be introduced to encompass some of her own responsibilities and the (reduced) duties of the Assistant Bursar. This new role was to have the title: 'Bursar's Assistant – Finance'.
14. It was Ms Chen's opinion that if the new role was to assume some of Ms Chen's own responsibilities, it would require someone with a level of technical accountancy knowledge and experience. In her view, this meant someone who was a part-qualified accountant. She explained that this meant someone who was at least half way to becoming a fully qualified accountant, with several years' study completed. Ms Chen equated the Bursar's Assistant – Finance position to a management accountancy position in a commercial environment. Ms Chen produced a job description for the new role and having undertaken some research into the market, deciding that the new role would come with a salary of around £29,000 per year, considerably less than the Claimant's salary at the time.
15. Ms Chen's deliberations inevitably placed the Claimant's role at risk and Mrs Chen then met with the Claimant on Friday 2 June 2017 to advise her of the proposal, handing her a letter inviting her to meet again with Ms Chen to discuss the proposal on Monday 5 June 2017 and attaching the Job Description she had prepared for the new role. Not surprisingly, the Claimant was somewhat shocked by the proposal and became emotional during the meeting.
16. Ms Chen had intended for the Claimant to consider the proposal over the weekend and then discuss her thoughts on Monday 5 June. However, the Claimant texted Ms Chen before that second meeting could take place to say that she did not feel well enough to attend. In response, Ms Chen wrote to the Claimant on 5 June postponing the meeting to another date when the Claimant was fit to return to work, but also giving the Claimant the opportunity to respond in writing.
17. The Claimant sought medical advice and obtained doctor's certificates signing her off work. There was what might be described as 'tetchy' correspondence between Ms Chen and the Claimant during June, with Ms Chen asking for independent evidence of the Claimant's ill health at a time when the Claimant was not required to provide it.
18. On 22 June, Ms Chen wrote to the Claimant stating that it had come to her attention both that the Claimant had been regularly processing claims for expenses without the appropriate authorisation and without providing a valid receipt in support and that the Claimant had been regularly claiming

extra hours and processing claims through the payroll without authorisation. the Claimant's current 'fit note' was due to expire on 26 June and Ms Chen had suggested that they meet again to discuss her proposal then. Her letter of 22 June concluded by stating that after they had finished discussing the restructure proposal, that it would be an appropriate time to 'clarify' why the Claimant had processed these claims for herself without authorisation or a receipt.

19. The Claimant did not attend the meeting on 26 June, having been signed off for a further two weeks. On 28 June, the Claimant wrote to Ms Chen, by way of response to Ms Chen's restructure proposal. In that letter she stated:-
 - 19.1 That she felt she was capable of doing the majority of the tasks set out in the Job Description for the Bursar's Assistant - Finance role;
 - 19.2 That the previous term was the first occasion she had not been fully involved in all those issues;
 - 19.3 That the only area which appeared new in the Job Description that she had not undertaken in the past was as 'Systems Super User', but that with appropriate training she could not see this as being an issue; and
 - 19.4 That she therefore did not see her role as being redundant.
20. Ms Chen responded by letter dated 29 June, listing a number of tasks in the Job Description which were currently being performed by Ms Chen and which would previously have been performed by her predecessor as Bursar and going into more detail regarding the responsibilities of the proposed new role. Those tasks were:-
 - 20.1 Production of monthly management accounts and variance analysis, ensuring the integrity of the nominal ledger;
 - 20.2 Maintaining an effective asset register;
 - 20.3 Monthly cash flow forecasts and analysis of variances;
 - 20.4 The planning, development, design organisation and monitoring of financial systems/procedures/policies;
 - 20.5 Remaining up to date with changes to financial regulations and undertake training to ensure that the school follows best practice in this area.
21. At the end of her letter, Ms Chen again referred to the issues regarding expenses and extra hours stating that they would need to be 'dealt with' on the Claimant's return to work.

22. Over the weekend of 3 and 4 June, the Claimant had gone into work and removed from her personnel file the only copy there of her contract of employment. This had also come to Ms Chen's attention and her letter of 22 June contained the additional allegation that the Claimant had "accessed her personnel file and without permission or authority removed the original of her contract which is the property of the school".
23. The Claimant responded by letter dated 30 June, seeking more information about the allegations regarding expenses and extra hours and explaining why she had removed her contract of employment, which was in essence that she needed it in order to consider the restructure proposal. The Claimant also commented on Ms Chen's assertion that the relevant tasks had not been carried out by the Claimant as Assistant Bursar and explaining that; "As the Assistant Bursar I have been regularly required to assist with all the said tasks as part of my role in assisting the Bursar" (my underlining).
24. Ms Chen responded by an undated letter sent at the beginning of July. In it, she confirmed that she stood by her previous comments regarding the new role and advised the Claimant of her right to apply for the new role. The Claimant did make an application, but she was not selected for interview because she was not a part qualified accountant. The role was given to the temp Karen Flanagan who did have that qualification.
25. Ms Chen's letter also provided some more detail of the expenses and extra hours allegations and stated that the Claimant's conduct in removing her contract of employment from her personnel file and taking it home was 'seriously inconsistent and incompatible with the conduct expected of her'. Further correspondence regarding these allegations ensued, with the Claimant alleging that Ms Chen was attempting to discredit her character.
26. On 7 July, the Claimant wrote to Gavin Owston, a governor of the school. Most of this letter comprises complaints by the Claimant against Ms Chen and towards the end of the letter, the Claimant refers to the proposed restructure alleging that there had been a 'witch-hunt' and that Ms Chen was making her a scape-goat for Ms Chen's own incompetence. The Claimant states that she could have been able to fulfil the necessary changes required by the restructure and that the training required would have been welcome to her. The Claimant states explicitly that the new role of Bursar's Assistant - Finance is not a significant change to her current role.
27. Having spoken to other governors and, briefly, to Ms Chen, Mr Owston responded to the Claimant by email on 21 July. In his reply, he stated that he was asking Ms Chen to respond to the criticisms made by the Claimant and that although it appeared that the Claimant and Ms Chen had 'fallen out' with each other, the governors had not asked for and would not support a 'witch hunt' against the Claimant. Mr Owston also confirmed that the governors supported Ms Chen's view that the Bursary was in need of

modernisation resulting in a change in the types of skills required, particularly more skilled accounting, IT and cash flow forecasting skills.

28. Also on 21 July, Ms Chen wrote to the Claimant confirming that she had not been short-listed for interview for the new role, advising the Claimant that in her view there were no suitable redeployment opportunities and that she was therefore considering terminating the Claimant's employment by reason of redundancy. Ms Chen invited the Claimant to a meeting for the Claimant to be able to respond, again offering the Claimant the option of responding in writing. The Claimant responded by letter dated 24 July stating that she did not see a meeting as being worthwhile as it appeared a decision had already been taken. Ms Chen then wrote to the Claimant on 25 July formally terminating the Claimant's employment and confirming the Claimant's entitlement to pay in lieu of notice and a statutory redundancy payment. The letter makes no reference to any right to appeal.

Relevant Law

29. Section 94(1) of the ERA provides that "an employee has the right not to be unfairly dismissed by his employer." Once a dismissal has been established it is for the employer to show the reason or principal reason for the dismissal and that it is either a reason falling within sub section (2) or "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held." (Section 98(1)). Section 98(2) sets out five potentially fair reasons, one of which is redundancy (section 98(2)(c)).
30. A reason for dismissal is a set of facts known to the employer or beliefs held by the employer which cause it to dismiss the employee (Abernethy v Mott Hay and Anderson [1974] IRLR 213 CA).
31. Once the reason for the dismissal has been shown by the employer, the Tribunal applies section 98(4) to the facts it has found, to determine the fairness or unfairness of the dismissal. The burden of proof is neutral. Section 98(4) provides:
- "In any other case where the dismissal has fulfilled the requirement of sub section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reasons 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".
32. In considering section 98(4) the Tribunal asks itself whether the decision to dismiss fell within the range of reasonable responses open to a reasonable employer. It is not for the Tribunal to substitute its own view for that of the decision makers in this case.

33. In the case of Iceland Frozen Foods Limited v Jones [1982] IRLR 439 EAT it was established that the correct approach for a Tribunal to adopt in answering the questions posed by section 98(4) is as follows:-

33.1 The starting point should always be the words of section 98(4).

33.2 In applying the section, a Tribunal must consider the reasonableness of the employer's conduct not whether the Tribunal consider the dismissal to be fair.

33.3 In judging the reasonableness of the employer's conduct, the Tribunal must not substitute its decision as to what the right course to adopt should have been.

33.4 In many (although not all) cases there is a band of reasonable responses within which one employer might reasonably take one view whilst another might quite reasonably take another.

33.5 The function of the Tribunal is to determine whether in the particular circumstances of the case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band of reasonable responses, the dismissal is fair. If it falls outside the band, it is unfair.

34. Redundancy is defined by section 139 (1) of the ERA, which states that

“An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to-

(a) The fact that his employer has ceased or intends to cease-

(i) To carry on the business for the purposes of which the employee was employed by him, or

(ii) To carry on that business in the place where the employee was so employed, or

(b) The fact that the requirements of that business-

(i) For employees to carry out work of a particular kind, or

(ii) For employees to carry out work of a particular kind in the place where the employee was employed by the employer,

Have ceased or diminished or are expected to cease or diminish.”

35. Once it has been established that an employee has been dismissed, there will therefore be a two stage test (see Safeway Stores v Burrell [1997] IRLR 2000 and Murray v Foyle Meats Ltd [1999] IRLR 562):

35.1 Did one of the situations set out in section 139 (1) apply?

35.2 If so, was the dismissal attributable, wholly or mainly, to that situation?

36. An employer will not normally act reasonably (in accordance with section 98 (4) in relation to redundancy unless it
- (a) Warns and consults with the employee about the proposed redundancy;
 - (b) Adopts a fair basis on which to select for redundancy; and
 - (c) Considers suitable alternative employment.
- (Polkey v AE Dayton Services Limited [1987] IRLR 503)
37. In the case of R v British Coal Corporation and Secretary of State for Trade and Industry, ex parte Price [1994] IRLR 72, it was stated that:
- “Fair consultation involves giving the body consulted fair and proper opportunity to understand fully the matters about which it is being consulted, and to express its views on those subjects, with the consultor thereafter considering those views properly and genuinely.”
38. Key components of fair consultation are that:-
- 38.1 the consultation takes place when the proposals are still at a formative stage;
 - 38.2 the employee is given adequate information on which to respond;
 - 38.3 the employee is given adequate time in which to respond; and
 - 38.4 the employer considers the response of the employee conscientiously.
39. A business reorganisation which does not fall within section 139 (1) can result in a dismissal for ‘some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held’ and therefore a dismissal for a potentially fair reason under section 98 (1).
40. For example, Lord Denning MR stated in the case of Lesney Products and Co Ltd v Nolan and Others [1997] IRLR 77 that:
- “It is important that nothing should be done to impair the ability of employers to reorganise their workforce and their terms and conditions of work so as to improve efficiency.”

Conclusions

41. Applying the relevant law to the findings of fact made, my conclusions are as follows.
42. The reason for the Claimant’s dismissal was an accumulation of factors. Those factors were:-

- 42.1 The transfer of the processing and recording of all purchase ledger financial transactions that formed the purchase ledger internally (to the new Bursar's Assistant HR);
 - 42.2 The transfer of the payroll to an external payroll bureau;
 - 42.3 The desire of the Bursar to divest herself of elements of her own role; and
 - 42.4 Partly in consequence of 42.3, the need determined by the Bursar for a part qualified accountant to carry out functions within the Bursary which would no longer be performed by the Bursar herself.
43. This set of factors led to a diminution in the requirement of the Respondent's business for employees to carry out work of a particular kind. Whilst there was no reduction in the requirement for employees to carry out the purchase ledger financial transactions, which had simply been transferred from one employee to another, the outsourcing of the payroll function meant that there was no longer a requirement for employees to carry out that function. Furthermore, the divesting by the Bursar of several of her own duties meant led to a situation in which there was a diminished need for employees to carry out the work of assisting the Bursar in those duties, which is work which had been carried out previously by the Claimant. With the new, higher qualified, Bursar's Assistant - Finance in place, there was no longer any need to assist anyone to perform those duties as they could be done by the Bursar's Assistant - Finance on her own. The result is that the requirements for employees (specifically the Claimant) to carry out the particular kind of work she had performed as Bursar's Assistant had diminished.
44. Contrary to the Claimant's assertions, I do not consider that the new role of Bursar's Assistant - Finance was essentially the same as the Claimant's Assistant Bursar role. Whilst it may be that the Claimant had assisted the previous and current Bursar in performing several tasks and was involved in those tasks, assisting in the performance of such tasks is very different to performing them oneself and having responsibility for their performance. Ms Chen decided that what was needed was someone to take over responsibility for those tasks. I do not doubt that a proportion of what Ms Flanagan does as Bursar's Assistant - Finance is similar if not the same as what the Claimant did as Assistant Bursar, but the overall roles are significantly different and the Bursar's Assistant - Finance role requires a higher level of financial and accounting expertise than the Assistant Bursar role did. I have noted that the salary offered to the new Assistant Bursar – Finance was considerably lower than the Claimant's salary and whilst this may seem unusual at first sight, I accept Ms Chen's explanation that it reflected the market rate at the time, whereas the Claimant's salary was the result of over ten years' employment by the Respondent.
45. In summary, this was a 'redundancy situation' within the meaning of section 139 (1) (b) ERA and the dismissal of the Claimant was attributable

to this state of affairs. The reason for the Claimant's dismissal was therefore the potentially fair reason of redundancy. I base this conclusion on the documentation I was taken to, the evidence of both the Claimant and Ms Chen and also the Claimant's own correspondence.

46. If I am wrong about this, however, then the restructuring of the Respondent's bursary constituted 'some other substantial reason of a kind such as to justify the dismissal of an employee holding the position that the Claimant held', which is itself a potentially fair reason under section 98 (1). I acknowledge that if, as the Claimant alleged, Ms Chen did not want the Claimant in the Bursary any longer, the criterion that the Bursar's Assistant - Finance be a part qualified accountant is of course very convenient for Ms Chen, being a criterion which the Claimant could not possibly fulfil. There was evidence before the tribunal that Ms Chen was not entirely satisfied with the performance of the Claimant in her role and there is no doubt that the relationship between the two deteriorated significantly in June and July 2017. However, Ms Chen was challenged about her insistence that the Bursar's Assistant - Finance be a part qualified accountant and having heard her evidence, I accept that she had a genuine business reason for wanting the greater level of skills and qualifications that a part qualified accountant could bring, regardless of her views of the Claimant's competence and the relationship between them.
47. The Respondent, in the person of Ms Chen, had the right to make those business and operational decisions which led to the restructure. Ms Chen had been recruited by the Respondent to effect a change in emphasis and direction in the Respondent's bursary, to bring in higher level financial and accounting skills and bring greater commercial experience and expertise to the Bursary. In making these decisions, Ms Chen was bringing about what she had been recruited to do and the restructuring which resulted in the Claimant's dismissal falls within section 98 (1) as 'some other substantial reason.....'.
48. For completeness I will add that I do not accept the Claimant's suggestion that the reason for her dismissal could be described as capability. Whilst it is true that one of the factors was that she didn't have the qualifications required by the Respondent for the Bursar's Assistant - Finance role, that is not the same as a lack of capability to perform her own Assistant Bursar role. The important feature was not her capability to perform her BA role, but the fact that duties which she had been performing in that role were no longer required.
49. Turning to the question of reasonableness under section 98 (4), I remind myself that the burden of proof is effectively neutral and that I am required to weigh all the circumstances from the standpoint of a reasonable employer, rather than substituting my own views.
50. Considering first the procedure adopted by the Respondent:-

- 50.1 The Claimant was provided with an initial explanation for the Respondent's proposal and given further information;
 - 50.2 The Claimant was then given time to consider the proposal and an opportunity to respond;
 - 50.3 When she became unfit to work, the Respondent offered to postpone the consultation until the Claimant was fit enough to participate in person;
 - 50.4 The Respondent also gave the Claimant the alternative option to respond in writing, an opportunity which she took up;
 - 50.5 The Respondent then considered the Claimant's representations in writing and responded;
 - 50.6 The Respondent gave the Claimant the opportunity to apply for the new role of Bursar's Assistant - Finance and considered her application against the criteria for the role;
 - 50.7 Having rejected the Claimant's application for the new role, the Respondent considered whether there might be alternative roles available within the organisation;
 - 50.8 Having concluded that there were no such roles, the Respondent gave the Claimant a further opportunity to respond, either in person or in writing, before considering whether to terminate the Claimant's employment, but the Claimant did not take up that opportunity.
51. Viewed from the perspective of a reasonable employer, all of those actions are actions which a reasonable employer might be expected to take, regardless of whether the reason for dismissal is redundancy or is a restructuring which falls short of the definition of redundancy. The Respondent's actions fulfil the components of reasonable consultation laid down by R v British Coal Corporation and Secretary of State for Trade and Industry and set out at paragraphs 37 and 38 above.
52. It is true that the decision not to appoint the Claimant to the new Bursar's Assistant - Finance role could be seen as something of a *fait accompli*, bearing in mind her lack of accountancy qualifications, and her participation in the recruitment process might be looked at as the Respondent doing no more than going through the motions, but from the standpoint of a reasonable employer, and for the reasons set out above, the decision of the Respondent to insist on a part qualified accountant for the new role was not a decision that no reasonable employer could have made.
53. The Claimant argued that she would have welcomed the chance to train and develop into the new role, the implication being that she had the right to be given that opportunity, but taking into account the reasons for Ms

Chen's recruitment and the need for the Respondent to bring more financial and accounting skills into its Bursary, it cannot be said that no reasonable employer would have brought in the qualified person at that point, rather than working with the Claimant to see if she might acquire those skills and qualifications at some point in the future. It is not difficult to see how the Claimant would feel aggrieved at being discarded after many years' loyal and competent service, but that is not the same as saying that the Respondent's actions and decisions were outside the range of reasonable responses available to the Respondent.

54. The Claimant has also highlighted the failure by the Respondent to offer an appeal against her dismissal as evidence of the unfairness of the process. The Respondent has responded in several ways, firstly that the Respondent had no legal requirement to offer an appeal when the dismissal is for reasons of redundancy, secondly that the Respondent did not refuse an appeal – the Claimant didn't request one, and thirdly that the letter to Mr Owston constituted an appeal against the decision to restructure, which Mr Owston dealt with in a reasonable and proper manner.
55. Dealing firstly with the third point, the involvement of Mr Owston cannot be seen as an appeal against dismissal, primarily as it pre-dated the Claimant's dismissal. However, it is correct that the ACAS Code of Practice on Disciplinary and Grievance does not apply to a 'redundancy dismissal' and the Claimant had no statutory right of appeal. There is also no contractual provision entitling the Claimant to an appeal and the same principles apply if this was a dismissal for 'some other substantial reason'.
56. Nevertheless, this is not the end of the matter and whether or not an employee has been given an opportunity to appeal is a factor to be taken into account when considering the actions of an employer as a whole.
57. In this case, the Claimant did not ask for an appeal and indicated that had she been offered one, she would not have taken it up anyway, on the basis that it was pointless, stating in her witness statement that an appeal would have been 'worthless'. No doubt some employers may well have offered an appeal, particularly in the light of complaints made by the Claimant in her letter to Mr Owston. Nevertheless, the Claimant did not ask for an appeal and there is no suggestion that a request to appeal would have been refused. Taking all the circumstances into account, it would be incorrect to conclude that no reasonable employer would have failed to offer the Claimant an appeal against the decision to dismiss her. In other words, the failure of the Respondent to offer the Claimant an appeal did not take the process adopted by the Respondent, taken as a whole, outside the range of reasonable responses open to it.
58. Viewed from the perspective of a reasonable employer, and for the reasons above, the Respondent acted reasonably in treating the redundancy (or in the alternative the restructuring) as a sufficient reason to dismiss the Claimant and the complaint of unfair dismissal therefore fails.

59. For completeness, and in light of the amount of time spent on the issue, I do not consider that had her dismissal been unfair, it would have been appropriate to reduce any compensation because of her conduct. The evidence of alleged impropriety relating to expenses and overtime related to some five occasions at the end of 2016 and in 2017. The allegation is not that the Claimant was regularly and fraudulently claiming money to which she was not entitled, but that she was failing to go through the proper approval procedures. However, there is no evidence to suggest that the Claimant was doing anything different in 2017 in comparison with the months and years before then and before Ms Chen was recruited. Whilst the Respondent suggests that this leads to the conclusion that her misconduct had been longstanding, it is equally plausible, as suggested by the Claimant, that the way in which she claimed expenses and overtime was known to and approved by Ms Chen's predecessor as the Claimant's line manager.
60. As for the removal by the Claimant of her contract of employment, this was undoubtedly misadvised, and it is perhaps odd that the Claimant did not simply request a copy from the Respondent. Nevertheless, one has to take into account the circumstances and effect on the Claimant of the announcement by Ms Chen of her restructuring proposal. It is not as if the Claimant had any intention to prevent the Respondent from access to the contract or to amend it in any way.
61. Based on the evidence put forward by the Respondent, it is not possible to conclude that the Respondent could have effected a fair dismissal on the basis of the Claimant's conduct, had she not been dismissed as a result of the restructure. There is simply insufficient evidence to conclude that dismissal would have been within the range or reasonable responses for a reasonable employer. I note also that the allegations of misconduct came to light some weeks before the Claimant was dismissed for redundancy and the Respondent chose not to take action or fully investigate the conduct issues with her.
62. In the light of the Tribunal's judgment, the provisional remedy hearing will now be vacated.

Employment Judge Finlay

Date:

Sent to the parties on: .31/05/2018...

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For the Tribunals Office