



EMPLOYMENT TRIBUNALS

Claimant: Mr K Wood

Respondent: Halesowen College

Heard at: West Midlands (Birmingham)
Employment Tribunal by video

On: 1 & 2 February 2024

Before: Employment Judge Childe

REPRESENTATION:

Claimant: In person

Respondent: Mr Islam Chaudhary (counsel)

JUDGMENT

1. The claimant's complaint of wrongful dismissal in relation to dismissal with no notice where summary dismissal is not justifiable is well-founded and succeeds.
2. The claimant's complaint of wrongful dismissal in relation to dismissal in breach of a contractual disciplinary procedure is well-founded and succeeds.

REASONS

Summary of the case and Issues to be determined.

3. This is a claim for wrongful dismissal.
4. The claimant is a teacher who was dismissed for gross misconduct following complaints raised by pupils in one of his classes.
5. The claimant said that the allegations raised were fabricated and therefore he had not committed gross misconduct entitling the respondent to terminate his contract with immediate effect.
6. I spent some time at the outset of the hearing confirming the issues in dispute.

Those issues are:

- a. Whether the claimant had committed gross misconduct, which justified the respondent terminating his contract with immediate effect.
- b. Whether the respondent had breached the contractual disciplinary procedure by not following key provisions within that procedure, prior to the claimant's dismissal.

Introduction

7. I had access to an agreed tribunal bundle which ran to 264 pages.
8. On the first day of the tribunal hearing the respondent disclosed for the first time the original emails of complaint from students MF and TP dated 27 February 2023 and a reference that had been supplied to the respondent on 6 July 2022 by a previous employer, Colmers School & Sixth Form College. I will refer to this reference as the "*Colmers Reference*" in this judgment. The claimant agreed to their inclusion in the bundle, and they were numbered pages 265, 266 and 267.

9. Witness evidence was provided by the claimant himself. From the respondent, I was provided with witness statements from Jacquie Carmen, Interim deputy principal and disciplinary officer and Joanne Williams Interim Principal and appeal officer.

Findings of fact

10. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so in the analysis and conclusion section of this judgment.
11. The claimant was employed by the respondent as a Lecturer in Esports at the respondent's Whittingham Road campus.
12. Prior to commencing employment with the respondent, on 28 June 2022, the claimant shared information with the respondent about an issue that had arisen whilst he had worked at a previous school called Colmers School & Sixth Form College. In summary, the claimant had been accused of what he considered to be false allegations brought by students. He had been invited to a disciplinary hearing by Colmers School. He had resigned prior to the disciplinary hearing concluding.
13. On 6 July 2022 Emma Leaman, head teacher at Colmers School, provided the Colmers Reference to the respondent. This reference said that the claimant had faced allegations of gross misconduct involving matters of a safeguarding nature. The reference said that the school determined that the allegations were substantiated and that the school would have dismissed the claimant had he not resigned. The claimant was not given a copy of this reference prior to the termination of his employment, and I find he had not seen the reference prior to the first day of the tribunal hearing.
14. This subject matter of the Colmers Reference was considered by the respondent in July 2022, including the claimant's explanation for what had happened, and a decision was taken to offer the claimant a contract of employment.

15. The claimant commenced employment on 24 August 2022.
16. The respondent's disciplinary and grievance procedure is incorporated into the claimant's contract of employment.
17. MF was a student in the claimant's level 3 Esports class. She was 19 years old and from November 2022 she specifically asked to attend the claimant's classes.
18. On 13 February 2023 MF asked to have a one-on-one conversation with the claimant. During this conversation she disclosed that she had previously been sexually assaulted. MF told the claimant that she had reported this to the respondent.
19. The claimant found out, by subsequently discussing this issue with Laura Lee, a Student Support Manager employed by the respondent, that MF had not disclosed to the respondent that she had previously been sexually assaulted, as she had previously suggested.
20. On 16 February 2023 the claimant recorded the incident described in paragraphs 18 and 19 as a safeguarding concern on the respondent's MyConcern electronic note recording system. I will refer to this system as '*MyConcern*' in this judgment.
21. Sometime in February 2023 MF asked the claimant by Microsoft Teams' to tell some of the students within the level 3 Esports class to stop discussing a particular topic. The claimant refused to do so. MF subsequently stormed out of the classroom. Laura Lee became involved in the incident. The claimant recorded this incident on the MyHalesown electronic note recording system operated by the respondent. I will refer to this system as *MyHalesown* in this judgment.
22. On 27 February 2023 MF and her boyfriend TP raised allegations, by email, against the claimant of unprofessional conduct and breaching professional boundaries within the classroom. These emails were not provided to the claimant prior to the termination of his employment with the respondent.

23. On 27 February 2023 the claimant was initially informed of disciplinary allegations against him, by Richard Franks and Joanne Williams and was suspended.
24. On 6 February 2023 the claimant attended an investigation meeting with John Murray, into the Allegations (the Allegations are described in paragraph 38 below). The claimant requested that John Murray interview four additional witnesses to support his case and asked for the relevant notes that he had recorded on the MyConcern and MyHalesown system to be provided. The respondent did not interview the witnesses or provide the claimant's requested information prior to dismissing him.
25. On 23 March 2023 the claimant received the invite to the disciplinary hearing to discuss the Allegations against him.
26. On 23 March 2023 the claimant wrote to Rachel Charles, in the respondent's HR team, and again requested the relevant notes that he had recorded on the MyConcern and MyHalesown system to be provided at the disciplinary hearing.
27. The disciplinary hearing took place on 27 March 2023. The disciplinary hearing was chaired by Jacquie Carmen. Prior to Jacquie Carmen adjourning the disciplinary hearing on 27 March 2023 the claimant asked her whether he could provide the names of witnesses who would support his case. Jacquie Carmen said that the claimant could.
28. No further investigation was carried out by Jacquie Carmen.
29. Two days later, on 29 March 2023, Jacquie Carmen summarily dismissed the claimant for gross misconduct.
30. The claimant appealed his dismissal on 3 April 2023.
31. On 27 April 2023 the claimant received witness statements that the respondent had obtained from Gemma Gowan Lock and Claire Stain, witnesses who would support his case.

32. On 28 April 2023 the claimant attended an appeal meeting with Joanne Williams.
33. On 4 May 2023 the claimant received a letter from Joanne Williams to say the appeal had not been upheld.

Relevant Law, Analysis and conclusion

Wrongful Dismissal

Did the claimant's conduct justify summary dismissal?

34. Wrongful dismissal is a common law right. The focus is upon the claimant's conduct and whether the claimant was in fundamental breach of the contract of employment, upon the facts. It is about whether the respondent was entitled to dismiss the claimant without notice.
35. This claim is defended on the basis that the claimant was in repudiatory breach of the contract entitling the respondent to dismiss without the giving of notice. The respondent says that the claimant conducted gross misconduct, in that his conduct amounted to a repudiatory breach of the contract of employment entitling the respondent to terminate the contract without notice or pay in lieu of notice.
36. For the respondent to succeed with a complaint that the claimant was in repudiatory breach of his contract of employment, the respondent has to prove that the claimant's misconduct in question was actually committed.
37. I must therefore decide if the claimant committed an act of gross misconduct entitling the respondent to dismiss him without notice. I must decide for myself whether the claimant was guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the respondent to summarily terminate the contract of employment.

38. The claimant's alleged conduct which the respondent relies on to justify the claimant's summary dismissal is set out in allegations made against the claimant by two students, MF and TP in emails dated 27 February 2023. They are all said to have taken place in the claimant's level 3 eSports lesson. They can be summarised as follows:

- a. The claimant had asked MF whether she was sexually active with her boyfriend TP.
- b. In November 2022 the claimant asked MF to go out for a drink with her.
- c. The claimant only approached female members of the class to have sit down conversations with them. The claimant primarily spoke to the girls in the classroom and ignored a large amount of the boys.
- d. When the claimant found out MF and TP were dating, he started acting very passive aggressive and sarcastic towards them.
- e. On multiple occasions the claimant had tried to grab MF's phone to unlock it to take pictures on it or try to oversee MF's notifications and text messages.
- f. The claimant consistently brought up his sex life and dating life, such as which dating apps he was on and how he has trouble finding women who were interested in him.
- g. The claimant said that most of his friends were lesbian women, married women or college students.

39. I will refer to the allegations in paragraph 38 as the '*Allegations*' in this judgment.

40. The respondent took the Allegations, and summarised them in the disciplinary invite letter dated 23 March 2023 as follows:

- a. It is alleged that you have had unprofessional conversations with learners and behaved inappropriately and in doing so it is also alleged that you have abused your position of trust.
- b. Conversations included:
 - i. Oversharing about his personal life
 - ii. Asking a learner if she was sexually active.
 - iii. Asking a learner to go out for a drink with him.
 - iv. Asking intrusive questions about the learner's personal life
- c. Behaviours included:
 - i. Passive aggressive behaviour after finding out the learner was already in a relationship.
 - ii. Using sarcastic language
 - iii. Grabbed the learner's phone to try and take photos and look at notifications.

41. The respondent's reasons for the claimant's dismissal were set out in the disciplinary outcome letter dated 30 March 2023. Jacquie Carmen concluded that *"on the balance of probabilities and given the wider context of the claimant's previously reported behaviours, the claimant had unprofessional conversations with learners and behaved inappropriately and in doing so had abused his position of trust and as such a disciplinary penalty was appropriate."*

42. I find that Jacquie Carmen relied on the Colmers Reference when deciding to dismiss the claimant for gross misconduct. Jacquie Carmen accepted this in evidence. In the disciplinary outcome letter Jacquie Carmen said *"I considered if a final written warning would be appropriate in the circumstances. Having reviewed your personal*

*file and your **references** again ... I find I have no alternative but to summarily dismiss you ... for gross misconduct (my emphasis)."*

43. The claimant accepted in cross examination that if the Allegations were true, this would amount to gross misconduct entitling the respondent to summarily dismiss the claimant without notice.
44. The issue for me to determine is therefore whether the Allegations were true. The respondent must convince me that the evidence which they have provided makes it more likely than not that their version of the facts is correct. This is the balance of probabilities test.
45. I have concluded, having considered the strength of the evidence of the respective parties, that on the balance of probabilities the Allegations were fabricated. The respondent has not persuaded me that their version of the facts is correct. Having reached this finding, I conclude that the claimant did not conduct himself in a manner which amounted to gross misconduct and justified summary dismissal. I have reached this finding for the following reasons.

The claimant's evidence.

46. The respondent called no witnesses who had been present at the time the Allegations were said to have taken place.
47. The claimant presented as a measured and honest witness throughout his evidence to the tribunal about the Allegations. He was the only witness I heard from that had been present in the classroom at the time the Allegations were said to have occurred. His evidence was that the Allegations were fabricated, and I have accepted that evidence.

48. The claimant was able to make concessions and give clear evidence about what occurred in the classroom. For example, he conceded that he did confiscate student phones from students when they were using phones inappropriately in the classroom. He also accepted that when students questioned him about whether he had a girlfriend, he had responded that he did not have a girlfriend, simply to close the conversation down.
49. The claimant gave clear evidence about an incident that occurred in the classroom with students MF and TP in February 2023. The claimant said he had a conversation in the classroom with MF and TP and they discussed a concert the claimant had attended. TP asked the claimant if he wanted to go for a drink with him and MF. The claimant said no and that this would not be appropriate. I have accepted this evidence and I consider it was an entirely appropriate way to manage MF and TPs' attempts to blur the professional boundaries between student and teacher.
50. I also accept the claimant's evidence, which was not challenged, that MF willingly attended additional lessons with the claimant from November 2022 and had not raised a complaint about the claimant until she made the Allegations in February 2023.
51. I find that the claimant was aware of the need to maintain professional boundaries within the classrooms that he worked in. I have accepted the claimant's evidence that he possessed an ability to build positive and professional relationships with students. I also accepted the claimant's evidence that he was fully aware of the need to report safeguarding concerns about students. The claimant reported approximately 30 such safeguarding concerns with the respondent during his employment.
52. The claimant was open, transparent and truthful with the respondent about past allegations raised against him when he was working at Colmer school, prior to joining

the respondent. He disclosed full details of those allegations to the respondent before he was offered employment. He gave details about the allegations to Julie Edwards on 28 June 2022. He told the respondent those allegations were false. Some of the allegations are quite fanciful: for example, that he'd raised a chair above the students' heads and had thrown bottles at a student. The respondent investigated this at the time. Having done so, the respondent decided to offer the claimant a job. I conclude that those allegations did not concern the respondent at the point the claimant was employed. Indeed, the respondent accepted in evidence that it was commendable that the claimant had raised this issue prior to joining the respondent.

Evidence of Gemma Gowanlock and Claire Swain

53. Gemma Gowanlock and Claire Swain were learning support assistants who worked with the claimant in his classrooms. Gemma Gowanlock worked in the claimant's level 1 eSports lesson and Claire Swain worked in the claimant's level 2 eSports lesson.
54. It is agreed that neither Gemma Gowanlock nor Claire Swain worked in the claimant's level 3 eSports lesson where the Allegations are said to have taken place. Whilst they are not a direct witness to those Allegations, they do provide useful witness evidence about the claimant's ability to maintain professional boundaries within the classroom.
55. Both Gemma Gowanlock and Claire Swain describe the claimant as being professional and having a good rapport with students. Claire Swain describes the claimant as a teacher who always respects boundaries and if conversations became inappropriate or students overstepped the mark, he brought closure to those conversations.

56. Claire Swain gave a specific example of the claimant reprimanding a student for asking him personal questions about his private life, where the claimant perceived the student had overstepped those boundaries.
57. Gemma Gowanlock gave a specific example of the claimant reprimanding a student for making a sexist comment in class.
58. The evidence of Gemma Gowanlock and Claire Swain supports my conclusion in paragraph 51 that the claimant was aware of the need to maintain professional boundaries within the classrooms that he worked in.

The motivation of MF, TP and the other two witnesses to fabricate the allegations.

59. An important matter to consider when determining the truthfulness of the Allegations is the motivation on the part of MF, TP and other relevant witnesses to tell the truth.
60. It is relatively easy for a student, disgruntled in some way at the actions of their teacher, to make allegations of unprofessional conduct against that teacher. Equally of course, very serious genuine allegations can be and are raised by students which are with merit and should be dealt with appropriately.
61. This is recognised in the respondent's safeguarding policy which states that the respondent *"recognises that an allegation made against a member of staff may be made for a variety of reasons and that the facts of the concern / allegation may or may not be true. It is imperative that those dealing with a concern / allegation maintain an open mind and those investigations are thorough and not subject to delay."*
62. I have accepted the evidence of the claimant, which was not challenged, that MF was 19 and an anxious and evasive individual whose attitude and behaviours could be challenging.

63. The claimant has identified two potential motivations for MF not to tell the truth about the Allegations.
64. The first relates to a safeguarding concern that the claimant raised about MF. The claimant gave the following evidence about this safeguarding concern which was not challenged and which I accept.
65. On Friday 13 February 2023 at approximately 3:30 PM MF asked the claimant to have a discussion with her outside the classroom on a one-on-one basis. During this conversation MF revealed that she had previously been sexually assaulted. She said the school knew about this already. The claimant had a discussion with MF about her relationship with TP and established, in his professional judgement, that she wasn't at risk of harm.
66. The claimant subsequently found out that the respondent didn't know about MF's disclosure. The claimant reported this to the safeguarding team on Monday 16 February 2023 at 9:07 AM. The claimant recorded this on the respondent's MyConcern system. I find that it is likely that this would have triggered a further discussion with MF and potentially her family, from someone at the respondent, about the safeguarding concern. This could have been motivation for MF to get back at the claimant for events that happened after she raised her safeguarding concern.
67. The second related to an incident in February 2023. MF messaged the claimant on Microsoft Teams' to request that he instruct a group of her peers to stop talking about the video game named League of Legends. The claimant refused to do so, for reasons that seem sensible and understandable. The claimant described MF as being visibly frustrated about the claimant's refusal to agree to what she had asked. Approximately five minutes later MF stormed out of the room, which prompted the claimant to raise a concern with Laura Lee, his Student Support Manager. Ten

minutes later the claimant approached MF in the student hub and after a brief conversation to ascertain why she had reacted in this manner, MF stormed off again. The claimant wrote several comments after this incident on MyHalesowen and also raised a safeguarding concern on MyConcern due to her unusual behaviour.

68. The claimant subsequently became aware that MF had complained to management and had given an explicit instruction that the respondent did not contact her family about concerns they might have. The claimant's evidence relating to this incident was not challenged by the respondent and I have accepted it.
69. Taking a step back, I find that it is more likely than not that MF was unhappy that the claimant had raised safeguarding concerns about her, which the respondent had subsequently taken up with her family. This is clear from MF's instruction that the respondent should not contact her family with such concerns. I add to this the fact that MF was known to be a student with challenging attitudes and behaviours and conclude that it is likely MF was a student who would raise the Allegations falsely as revenge for what she perceived to be the claimant interfering in her home life and also because he had not followed her instructions in class (as described in paragraph 67 above). MF would have known that the Allegations were potentially career ending for the claimant as a teacher.
70. I find that there is also a motivation for TP to not tell the truth. He was at the relevant time MF's girlfriend, and it is more likely than not that he was persuaded by her to go along with her story.
71. Finally, I also find that the other two students whose witness evidence supported MF's Allegations were part of MF's friendship group. This was accepted by the respondent in evidence.

72. Taking a step back, I find it is more likely than not that MF, TP and MF's two other male friends, who I will refer to as the '*Four Friends*' in this judgment, got together to fabricate the Allegations to support MF.

73. In reaching this conclusion I reject the respondent's submission that the Four Friends would not set out to deliberately fabricate the Allegations. There was no evidence presented by the respondent to support this submission.

The nature of the Allegations

74. I have accepted the claimant's submission that the Allegations are illogical, outlandish, contradictory and inconsistent.

75. I have found at paragraph 50 that MF actively chose to attend the claimant's classes from November 2022. If the Allegations were true, I find it unlikely that MF would have chosen to attend the claimant's classes from November 2022 as the Allegations are said to have taken place from November 2022. Nor would MF have chosen to share a deeply personal matter with the claimant on 16 February 2023.

76. Taken together, the evidence of the Four Friends is that:

- a. on the one hand the claimant told them that he was a 30-year-old virgin and on the other hand the claimant told them he engaged in group sex.
- b. on the one hand the claimant had, for no apparent reason, gone up to the Four Friends (three of whom were male) and disclosed personal information about his romantic life. On the other hand, the claimant is said to have ignored the male students in the class.
- c. on the one hand the claimant had told them he had been using the gay dating app Grinder and on the other hand the claimant had told them he had been using the straight dating app Tinder.

77. I accept the claimant's submission that the allegations described in paragraph 76 are outlandish, contradictory and inconsistent. No times, dates or other context is given for when these allegations are said to have taken place. This supports my conclusion that on the balance of probabilities the Allegations are fabricated.
78. In reaching this conclusion, I reject the respondent's submission that the evidence from the Four Friends (as I have described in paragraph 76), represented a pattern of behaviour where they remembered different things at different times and therefore this suggested they were telling the truth. On the balance of probabilities, I find the evidence from the Four Friends was too outlandish, contradictory and inconsistent to support this conclusion.
79. I also reject the respondent's submission that the evidence of the Four Friends was tested thoroughly by the respondent, for the following reasons:
- a. The evidence that the claimant gave about the reasons that MF might be motivated not to tell the truth about the Allegations, which I set out in paragraphs 63 to 67, were never put to MF. The investigating officer did not refer MF to any of the safeguarding concerns or behavioural concerns that the claimant had raised on the respondent systems at the time. I don't accept that MF's evidence was tested. Rather, I find it was simply taken at face value.
 - b. The reasons that the Four Friends might have to fabricate the Allegations, which I have set out in paragraphs 70 and 71, were not raised with them by the investigating officer. Again, I find that the Four Friends' evidence was not tested but rather it was simply taken at face value.

The witness evidence of the other students

80. The respondent obtained witness statements from three other students (who I will refer to as *WS3*, *WS4* and *WS5* in this judgment) who were present in the claimant's level 3 eSports lesson. They were not part of the Four Friends friendship group. The respondent did not lead any evidence to suggest there was a reason for them not to tell the truth. I will refer to them as the "*Independent Witnesses*" in this judgment.
81. I accept the claimant's submission that none of the Independent Witnesses identified that they had witnessed any inappropriate or unprofessional conduct from the claimant in the level 3 eSports lesson.
82. Taken together, the Independent Witnesses' evidence was that:
 - a. The claimant did not share information about his dating experience during the level 3 eSports lesson.
 - b. The claimant did not show any bias towards female students in the level 3 eSports lesson.
 - c. They could identify no conduct from the claimant in the level 3 eSports lesson which made them feel uncomfortable.
83. I have accepted the evidence of the Independent Witnesses and that evidence supports my conclusion that on the balance of probabilities:
 - a. the Allegations have been falsified; and
 - b. the claimant always behaved in a professional manner, maintaining appropriate professional boundaries, when conducting his lessons both in the level 3 eSports lessons and in his other lessons.
84. In reaching this conclusion, I reject the respondent submission that there is evidence given by the Independent Witnesses that would "*concern a parent*" and somehow be

inappropriate. The respondent relies on a comment from WS5 in which that witness says the claimant *'just tells us about how he doesn't have a girlfriend'*.

85. The claimant's evidence, which I have accepted, is that the students showed an interest, sometimes a persistent one, in his personal life. The students were teenagers (MF was 19 years old), and it is not surprising that they might push boundaries and choose to ask the claimant about his romantic interests. The claimant's method of closing this discussion down was to say that he didn't have a girlfriend (as I have found at paragraph 48 above). The claimant's evidence was that this had the effect of shutting down the discussion, which he found to be inappropriate and breach of professional boundaries. In the circumstances, it is difficult to see how the claimant can be criticised for closing down inappropriate questions from students in a neutral way.
86. I also reject the respondent submission that *"in the real world allegations of this kind are not done in plain sight."* One of the Allegations was that the claimant favoured male students over female students in the classroom and that he ignored male students. This is an allegation of the claimant favouring one group of students in plain sight of all the others. I find that had the claimant done this, one of the Independent Witnesses would have said so. Similarly, the allegations about the claimant over sharing information about his personal life was said to have taken place in the classroom, in plain sight of all the students. Again, I find that had the claimant done this one of the Independent Witnesses would have said so.

Was the claimant's dismissal in breach of a contractual disciplinary procedure?

87. The respondent accepts that the disciplinary procedure formed a part of the claimant's contract of employment.

88. The disciplinary procedure sets out a process which must be followed before notice of termination may be given validly.
89. If I find the respondent has failed to follow part of that process, I may award damages which reflect the length of time it may have taken to follow that process, to the notice period itself when determining the period in respect of which damages are to be assessed. See *Gunton v Richmond-on-Thames Borough Council* [1980] IRLR 321.
90. The issue for me to determine therefore is whether the claimant has established that the respondent has breached their contractual disciplinary procedure. The claimant relies on a breach of sections 3.1 and 7.1 of the contractual disciplinary procedure. I will deal with each section in turn.

3.1: No disciplinary action will be taken against an employee until the College has fully investigated the circumstances of the matter complained of having regard to the employee's response to allegations.

91. The respondent accepted in submissions that the requirement for a full investigation in paragraph 3.1 applies up to the point that the claimant was dismissed. This is what is meant by disciplinary action in paragraph 3.1. In other words, the effect of paragraph 3.1 was that the respondent was required to conduct a full investigation prior to 27 March 2023, which was when the claimant was given notification that he would be summarily dismissed.
92. The respondent accepted that it had not interviewed four members of staff who had relevant information which would support the claimant's version of events, prior to dismissing the claimant.

Gemma Gowanlock and Claire Swain

93. The first two of these were the witnesses Gemma Gowanlock and Claire Swain. The respondent accepted in submissions that the disciplinary allegation against the claimant was broad. The relevant allegation, as identified in paragraph 40.a above, was *“the claimant had unprofessional conversations with learners and behaved inappropriately and in doing so it is also alleged that he had abused his position of trust”*. I will call this the *“Inappropriate Behaviour Allegation”* in this judgement. I find the Inappropriate Behaviour Allegation extended to the claimant’s general professionalism and behaviour in other classes, outside the level 3 eSports classroom setting.
94. I have set out in paragraphs 53 to 58 how Gemma Gowanlock and Claire Swain were relevant to the investigation to the Inappropriate Behaviour Allegation.
95. I find that the respondent had not complied with its contractual obligation to fully investigate the circumstances of the Inappropriate Behaviour Allegation by not obtaining witness statements of Gemma Gowanlock and Claire Swain before taking the decision to dismiss the claimant. Their evidence was relevant to whether the claimant had unprofessional conversations or behaved inappropriately in the level 1 and level 2 eSports classroom setting. They worked alongside the claimant in that classroom setting and were able to give direct evidence about his conversations and behaviour in those settings.
96. I have accepted the evidence of the claimant, which was not challenged, that he requested that the investigating officer, John Murray, take witness statements from Gemma Gowanlock and Claire Swain. I have also found, at paragraph 117 below that the claimant requested that he be able to provide the name of a supportive witness to Jacqueline Carmen at the disciplinary hearing.

97. I therefore conclude that the claimant made a request for relevant evidence, as part of his response to the Allegations, prior to the decision to dismiss being taken.
98. This brought the request for the witness statements from Gemma Gowanlock and Claire Swain within the definition of section 3.1 of the disciplinary policy as this was evidence that emerged because of the claimant's response to the Allegations. To be a full investigation, within the meaning of the contractual disciplinary procedure, these witnesses needed to be interviewed and their evidence included as they had been requested by the claimant in response to the Allegation.
99. The respondent's failure to do so prior to the decision to dismiss the claimant was in breach of section 3.1 of the disciplinary policy.

[Anastasia Cooke and Laura Lee and supporting contemporaneous documentation.](#)

100. I have already set out in paragraph 67 that Laura Lee was directly involved in the aftermath of the incident in February 2023 where the claimant had to deal with poor behaviour from MF. The claimant said that this incident formed part of the motivation for MF to fabricate the Allegations.
101. I also accept the evidence of the claimant, which was not challenged, that Laura Lee and Anastasia Cooper had first-hand experience of how MF had shown inappropriate behaviour towards members of staff since she was known to lash out in frustration. This was relevant evidence about the credibility of MF as a witness to the Allegations.
102. I have accepted the evidence of the claimant, which was not challenged, that he:
- a. told the investigating officer, John Murray, that Anastasia Cooke and Laura Lee could give this relevant evidence at the investigation stage; and also

b. requested copies of the safeguarding reports he had recorded on MyConcern, and several written comments made on MyHalesowen about MF.

103. I therefore conclude that the claimant made a request for the relevant evidence, as set out in paragraph 102, as part of his response to the Allegations, prior to the decision to dismiss being taken.

104. I find that the respondent had not complied with its contractual obligation to fully investigate the circumstances of the Allegations by not obtaining witness evidence of Laura Lee and Anastasia Cooper or the material set out in paragraph 102.b above before taking the decision to dismiss the claimant. This evidence was relevant to the motivation of MF to fabricate the Allegations and to MF's general reliability as a credible witness to the Allegations.

105. This brought the request for witness evidence from Laura Lee and Anastasia Cooper and the material set out in paragraph 102.b within the definition of section 3.1 of the disciplinary policy. To be a full investigation under the contractual disciplinary procedure this witness evidence and that material needed to be included as they had been requested by the claimant in response to the Allegations.

106. The failure to obtain those two statements and that material prior to the decision to dismiss the claimant was in breach of section 3.1 of the disciplinary policy.

107. I will refer to Gemma Gowanlock, Claire Swain, Anastasia Cooke and Laura Lee as the *Four Witnesses* in this judgment.

7.1 If the College decides to hold a disciplinary hearing relating to the matter complained of, the employee will be advised of the nature of the complaint against him or her, with sufficient information to let the employee know what the alleged problem is, at least five working days before such hearing.

108. I have found at paragraph 42 above that Jacqueline Carmen relied on the Colmers Reference as a reason for dismissing the claimant for gross misconduct.

109. The claimant was not advised in advance that this was part of the nature of the complaint against him.

110. I find that this is a breach of paragraph 7.1 of the disciplinary policy.

111. I find that otherwise, whilst broad in scope, the Allegations did advise the claimant of the nature of the complaint against him, with sufficient information to let him know what the alleged problem was.

7.1 Documentation to be used at the hearing should be exchanged by the employer and the employee at least three working days before such hearing.

112. Jacqueline Carmen said in evidence that she had access to the Colmers Reference at the disciplinary hearing. I have already found at paragraph 42 above that Jacqueline Carmen relied on the Colmers Reference as a reason for dismissing the claimant for gross misconduct.

113. The claimant did not have access to the Colmers Reference. It was disclosed to the claimant for the first time on the first day of the employment tribunal hearing.

114. I find that otherwise the claimant did have access to all relevant material used at the hearing. I accept Jacqueline Carmen's evidence that she did not have access to the original complaints raised by TP and MF on 27 February 2023. These have

not been included in the disciplinary pack due to a mistaken belief that they were covered by GDPR principles.

115. The failure to provide the Colmers Reference to the claimant at least three working days before the disciplinary hearing was a breach of paragraph 7.1 of the disciplinary policy.

Time it would have taken the respondent to follow paragraph 3.1 and 7.1 of the disciplinary procedure

116. On 23 March 2023 the claimant emailed Racheal Charles at the respondent and said that evidence he had highlighted during his interview with John Murray had not been investigated. The claimant said this evidence was the MyHalesown and MyConcern notes.

117. I accept the evidence of the claimant that he asked for further evidence to be gathered at the disciplinary hearing, on 27 March 2023. At the end of the disciplinary notes, there is a contemporaneous record of Jacqueline Carmen stating that the claimant could give her the name of a learning support assistant. The clear implication here, I find, is that the claimant could provide a name or names of a learning support assistant or assistants and Jacqueline Carmen would go away and speak to those individuals.

118. Jacqueline Carmen's own evidence was that she had subsequently made a unilateral decision after the disciplinary hearing that she would not carry out any further investigation. The disciplinary outcome letter was provided two days later on 29 March 2023.

119. I've accepted the claimant's evidence that it would have taken about three weeks for Jacqueline Carmen to interview the Four Witnesses, obtain the

MyHalesown and MyConcern notes and provide the Colmers Reference, bearing in mind the Easter holidays and the busy diary Jacqueline Carmen had.

120. Three weeks after 27 March 2023 is 17 April 2023.

121. I find it would have taken another two weeks to schedule the resumed disciplinary hearing to allow the claimant to present that material to Jacqueline Carmen.

122. I therefore find that had the respondent complied with their contractual duties to fully investigate the circumstances before concluding disciplinary action against the claimant, that would not have taken place before 1 May 2023.

REMEDY JUDGMENT

123. The respondent shall pay compensation to the claimant of **£3,431.31**, plus the sums set out at paragraph 145 below, calculated as follows.
- a. £596.75 as compensation for one weeks' loss of notice, for the period 27 March 2023 to 2 April 2023.
 - b. £2,387 (4 x £596.75) as compensation to reflect the four-week period it would have taken the respondent to follow the contractual disciplinary policy, from 3 April 2023 to 1 May 2023.
 - c. £447.56 which represents an uplift on the compensation awarded at a and b of 15% due to the breach of the Code.

REASONS

124. Damages for a wrongful dismissal will generally be limited to compensation for the loss of the notice period and the respondent's failure to follow a contractually agreed disciplinary period.

A week's loss of notice

125. The claimant claims a week's compensation for one week's loss of notice. The respondent confirmed in submissions that the claimant's calculation of one week's pay, as set out in the claimant's schedule of loss, was agreed. I therefore have decided that the claim should receive compensation for one week's loss of notice.

Time it would have taken the respondent to follow the contractual disciplinary policy.

126. I have decided, as set out in paragraph 122 above, that it would have taken the respondent until 1 May 2023 to follow the contractual disciplinary procedure and to dismiss the claimant.

127. I find that had the respondent followed the contractual procedure, the claimant would have been dismissed on 1 May 2023 and would not have received any further income from this date. I have therefore awarded the claimant compensation to 1 May 2023 only.

128. I reject the claimant's submission, in his schedule of loss, that he should receive compensation until such time as the respondent would have heard the claimant's appeal. There is no evidence available to me to suggest that the claimant would have continued to be paid whilst an appeal was outstanding.

ACAS Uplift

129. By s 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A), the tribunal has a discretion to increase or reduce an award for failure to follow the ACAS Code of Practice 'Disciplinary and Grievance Procedures' ("the **Code**"). This discretion applies to wrongful dismissal claims heard in proceedings before the tribunal.
130. The tribunal must make an express finding that a failure to follow the Code was unreasonable before making an adjustment *Kuehne and Nagel Ltd v Cosgrove UKEAT 0165/13 (17 January 2014, unreported)*.
131. I take into account the following guidance, set out in *Slade v Biggs and Stewart [2022] IRLR 216*, when considering any uplift of compensation for a failure to follow the Code:
- a. Is the case such as to make it just and equitable to award any ACAS uplift?
 - b. If so, what does the ET consider a just and equitable percentage, not exceeding although possibly equalling, 25%? Any uplift must reflect "*all the circumstances*", including the seriousness and/or motivation for the breach, which the ET will be able to assess against the usual range of cases using its expertise and experience as a specialist tribunal.
 - c. Does the uplift overlap, or potentially overlap, with other general awards, such as injury to feelings ...
 - d. Applying a final sense-check, is the sum of money represented by the application of the percentage uplift arrived at by the ET disproportionate in absolute terms and, if so, what further adjustment needs to be made?

132. I decided to uplift the compensatory award by 15% due to the failure of the respondent to follow the Code. I have accepted the claimant's submission that there was a breach of paragraph 9 and paragraph 23 of the Code.

133. Paragraph 9 of the Code says "*If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting.*"

134. Paragraph 23 of the Code says "*Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct.*"

135. I have found at paragraphs 108 and 109 and paragraphs 112 to 115 above that the respondent:

- a. failed to provide the claimant with the Colmers Reference, which was information that they were relying on as a reason for dismissing the claimant for gross misconduct, prior to taking the decision to dismiss him.
- b. failed to provide him with a copy of the Colmers Reference prior to dismissing him.

136. This was a breach of paragraph 9 and 23 of the Code as it:

- a. meant that a key piece of information about the claimant's alleged misconduct was not provided to him prior to the disciplinary hearing which in turn meant he was not able to prepare to answer that part of his case at the disciplinary hearing, in breach of paragraph 9 of the Code; and

b. this resulted in the respondent not following a fair process, prior to dismissing the claimant for gross misconduct, in breach of paragraph 23 of the Code.

137. I have also found that the respondent should have interviewed the Four Witnesses and obtained the MyHalesown and MyConcern notes before proceeding with the disciplinary meeting. I have found at paragraphs 24 and 26 that the claimant asked John Murray and Rachel for this information prior to the disciplinary meeting.

138. This was a breach of paragraph 23 of the Code as in not obtaining and considering relevant evidence which supported the claimant's claim, prior to taking the decision to dismiss the claimant, the respondent did not follow a fair process prior to the dismissing the claimant.

139. The respondent advanced no credible reason for breaching the Code in the way it did. It would have been easy for the respondent to provide the Colmer Reference and explain in the disciplinary invite that the Colmer Reference would be considered as part of the disciplinary proceedings. It was in the claimant's personnel file and was reviewed by Jacquie Carmen, prior to the disciplinary hearing and was considered by her when she made her decision to dismiss the claimant. I therefore conclude that the breach of the Code that I have identified at paragraph 135 and 136 was unreasonable.

140. It would similarly have been a straightforward matter to have interviewed the Four Witnesses and obtained the MyHalesown and MyConcern notes. As I have found at paragraphs 24 and 26, requests were made by the claimant to John Murray and Rachel Charles to provide this information prior to the disciplinary hearing. No explanation has been put forward by the respondent as to why these requests were

ignored. I find that the breach of the code that I have identified at paragraphs 137 and 138 was unreasonable conduct on the respondent's part.

141. I've found at paragraphs 117 and 118 that Jacquie Carmen said the claimant could provide the details of a witness to support his case, at the disciplinary hearing. However, instead of obtaining that information Jacquie Carmen then took the unilateral decision to dismiss the claimant without conducting a further investigation. I find Jacquie Carmen behaved unreasonably in taking this approach, rather than obtaining the details of the witness to support the claimant's case.

142. The Colmers Reference was a fundamental part of Jacquie Carmen's reasoning for dismissing the claimant. Jacquie Carmen decided that "*there was no smoke without fire*" in connection with the allegations set out in the Colmers Reference but did not give the claimant an opportunity to put his side of the story forward regarding those allegations. Similarly, a decision was taken by three of the respondent's employees tasked with managing the claimant's disciplinary process, on multiple occasions, not to obtain information that he requested which would support his case.

143. I therefore conclude that due to the respondent's unreasonable breach of the Code, this is such a case where it is just and equitable to award an ACAS uplift.

144. I have accepted the claimant's submission, set out in his schedule of loss, that a 15% percent uplift to the compensation I have awarded is appropriate in all the circumstances. I apply my expertise and experience as a specialist tribunal in reaching this conclusion.

145. The claimant has not set out the basis upon which he has calculated losses of holiday pay and pension entitlement. The parties have until **12 March 2024** to agree the level of compensation due to the claimant in respect of holiday pay and pension

entitlement. If it is not possible to do so, before **12 March 2024**, the parties should write to the tribunal setting out their respective positions and the tribunal will decide how to resolve this issue.

Employment Judge Childe

14 February 2024

Public access to employment tribunal decisions

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