THE INDUSTRIAL TRIBUNALS

CASE REFS: 10280/18
13000/18

CLAIMANTS: **1. Georgina Barrett**
2. Mark Robinson

RESPONDENT: **RMB Robinson & Mornin Bookbinders Ltd**

JUDGMENT

The unanimous judgment of the tribunal is that the claims of unfair dismissal brought by the two claimants are both dismissed.

CONSTITUTION OF TRIBUNAL

Vice President: **Mr N Kelly**

Members: **Mrs C Stewart**
Mr I Rosbotham

APPEARANCES:

The claimants were both represented by Mr P Moore of Copacetic Business Solutions Limited.

The respondent was represented by Mr M Mason of Mark Mason Law.

BACKGROUND

1. The respondent is a private limited company operating a bookbinding business in Belfast.

2. That private limited company did not have a formal or written Director's Agreement allocating duties and in particular designating one Director, or even two Directors, as Managing Directors. Similarly, it had no formal or written contracts of employment in respect of the two claimants.

3. The two claimants were dismissed by the respondent and both alleged that they had been unfairly dismissed for the purposes of the Employment Rights (Northern Ireland) Order 1996.

4. The parties were reminded at the start of this hearing that this is a statutory tribunal with a jurisdiction which is conferred by and which is limited by statute. They were

reminded specifically that this tribunal does not have power to rule on probate issues, the removal of individuals from the office of director, the allocation of shares in a private limited company, or generally in relation to commercial law. Its sole role in these claims is to determine whether the dismissals were fair dismissals for the purposes of the 1996 Order. That reminder had limited effect.

RELEVANT LAW

5. The statutory test to be applied by a tribunal, when considering the fairness of a dismissal, appears simple. However it has provoked a lengthy series of appellate decisions.

6. Article 130 of the Employment Rights (Northern Ireland) Order 1996 provides:-

> *"130(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 is either a reason falling within paragraph (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 paragraph if it –*
>
> *(b) relates to the conduct of the employee,*
>
> *(4) where the employer has fulfilled the requirements of paragraph (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."*

7. The Court of Appeal in ***Rogan v South Eastern Health & Social Care Trust [2009] NICA 47*** approved the earlier decision of Court in ***Dobbin v Citybus Ltd [2008] NICA 42*** where the Court held:-

> *"(49) The correct approach to [equivalent GB legislation] was settled in two principal cases – **British Home Stores v Burchell [1980] ICR 303** and **Iceland Frozen Foods Ltd v Jones [1983] ICR 17** and explained and refined, principally in the judgements of Mummery LJ, in two*

further cases ***Foley v Post Office*** *and* ***HSBC Bank PLC (formerly Midland Bank) v Madden reported at [2000] ICR 1283*** *(two appeals heard together) and* ***J Sainsbury v Hitt [2003] ICR 111****.*

(50) In ***Iceland Frozen Foods****, Browne-Wilkinson J offered the following guidance:-*

"Since the present state of the law can only be found by going through a number of different authorities, it may be convenient if we should seek to summarise the present law. We consider that the authorities establish that in law the correct approach for the industrial tribunal to adopt in answering the question posed by [equivalent GB legislation] is as follows:-

(1) the starting point should always be the words of [equivalent GB legislation] themselves;

(2) in applying the section an industrial tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the industrial tribunal) consider the dismissal to be fair;

(3) in judging the reasonableness of the employer's conduct an industrial tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;

(4) in many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, and another quite reasonably take another;

(5) the function of an industrial tribunal, as an industrial jury, is to determine whether in the particular circumstances of each 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 the dismissal is fair; if the dismissal falls outside the band it is unfair. "

(51) To that may be added the remarks of Arnold J in ***British Home Stores*** *where in the context of a misconduct case he stated:-*

> *"What the Tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, it must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable*

grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further. It is not relevant, as we think, that the Tribunal would themselves have shared that view in those circumstances. It is not relevant, as we think, for the Tribunal to examine the quality of the material which the employer had before them, for instance to see whether it was the sort of material, objectively considered, which would lead to a certain conclusion on the balance of probabilities, or whether it was the sort of material which would lead to the same conclusion only upon the basis of being "sure", as it is now said more normally in a criminal context, or, to use the more old fashioned term such as to put the matter beyond reasonable doubt. The test, and the test all the way through is reasonableness; and certainly, as it seems to us, a conclusion on the balance of probabilities will in any surmisable circumstance be a reasonable conclusion."

8. In ***Bowater v North West London Hospitals NHS Trust [2011] EWCA Civ 63***, the Court of Appeal (GB) considered a decision of the Employment Appeal Tribunal which had set aside a decision of an employment Tribunal. The Employment Tribunal had determined that a remark made by a nurse in an Accident & Emergency Department was not a sufficient basis for a fair dismissal. Lord Justice Longmore stated at Paragraph 18 of the decision that:-

> *"I agree with Stanley Burnton LJ that dismissal of the appellant for her lewd comment was outside the range of reasonable responses open to a reasonable employer in the circumstances of the case. The EAT decided that the ET had substituted its own judgment for that of the judgment to which the employer had come. But the employer cannot be the final arbiter of its own conduct in dismissing an employee. It is for the ET to make its judgment always bearing in mind that the test is whether dismissal is within the range of reasonable options open to a reasonable employer."*

He continued at Paragraph 19:-

> *"It is important that, in cases of this kind, the EAT pays proper respect to the decision of the ET. It is the ET to whom Parliament has entrusted the responsibility of making what are, no doubt, sometimes, difficult and borderline decisions in relation to the fairness of dismissal."*

9. In ***Fuller v London Borough at Brent [2011] EWCA Civ 267***, the Court of Appeal (GB) again considered a decision of the Employment Appeal Tribunal which had set aside the decision of an employment tribunal on the basis that the employment tribunal had substituted its view for the decision of an objective reasonable employer. Lord Justice Mummery stated at Paragraph 7 of the decision that:-

"In brief, the council's case on appeal is that the ET erred in law. It did not apply to the circumstances existing at the time of Mrs Fuller's dismissal the objective standard encapsulated in the concept of the 'range or band of reasonable responses'. That favourite form of words is not statutory or mandatory. Its appearance in most ET judgments in unfair dismissal is a reassurance of objectivity. "

At Paragraph 38 of the decision, he continued:-

"On a proper self-direction of law I accept that a reasonable ET could properly conclude that the council's dismissal was outside the band or range of reasonable responses and that it was unfair. If, as I hold, the ET applied the objective test, it did not err in law and there was no ground on which the EAT was entitled to set it aside or to dismiss Mrs Fuller's claim. "

10. In ***Salford Royal NHS Foundation Trust v Roldan [2010] IRLR 721***, the Court of Appeal (GB) again considered a decision of an Employment Appeal Tribunal which had set aside the decision of an employment tribunal on the ground that that tribunal had substituted their judgment of what was a fair dismissal for that of a reasonable employer. At Paragraph 13 of the judgment, Lord Justice Elias stated:-

*"Section 98(4) focuses on the need for an employer to act reasonably in all the circumstances. In **A v B [2003] IRLR 405**, the EAT (Elias J presiding) held that the relevant circumstances include the gravity of the charge and their potential effect upon the employee. So it is particularly important that employers take seriously their responsibilities to conduct a fair investigation where, as on the facts of that case, the employee's reputation or ability to work in his or her chosen field of employment is potentially apposite"*

*"In **A v B** the EAT said this:- Serious allegations of criminal misbehaviour, at least where disputed, must always be the subject of the most careful investigation, always bearing in mind that the investigation is usually being conducted by laymen and not lawyers. Of course even in the most serious cases it is unrealistic and quite inappropriate to require the safeguards of a criminal trial, but a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the enquiry should focus no less on any potential evidence that may exculpate or least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him."*

11. The Court of Appeal in Northern Ireland further examined the approach that a tribunal should adopt in claims of unfair dismissal in the case of ***Connolly v Western Health & Social Care Trust [2017] NICA 61***.

In that case, a nurse, who was on duty in a hospital ward and who was experiencing the symptoms of an asthma attack, used a Ventolin inhaler from the locked ward stock. She had intended to replace it with another inhaler which would have been supplied to her on her own prescription. She had not sought prior permission to use the hospital's inhaler; she had not approached any doctor in the hospital for assistance; she had not attended the Accident & Emergency Department for assistance. She did not disclose the use of the inhaler until her next

day on duty two days later. It was not in dispute that there had been misconduct on the part of the claimant in using a prescription only medicine which was part of hospital stock. The issue in all of this was whether the misconduct had been sufficiently serious to ground summary dismissal for gross misconduct.

12. The WHSCT had been concerned that the claimant had intended to replace the inhaler from her own supply. That would have broken the chain of supply within the hospital and in the employer's view would have presented a serious risk to the health of patients. The employer was also concerned that the claimant had sought, in response to the disciplinary proceedings, to stress that Ventolin had not been a controlled drug (although it had been a prescription only drug). The employer felt the claimant still believed that her conduct was permissible in certain circumstances and that therefore the behaviour could recur. The claimant was summarily dismissed for gross misconduct.

13. This case was the subject of two separate appeals to the Court of Appeal. However, the later appeal is the one relevant to the present case. It was a split decision. The minority decision, reached by Gillen LJ, found that the tribunal decision had been a decision which it had been entitled to reach, in that it had held that there had been a fair dismissal for gross misconduct. The hospital rules had made it clear that '*misappropriation*' of drugs was a potential offence. The claimant had not notified any other member of staff of her use of the inhaler before using it or for the rest of that shift. She had attended work for her next shift some two days later and had only then informed her manager that she had used the Ventolin inhaler from ward stock.

14. In essence, Gillen LJ determined that the decision to summarily dismiss the claimant in all the circumstances of the case had been a decision which a reasonable employer could reasonably have reached, even if may not have been the decision that the tribunal or the court would have reached, had it been determining the issue at first instance.

15. After citing the usual authorities, Gillen LJ approved the following statement in the tribunal's findings:-

> *"It (the tribunal) may not re-hear and re-determine the disciplinary decision originally made by the employer; it cannot substitute its own decision for the decision reached by that employer. In the case of a misconduct dismissal, such as the present case, the tribunal must first determine the reason for the dismissal: that is, whether in this case the dismissal was on the basis of conduct and must determine whether the employer believed that the claimant had been guilty of that misconduct. The tribunal must then consider whether the employer had conducted a reasonable investigation into the alleged misconduct and whether the employer had then acquired reasonable grounds for its belief in guilt. The question is not whether the tribunal will have reached the same decision from the same evidence or even on different evidence. The tribunal must then consider finally whether the decision to dismiss was proportionate in all the circumstances of the case."*

16. Gillen LJ then noted that the tribunal had determined that the employer had been concerned by the use of the prescription only inhaler from the ward stock which had been kept under lock and key, the claimant's intention to replace that inhaler with

an inhaler from her own supply and that she knew the use of such medication was wrong. The tribunal had determined that the employer had held a genuine belief in gross misconduct which had been reached on reasonable grounds following a reasonable investigation and that it was not for the tribunal to substitute its own opinion or penalty for that of the employer in the circumstances of this case. Gillen LJ determined that:-

> *"49. I consider that there is no basis upon which this court could consider that this conclusion was plainly wrong or that it could not have been reached by any other reasonable tribunal. Taking a prescription drug from under lock and key for the appellant's own use is clearly an extremely serious matter which no hospital can or should tolerate. Not only was the appellant well aware that this was prohibited behaviour but it could easily have been avoided by seeking assistance from A and E or the duty doctor.*
>
> *50. It was not unreasonable to conclude that this was aggravated by her failure to report the matter until two days later. Moreover it was perfectly reasonable for the Panel, made up of employees of the Trust well versed in Trust procedures and policies, to take the view that intent to personally replace it infringed the pharmacy supply chain. Frankly it scarcely requires an expert to inform the court that decisions to replace prescribed medications in principle should not be taken at this level irrespective of how simple an exercise in replacement in individual instances may appear to be."*

17. Gillen LJ concluded:-

> *"57. Whilst this may not necessarily have been the conclusion that this court would have reached had it been hearing the matter at first instance, I find no basis for substituting our view for that of the Panel and the Industrial Tribunal hearing this matter. I therefore dismiss this ground of appeal."*

18. The majority of the Court of Appeal in ***Connolly***, Deeny LJ and Weir LJ, reached a different conclusion. Firstly, they concluded that the decision of the respondent to dismiss the claimant, in all the circumstances of the case, was not a decision which a reasonable employer could reasonably have reached. Secondly, it determined that the decision of the industrial tribunal was '*plainly wrong*'. That second decision is based on the facts of the ***Connolly*** decision and on the view taken by the majority of the Court of Appeal in relation to the wording of the tribunal decision in that case. The first decision, and the approach taken by the majority to the objective standard of reasonableness, is of primary importance to the present Judgment.

19. Deeny LJ stated that:-

> *"Reaching a conclusion as to whether the dismissal is fair or unfair 'in accordance with equity and the substantial merits of the case' as required by Article 130(4)(b) would appear to involve a mixed question of law and fact."*

20. Deeny LJ then cited the well-known paragraph in ***Iceland Frozen Foods Ltd v Jones*** (above) which sets out the '*reasonable responses*' test. He went on to quote further from that decision to include the following:-

> *"Although the statement of principle in **Vickers Ltd v Smith [1977] IRLR 11** is entirely accurate in law, for the reasons given in **N C Watling & Company Ltd v Richardson [1978] ICR 1049**, we think industrial tribunals would do well not to direct themselves by reference to it. The statement in **Vickers Ltd v Smith** is capable of being misunderstood so as to require such a high degree of unreasonableness to be shown that nothing short of a perverse decision to dismiss can be held to be unfair within the section. This is how the industrial tribunal in the present case seems to have read **Vickers v Smith**. That is not the law. The question in each case is whether the industrial tribunal considers the employer's conduct to fall within the band of reasonable responses and industrial tribunals would be well advised to follow the formulation of the principle in **N C Watling & Company Ltd v Richardson [1978] ICR 1049** or **Rolls Royce Ltd v Walpole [1980] IRLR 343**."*

21. Deeny LJ then pointed out that gross misconduct justifying dismissal must amount to a repudiation of the contract of employment by the employee:-

> *"So the conduct must be a deliberate and wilful contradiction of the contractual terms."*

22. Deeny LJ stated that:-

> *"The facts as found are that she [the claimant] took five puffs of this inhaler when undergoing an asthmatic attack, without permission. The tribunal accepted the Appeal Panel's view that this was aggravated by her failure to report the matter until two days later.*
>
> *It seems to me that, even taking into account the delay, for which an explanation was given and was not rejected as a finding of fact, that cannot constitute 'deliberate and wilful conduct' justifying summary dismissal. Her terms of employment do not seem to have expressly prohibited such a use. The Code of Conduct is ambiguous at best on the topic. If she had asked the Ward Sister for permission before she used the inhaler and the Sister had refused her permission and she had nevertheless gone ahead and had used it one might have had the sort of act of disobedience contemplated by the Court of Appeal in **Laws v London Chronicle Limited**. That would have been a deliberate flouting of essential contractual conditions, ie following the instructions of her clinical superiors. But that is not what happened here. Furthermore, I agree with the statements in Harvey … that dismissals for a single first offence must require the offence to be particularly serious. Given the whole list of matters which the employer included under the hearing of Gross Misconduct it is impossible, in my view, to regard the nurse's actions as 'particularly serious'."*

23. Deeny LJ stated:-

> *"For this court to approbate the tribunal's decision upholding as within a reasonable range of responses the summary dismissal of an employee from her chosen profession on these facts without any prior warning as a 'repudiation of the fundamental terms of the contract' would be to turn language on its head. Employment law is a particular branch of the law of contract. With statutory interventions it has, of course, developed a character of its own. But any dismissed employee opting to go into a court of law and claim damages for breach of contract at common law against an employer who had summarily dismissed them for using a Ventolin inhaler while suffering from an asthmatic attack and delaying two days in reporting that, particularly when it was their 'first offence', could be tolerably confident of success before a judge, in my view."*

24. Deeny LJ held further that:-

> *"The interpretation of what, in this jurisdiction, is Article 130(4)(a) of the 1996 Order has been fixed by a series of appellate courts over the years, ie that whether an employer acted reasonably or unreasonably is to be addressed as whether an employer acted within a band of available decisions for a reasonable employer even if not the decision the tribunal would have made. That test, expressed in various ways, is too long established to be altered by this court, and in any event has persuasive arguments in favour of it. But it is necessary for tribunals to read it alongside the statutory provision of equal status in Article 130(4)(b), ie that that decision 'shall be determined in accordance with equity and the substantial merits of the case'. … ."*

25. The statutory test of unfairness in Article 130 of the 1996 Order (and in its predecessor) is in simple terms, and should be straightforward. It is difficult to see why it has generated such an extended discussion in case law over the last 40 years. The words of Article 130 comprise the only statutory test of unfairness. The formulation of the '*band of reasonable responses*' test, variously worded in different decisions, cannot be a substitution for the proper application of the statutory test. It may best be regarded as a double-check to be applied to ensure that, in applying the statutory test, the tribunal has avoided substituting its own views, on what it would have done in the relevant circumstances, for the decision of the employer. In other words it is, as the Court of Appeal (GB) stated in ***Fuller*** (above), a '*reassurance of objectivity*'.

    It is therefore important to remember that the '*reasonable responses*' test, although long-established as pointed out by the Court of Appeal in ***Connolly*** (above), appears nowhere in the statute. This is a statutory tribunal whose function is to apply the statute. Non-statutory wording or non-statutory paraphrasing of the statutory test can only be of assistance where it is remembered that it cannot substitute for the statutory test which sets out the remit and the function of the tribunal. In ***Iceland*** (above), it was stressed that the starting point should be the words of the legislation. In ***Connolly*** (above) the Court of Appeal (Northern Ireland) emphasised the importance of applying the statutory test as a whole.

26. There is no difference between the formulation of the legal principles expressed in the majority judgment and in the minority judgment in the case of ***Connolly***. The detailed formulation of those principles set out by Gillen LJ at Paragraph 28(i) – (xvi) of the decision covers, in full, the procedure which should be adopted by an industrial tribunal in assessing the fairness or unfairness of a misconduct dismissal. It is not disputed or challenged in any way in the majority judgement.

27. In ***Reilly v Sandwell Metropolitan Borough Council [2018] UK SC16***, the Supreme Court looked at a case of alleged unfair dismissal. The facts of that particular case are not of assistance to the present matter. However it is notable that Lady Hale, the President of the Supreme Court stated;

> *"the case might have presented an opportunity for this court to consider two points of law of general public importance which have not been raised at this level before."*

The first point is not of relevance to the present matter. However, Lady Hale described the second point in the following way;

> *"nor have we heard any argument on whether the approach to be taken by a tribunal to an employer's decisions, both as to the facts under section 98(1) to (3) as the Employment Rights Act 1996 first led down by the Employment Appeal Tribunal in **British Homes Stores Limited v Burchell [1978] ICR 303** and definitively endorsed by the Court of Appeal in **Foley v Post Office [2000] ICR 1283,** is correct."*

She went on to state;

> *"Even in relation to the first part of the inquiry, as to the reason for the dismissal, the **Burchell** approach can lead to dismissals which were in fact fair being treated as unfair and dismissals which were in fact unfair being treated as fair. Once again, it is not difficult to think of arguments on either side of this question but we have not heard them."*

28. Lady Hale went to state;

> *"34. There may be good reasons why no one has challenged the **Burchell** test before us. First, it has been applied by Employment Tribunals, in the thousands of cases which have come before them, for forty years now. It remains binding upon them and on the Employment Appeal Tribunal and Court of Appeal. Destabilising the position without a very good reason would be irresponsible. Second, Parliament has had the opportunity to clarify the approach which is intended, should it consider that **Burchell** is wrong, and it has not done so. Third, those who are experienced in the field, whether acting for employees or employers, may consider the approach is correct and does not lead to injustice in practice.*
>
> *35. It follows that the law remains as it has been for the last 40 years and I express no view about whether that is correct."*

29. Therefore, while the Supreme Court recognised the long standing of the ***Burchell*** test, and pointed out the significant difficulties inherent in challenging that non

statutory test at this stage, it did, rather pointedly, indicate that they were not expressing any view about whether the non-statutory test is correct and that they had not heard any argument in relation to that point. At the least, the Supreme Court questioned whether the "reasonable responses" test should be challenged, at some point, at the final appellate level.

That said, as matters stand, the statutory test, underpinned by the *'reasonable responses'* test as discussed in the above authorities, is the approach which this tribunal must adopt in relation to the claims of unfair dismissal.

PROCEDURE

30. The two claims were heard over three days on 10, 11 and 12 May 2021.

31. The witness statement procedure was used in this case. Witness statements were exchanged in advance in accordance with a timetable set by the tribunal. Each witness in turn swore or affirmed to his/her witness statement and was then cross-examined. With the exception of Mr Jeremy Robinson, each witness moved immediately into cross-examination and re-examination at that point.

The tribunal heard evidence from Mr Jeremey Robinson on behalf of the respondent company, from Mr Gary Jackson who heard the internal appeal from Ms Barrett, Ms Sophie Irwin who heard the internal appeal from Mr Mark Robinson, and from the two claimants.

32. Mr Jeremy Robinson gave some brief supplemental oral evidence in chief before being cross-examined.

33. The tribunal was provided with a bundle containing the exchanged documentation and a bundle of witness statements. The manner in which the bundle was compiled made the work of the tribunal, both in the course of the hearing and thereafter when reaching its decision, immensely difficult. The documentation was out of sequence, email chain were repeated and the bundle was presented in an incoherent order which meant that a substantial amount of time was spent by the tribunal searching for documentation and extracting the relevant documentation.

The parties' representatives were aware that bundles should be clear, that they should follow a chronological or other logical sequence and that they should not contain duplicates; particularly duplicated email chains. The bundles were a disgrace.

RELEVANT FACTS

Georgina Barrett

34. The first-named claimant, (hereinafter referred to as Ms Barrett) was employed by the respondent for four complete years. There was no written employment contract and her exact job title is in dispute. However, she had a responsible role in relation to business development.

35. Ms Barrett, at all relevant times, had been the domestic partner of the second-named claimant, who had been her line manager.

36. Ms Barrett was dismissed by the respondent for gross misconduct on 15 May 2018.

37. Ms Barrett alleged that she had been unfairly dismissed by the respondent contrary to the Employment Rights (NI) Order 1996.

38. Ms Barrett had been approached in 2016 by a company described as RD Tax Solutions. That company, later known as Catax, (and described hereinafter as Catax) offered to prepare and submit a claim to HMRC, on behalf of the respondent, in respect of tax credits for research and development expenditure.

39. Ms Barrett signed a document described as a *"client instruction form"*.

40. Ms Barrett signed that document on 27 April 2016 by adding an electronic signature. That signature was immediately below a short paragraph which had been explicitly headed *"Agreement to Terms and Conditions".*

41. Ms Barrett sought to allege in evidence before this tribunal that she had not, at that stage, received a copy of the detailed terms and conditions forming part of that contract which had included a specific provision which stated:

> *"Without prejudice to any other right to remedies available to the supplier under this contract or at law, if the client – fails to comply with obligations under Clause 5.1 – then the supplier shall be entitled to charge and the client shall pay the supplier for time spent for services rendered from the commencement date to the date of termination at an hourly rate of £250.00 plus VAT –*

Clause 5.1 of those terms and conditions stated:

> *that the client shall provide the supplier promptly with as much information and materials concerning its operation or activities or otherwise as the supplier may reasonably require in order to supply the services and to ensure that such information is true and accurate in all material respects."*

42. The tribunal does not accept that Ms Barrett had not, on 27 April 2016, received a full copy of the client instruction form together with the terms and conditions. Ms Barrett had been experienced in business and in this particular industry. She held a responsible role in the respondent company. She had specifically signed the document immediately below the words *"I hereby agree to the terms and conditions set out in this contract (see overleaf)* -". Furthermore, immediately beside Ms Barrett's electronic signature, a box had been ticked to confirm *"I have received a copy of the terms and conditions overleaf".* If it had been the case that Ms Barrett had not been supplied with the detailed terms and conditions set out overleaf, Ms Barrett would not have signed this document. She would have asked for sight of those terms and conditions before appending her signature. Ms Barrett did sign this document and the tribunal can only conclude that Ms Barrett, as an experienced business person, had read and understood what she was signing. The respondent had been entitled to reach the same conclusion.

43. There was also some debate later in the process as to whether Ms Barrett had been authorised by the respondent to enter into this contract. Ms Barrett had

specifically signed the contract (albeit with an electronic signature) immediately below the words:

> *"I hereby confirm that I am - duly authorised to sign this agreement on behalf of the company/organisation and that these terms and conditions shall be binding upon it."*

44. It is clear that Catax continually sought to obtain information from Ms Barrett in respect of the tax credit claim. They wrote on 17 May 2016, 1 June 2016, 13 June 2016, 4 July 2016, 6 July 2016, 25 July 2016, 29 September 2016, 6 October 2016, and 17 October 2016. It is equally clear that Ms Barrett had simply failed to provide the necessary information to Catax in accordance with the terms of the clear contract which she had entered into on behalf of the respondent.

45. On 22 May 2017, Catax wrote to the respondent levying a cancellation invoice amounting to £4,924.99, because they had been unable to successfully contact Ms Barrett since March 2017 and because the necessary information had not been provided in accordance with Clause 5.1.

46. Catax wrote again to Ms Barrett on 31 May 2017 seeking payment in respect of the cancellation invoice. A reminder notice was issued on 8 June 2017.

47. Ms Barrett wrote back to Catax on 8 June 2017 to state:

> *"This invoice will not be paid as I have no contract with Catax and was given no notice of novation."*

This reply can only be regarded as consistent with Ms Barrett being fully aware that she had entered into a binding legal contract, initially, with R&D Tax Solutions and with Ms Barrett then seeking to allege that the contract had not been *"novated"* to Catax. Again that is inconsistent with Ms Barrett's assertions in her witness statement and at the start of her cross-examination that she had been unaware that she entered into a contract in April 2016 or indeed that she had not been given the terms and conditions of the contract. She did not make either assertion in her email of 8 June 2017.

48. Ms Barrett was advised on 14 June 2017 that Catax had simply been a *"rebranding"* of R&D Tax Solutions and that novation had been required. There was no response from Ms Barrett asserting either that she had not signed a contract in the first place or that she had not seen the terms and conditions.

49. Ms Barrett was again advised by Catax on 28 June 2017 that the invoice remained outstanding. Catax confirmed that it had received no response to its email of 14 June 2017.

50. As a result of further correspondence in June and July 2017, the first cancellation invoice of 22 May 2017 was waived on the basis that the respondent would resume the process of seeking a tax credit with Catax. To that end, Catax wrote again on 5 July 2017 and 11 July 2017 seeking the necessary information to progress the tax credit claim. That information was not provided. Ms Barrett emailed Catax on 17 July 2017 and stated that:

"We were closed for the week, last week, so I will be working on these figures this week. Once I have the information, I will send it through to you."

On 20 July 2017 Ms Barrett again wrote to Catax to state:

"Just wanted to update you. I am still working on the facts/figures and just want to get them checked over. I will be on annual leave next week, so I will have something for you the week commencing 31 July."

51. On 1 August 2017 Catax again wrote to Ms Barrett asking:

"Could you let me know if you expect to have the information we need ready by the end of the week?"

52. On 7 August 2017 Catax again wrote to Ms Barrett stating:

"I just rang for an update on the costs as we will need to proceed your claim as per below. Could you please let me know when you think you will have these figures."

53. On 31 August 2017 Ms Barrett wrote to Catax to state that one of their staff members had passed away and they had been short staffed. On that basis she hoped that she would be able to send in the information on the following week.

54. On 7 September 2017, Catax acknowledged that email and stated:

"I will get in touch towards the end of next week and we can look forward to progress from there."

55. On 15 September 2017, Catax wrote again to Ms Barrett seeking the necessary information. Catax sent another reminder on 20 September 2017. Further reminders were sent on 22 September 2017, 3 October 2017, 17 October 2017, 20 October 2017, 27 October 2017, 23 November 2017. Ms Barrett did not provide the requested information.

56. On 18 December 2017 Catax raised a second cancellation notice and invoice.

57. On 18 December 2017 Ms Barrett emailed Catax to state that Christmas was one of their busiest times and that she would be sending the information in the first two weeks in January 2018. On that basis, on 18 December 2017, Catax stated they would *"we shall once again halt the cancellation invoices, and look forward to hearing from you in January."*

58. Ms Barrett still did not supply the information to Catax and on 23 January 2018 Catax wrote again with a reminder. Another reminder was issued by Catax on 1 February 2018, again with no response.

59. On 13 March 2018, Debt Guard Solicitors wrote to the respondent company in respect of an outstanding debt in respect of the two outstanding invoices of £5,912.48.

60. That debt recovery letter was passed to Mr Jeremy Robinson who was then the majority shareholder and had been acting as Managing Director.

61. When Mr Jeremy Robinson, who was then the majority shareholder and acting as Managing Director, became aware of the letter from Debt Guard, Ms Barrett was on sick leave. On 28 March 2018, Mr Jeremy Robinson spoke to Ms Barrett about the letter from Debt Guard. Ms Barrett stated that the second-named claimant (Mr Mark Robinson) had been aware of it and that she was waiting to hear back from the company solicitor with an appointment to discuss the matter.

62. Mr Jeremy Robinson wrote to Ms Barrett suspending her from duty on 27 March 2018 pending a full investigation into the issue.

63. In an undated letter Mr Jeremy Robinson wrote again to Ms Barrett shortly thereafter inviting her to attend an investigatory meeting on 9 April 2018. He indicated that he would be accompanied by Mark Mason, an employment law adviser who had been engaged to assist him in the procedure. As this was not part of the disciplinary procedure, Ms Barrett was advised that she no right to be accompanied. However it was made plain to her that she could be accompanied by any work colleague, other than Mr Mark Robinson.

64. In the course of that investigation meeting, on 11 April 2016 Ms Barrett advised that Mr Mark Robinson had *"made the decision to go with this other company (Catax)".* Mr Jeremy Robinson stated he had not wished to pursue the initial contract from Catax. Ms Barrett stated that she had not been aware of that and that *"I was working on the authority of Mark Robinson".* She further stated: *"I did accept the form and sent it off with the authority of Mark Robinson".*

    Ms Barrett confirmed that she had not kept Mr Jeremy Robinson informed of progress. She stated: *"What you and Mark Robinson do and do not discuss is none of my business. I was working under the authority of Mark Robinson."*

65. Ms Barrett sought to argue during cross-examination in the present hearing that she had been confused about what she had been asked in this respect. After listening to her giving evidence and having looked at the documentation and in particular at the clear and explicit contract which she had signed, Ms Barrett could have been in no doubt as to the meaning and purpose of those questions. The tribunal is therefore content that Ms Barrett has stated specifically in the course of this investigatory meeting that she had had authority from Mr Mark Robinson to enter into this contract.

    When this was put to Mr Mark Robinson on his investigation interview on 19 April 2018, he replied that *"no contract was entered into."*

66. In another undated letter, Ms Barrett was invited to attend a disciplinary hearing on 9 May 2018. The disciplinary hearing was to consider three disciplinary charges:

    (i) that you, without authority, committed to (sic) the company with a contract with R&D Tax Solutions on 27 April 2016.

(ii) That, having entered into this contract, you failed to engage properly with R&D tax solutions (later known as Catax) resulting in the company being charged £5,912.48 for their time spent on the matter.

(iii) That you gave a dishonest account of the circumstances in an investigatory meeting on 11 April 2018 when asked to explain why you had committed the company to this contract. You said that you had the authority of Mark Robinson. It is alleged that you had no such authority.

67. Ms Barrett was advised that the third disciplinary charge might amount to a charge of gross misconduct and that a potential outcome of the disciplinary hearing was her dismissal without notice. She was provided with a copy of all the relevant emails in relation to her correspondence with Catax, the letter from Debt Guard Solicitors, the notes of the investigatory meeting, the notes of the meeting between Mr Jeremy Robinson and Mr Mark Robinson on 19 April 2018 and a copy of the disciplinary/dismissal procedure.

68. All three disciplinary charges were upheld. In relation to the third charge ie that Georgina Barrett had given a dishonest account of her authority to enter into a contract, Ms Barrett insisted in the disciplinary hearing that she had had authority from Mark Robinson to enter into a contract. Mr Jeremy Robinson concluded that she had no such authority and relied in particular on Mr Mark Robinson's insistence that he did not believe a contract had ever been entered into. Mr Jeremy Robinson also concluded that Ms Barrett had entered into that contract without authority from her employer and in so doing had committed the company to a significant liability. He further concluded that Ms Barrett had failed to engage properly with Catax in accordance with that contract.

69. The letter of dismissal set out the findings in some detail.

In relation to the first charge ie that Ms Barrett had, without authority, committed the company to a contract with R&D Tax Solutions on 27 April 2016, Mr Jeremy Robinson recorded that Ms Barrett had stated that she had had the authority of Mr Mark Robinson to enter into the contract. He pointed out that Mr Mark Robinson, in his investigation meeting, had stated that he did not believe a contract had been entered into by Ms Barrett. He further pointed out that in an email of 22 May 2017 to Catax, Ms Barrett had stated that:

> *"I explained on a number of occasions that the director structure had changed since the initial contact and that I could not pursue going any further until they had agreement from them."*

Ms Barrett had not sought any such approval in the terms set out in that email. Mr Jeremy Robinson also referred to a draft email that Ms Barrett had prepared which stated (although it had never been sent) to Catax that:

> *"I was not authorised nor did I sign any of that authorisation." – "The work was carried out by yourselves without any authorisation from a company director".*

Mr Jeremy Robinson was concerned that on the one hand Ms Barrett was adamant that she had had the authority of Mr Mark Robinson, director and her line manager,

to enter into this contract, while at the same time she was at least prepared to put forward the argument to Catax that she had had no such authority. Furthermore, Mr Mark Robinson had stated plainly that he had did not believe a contract had been entered into by Ms Barrett. The first disciplinary charge was upheld.

In relation to the second disciplinary charge ie that Ms Barrett had failed to engage properly with Catax, with the result that the respondent company had been charged £5,912.48, Mr Jeremy Robinson referred to the terms of the contract and to the exchange of emails which had passed between Ms Barrett and Catax. He set out a detailed chronology of that exchange and concluded that Ms Barrett had failed to meaningfully engage with Catax. He stated:

> *"While I am surprised at the amount of time the claimant has spent and may query this with them, I believe that they were within their rights, owing to the lack of information being provided by you, to cancel the contract and charge the hourly rate contained within their terms of business. They cannot be expected to work for free."*

The second disciplinary charge was upheld.

In relation to the third disciplinary charge ie that Ms Barrett had given a dishonest account of the circumstances at an investigatory meeting on 11 April 2018 when she stated that she had had the authority of Mr Mark Robinson to enter into the contract, Mr Jeremy Robinson concluded that she had given such a dishonest account and that she had repeated the account at the disciplinary hearing. He concluded that Ms Barrett had not had the authority of Mr Mark Robinson to enter into the contract and that she had been dishonest in saying that she had had such authority.

The third disciplinary charge was upheld.

70. Mr Jeremy Robinson stated:

> *"Regrettably, I agree with you that the working relationship has broken down beyond repair. I do not agree that this is because how you have been treated but believe that it is because of your actions in dealing with the R&D Tax Credit issue, in particular giving a dishonest account of it to me. I do not believe that there is sufficient trust to enable us to carry on working together and that breakdown of trust is attributable to your actions. I consider that your dishonest account of the events surrounding the R&D Tax Credit contract gives sufficient grounds to terminate your employment for gross misconduct without notice. However while I am of the view that dismissal is the appropriate outcome of your misconduct I have decided to make a payment in lieu of your four weeks' notice period."*

Ms Barrett was advised of her right to appeal.

71. On 21 May 2019, Ms Barrett appealed against the disciplinary decision. She stated that she was appealing the decision to terminate her contract of employment on the following points:

"- this should not have been considered gross misconduct as I was acting under the direct instruction of a director of the company.

- The hearing of my case was unfair and was pre-determined, therefore the ruling was not in my favour.

- The allegations against me were over inflated in a bid to terminate my contract based on the ongoing directors' dispute with Mark Robinson and my relationship with him.

- I had complete authority from Mark Robinson at all stages and performed all functions asked of me and I dispute the allegation that he did not give me authority.

- I dispute the allegation that I did not engage with Catax and that I gave a dishonest account of events.

- I believe that Jeremy Robinson should be made accountable for actions of harassment and bullying behaviour, which has accumulated in him breaking down the relationship in a bid to dismiss me.

- The conduct of the investigation processes flawed and manufactured in an attempt to single me out and to undermine my position in the company."

72. An appeal hearing was arranged on 19 June 2018. That appeal was heard and determined by Mr Gary Jackson, an independent HR consultant retained on behalf of the respondent company. Ms Barrett was advised that she could be accompanied by a work colleague. In the event she was not accompanied by anyone.

73. Ms Barrett argued in the appeal hearing that neither she nor Mr Mark Robinson had recognised what she had signed on 27 April 2016 as a contract. She sought to argue that Mr Mark Robinson had given her permission to proceed with the matter but not permission to enter into a contract and that no contract had in fact been entered into.

74. The appeal was dismissed on 5 July 2018. Mr Jackson concluded that he was going to confine his considerations to matters directly relating to Ms Barrett's dismissal. He decided not to investigate her complaints about Mr Jeremy Robinson's alleged previous behaviour in the company.

75. In relation to the first disciplinary charge, Mr Jackson accepted that there might have been some confusion between Mr Mark Robinson and Ms Barrett about what Ms Barrett had been authorised to do in relation to Catax. He stated that *"I am inclined to accept Georgina's assertion that Mark had given her authority to proceed to check if there was any merit in engaging with Catax but that he had not authorised committing the company to a binding contract. This is supported by Mark."*

Mr Jackson then stated:

> *"Therefore, the only valid points left to examine, and the only investigation aspects of any real probative value in this circumstance, is whether or not there was clarity within the document signed off by Georgina that she was committing the company to a binding contract and whether or not she was dishonest in her accounting of it to the investigation and disciplinary panel."*

Mr Jackson referred to the clear terms of the document signed by Ms Barrett on 27 April 2016. He took the view that there was room for doubt as to whether or not the terms and conditions where attached to the document initially signed by Ms Barrett. However, he noted that the terms and conditions had been emailed by Catax on 7 March 2016. He concluded that *"Georgina would be expected to have full responsibility for ensuring that she was not committing the company to any form binding contract and would have been accountable for ensuring that she had perused the document fully and thoroughly."*

He concluded:

> *"It is therefore very clear and completely unambiguous this document was going to commit (the respondent company) to a binding contract with R&D Tax Solutions (later Catax) and that there were specific terms and conditions involved to such a contract."*

76. In relation to the second ground of appeal ie that Ms Barrett disputed that she failed to properly engage with Catax, Mr Jackson reviewed the lengthy exchange of emails and concluded:

> *"Therefore, I am absolutely satisfied that the reason for R&D Tax Solutions/ Catax cancelling the contract was because Georgina had not engaged properly with them and not provided them with information."*

77. In relation to third appeal ground ie that Ms Barrett had been singled out as a target because of her relationship with Mark Robinson, Mr Jackson concluded that the rationale for the dismissal decision was based upon factual evidence and that it was considered reasonable. That appeal point was not upheld. The dismissal was confirmed.

Mr Mark Robinson

78. Mr Jeremy Robinson and Mr Mark Robinson were both Directors of the respondent private limited company at all relevant times. There had been no written or formal directors agreement designating one, or indeed both of them, as a Managing Director, or allocating any specific roles or duties.

79. At all relevant times, Mr Jeremy Robinson had 51% of the shares and Mr Mark Robinson 49% of those shares.

80. Mr Mark Robinson appeared to dispute the probated will of their late father and in particular, disputed the differential allocation of shares. All of that is irrelevant to the present claims of unfair dismissal before a statutory tribunal under the 1996 Order and is entirely outside the jurisdiction of this tribunal.

81. At all relevant times, Mr Jeremy Robinson described himself as and acted as the Managing Director of the private limited company. Mr Mark Robinson intermittently had stated that he had been joint Managing Director. That argument which had been put forward by Mr Mark Robinson appeared to relate to the fact that he had previously been the Managing Director of the company. In his witness statement to the tribunal, Mr Mark Robinson referred to the deep-seated sibling rivalry and resentment which underlay this case. He stated:

> *"My father had said that if we were successful running the company together, he would upon his retirement hand the company over to me."*
>
> *"Jeremy Robinson joined RMB after two failed attempts at obtaining a degree."*
>
> *"Jeremy has had no work experience of the outside world and has been mollycoddled by his family throughout his life. This, immature behaviour of the spoilt youngest brother just because he was given the majority share not earned, is totally unfair and in no way grounds for dismissal."*

He stated that their late father had previously asked him to become Managing Director and he had taken up that role.

Specifically, Mr Mark Robinson stated in his witness statement:

> *"Jeremy (tried?) to dismiss his former MD, older brother and shareholder purely for financial gain."*

It is significant that, despite the argument put forward by Mr Mark Robinson and on his behalf that he had in fact been a joint Managing Director throughout this process, he specifically acknowledged in that part of his witness statement that he had ceased to be Managing Director by his use of the words *"former"*. He did not describe himself in the *"joint Managing Director";* rather as the *"former MD".* Of the 36 paragraphs in Mr Mark Robinson's witness statement, 26 paragraphs relate to historic matters and the long running dispute between the two brothers. Only 10 paragraphs can be said to directly relate to the issue properly before this tribunal.

However, at no point in his witness statement, did Mr Mark Robinson assert that he had been joint Managing Director and that, on that basis, his brother had had no authority to investigate, suspend, discipline or dismiss him. Furthermore, Mr Mark Robinson complied with the investigation, suspension, disciplinary process and the appeal process. At no point had be asserted, for example, that he had not been suspended and that he was going to attend work.

The tribunal concludes that Mr Jeremy Robinson had been the majority shareholder and had been acting as the Managing Director. He had been the proper disciplinary authority in relation to Mr Mark Robinson. The argument advanced in the course of the present hearing that Mr Jeremy Robinson had acted without authority is without merit.

82. Mr Jeremy Robinson had expressed concerns about Mr Mark Robinson's time keeping and attendance record throughout the period from January 2017 to February 2018. There had been multiple occasions on which Mr Mark Robinson had either telephoned in or texted in sick or when he had arrived late or left early.

83. Mr Jeremy Robinson had also been concerned about complaints which he had received from customers about Mr Mark Robinson's conduct.

84. On 13 December 2017, Mr Jeremy Robinson wrote to Mr Mark Robinson directing him to attend a meeting on 15 December to discuss his conduct and performance. It set out specific details about his attendance and time keeping. It listed 31 instances where Mr Mark Robinson had either not attended at all (sometimes for multiple days), or had been late for work, in 2017.

85. The letter also raised specific issues in relation to customers. It stated that:

> *"Some customers refused to interact with you because of the treatment they get".*

86. The letter went on to state:

> *"It is my view that we have reached a point where our current working relationship is unworkable and, if we cannot agree a way forward, consideration is going to have to be given to whether or not your employment can continue. I am not invoking a formal disciplinary or dismissal procedure at this stage but please note that if we cannot agree a way forward at our meeting that will be the next step for me to consider.*

87. That letter of the 13 December 2017 made it plain that this was not part of the formal disciplinary procedure and that there was therefore no statutory right to accompaniment. That said, the letter made it plain that if he wished to be accompanied at the meeting, he could be accompanied. On 15 December 2017 at 9.05 am Mr Mark Robinson emailed Mr Jeremy Robinson to state:

> *"Further to our conversation I will not be available at 2 pm today. I was unable to change previous engagements. I will let you know when we can reschedule."*

It is notable that Mr Mark Robinson did not assert in that replying email that Mr Jeremy Robinson had no authority to investigate these matters and no authority to set up such a meeting. He did not assert that any potential disciplinary action would be beyond the authority of Mr Jeremy Robinson.

88. Mr Jeremy Robinson wrote back at 10.19 am on the same day 15 December 2017 to state:

> *"Monday at 2 pm would work. Is there any reason this is not possible?"*

89. It seems clear that Mr Mark Robinson refused to attend on the following Monday but the tribunal was not drawn to any specific email and there was no assertion that Mr Mark Robinson had refused to attend on the following Monday because he disputed Mr Jeremy Robinson's right to hold such a meeting.

90. On 25 January 2018, Mr Jeremy Robinson wrote again telling Mr Mark Robinson that he was required to attend a meeting, on this occasion on 26 January 2018.

In that letter, Mr Jeremy Robinson referred to multiple occasions on which Mr Mark Robinson had either been absent from work or late for work. The letter also referred to complaints from customers about Mr Mark Robinson's behaviour. The letter stated:

> *"It seems to me from our discussions and my discussions with the customers that you have not been truthful with me in your account of these various matters. This not only impacts on our relationships with our customers but leaves me wondering if you are telling the truth in any of our interactions. If we do not have trust in each other as Directors, we cannot go forward. It is my view that, in light of your senior position in the company, we have reached a point when our current working relationship is unworkable and if we cannot agree a way forward, consideration will have to be given to terminating your employment. If after our meeting on Friday 26 January, I do not believe that a way forward can be agreed, the next stage in the process will be to consider invoking a formal disciplinary procedure which may result in the termination of your employment."*

Again Mr Mark Robinson was offered the chance to be accompanied at that meeting.

91. Mr Mark Robinson again failed to attend that meeting but the tribunal was not drawn to any email or oral exchange between Mr Jeremy Robinson and Mr Mark Robinson in which Mr Mark Robinson had asserted that Mr Jeremy Robinson had no power to conduct such a meeting in relation to Mr Mark Robinson's employment.

92. Mr Jeremy Robinson wrote again to Mr Mark Robinson on 31 January 2018 requiring him again to attend the meeting; on this occasion on 5 February 2018. That letter covered the same issues in relation to Mr Mark Robinson's timekeeping and attendance and his interaction with customers.

93. Mr Mark Robinson refused to attend that meeting. Mr Jeremy Robinson wrote back to Mr Mark Robinson on 7 February 2018 and stated:

> *"Further to my letter of 31 January 2018, asking you to meet on 5 February 2018 to discuss your employment, you advised me you would not be meeting with me. You said that you had received advice and that I would hear from your adviser "in due course". I asked if you were saying that you wanted to rearrange the meeting or you were saying you were refusing to have the meeting that I had requested you to attend. You did not give me an answer but simply repeated that I would receive communication from your adviser "in due course". This is not acceptable. I have asked you to meet to discuss concerns that I have in relation to your employment. This is a perfectly reasonable request. Please note that if the meeting cannot be rearranged within one week of this letter, I will have to consider moving to a more formal procedure without first having had the opportunity to meet with you to discuss these matters. It is in your interests to engage in the meeting*

that I am trying to arrange with you. Please confirm at the end of this week that you are willing to meet in the next seven days and we can put a date and time in the diary."

94. Mr Mark Robinson commenced sick leave on 13 February 2018 without responding. On 23 March 2018, Mr Jeremy Robinson wrote to Mr Mark Robinson. He stated:

> *"I am writing to enquire what your intentions are in relation to a return to work at the expiry of your current sick line. As you will appreciate, in light of previous correspondence, there is a lot for us to discuss upon your return. In order to plan a return to work discussion, it would be helpful to know your intentions. Do you intend to return work at the expiry of your sick line on 27 March or is it your intention to submit a further sick note? Please let me know as soon as possible."*

95. Mr Mark Robinson returned to work without notifying Mr Jeremy Robinson and without responding to that correspondence.

96. On 15 March 2018, the letter from Debt Guard concerning the Catax invoice had been brought to Mr Jeremy Robinson's attention. He wrote again to Mr Mark Robinson on 27 March 2018 suspending him from duty. He stated:

> *"Further to previous failed attempts to meet with you to discuss your employment, I have decided to invoke a short period of suspension to allow for further investigations to be carried out. You were asked to contact me upon the expiry of your medical certificate to discuss a return to work. Clearly there are several issues that need to be addressed before it is appropriate for you to return to your duties. Despite my request that you contact me ahead of your return, you failed to do so and simply turned up for work as if there was nothing to discuss."*

97. On 18 April 2018, Mr Mark Mason, on behalf of Mr Robinson, wrote to Mr Frank Roberts, Mark Robinson's solicitor to set up an investigatory meeting on 19 April 2018. That letter indicated that this was an investigatory meeting to establish facts and then to decide if there was a disciplinary case to answer. It stated that the issues to be discussed in the course of that meeting included Mr Mark Robinson's attendance and timekeeping record, his indication that he could *"come and go"* as he pleased, issues relating to customer complaints, his willingness to engage in discussions and his awareness of Ms Barrett's dealings with Catax.

98. Mr Mark Robinson attended that meeting on 19 April 2018 accompanied by his solicitor Mr Frank Roberts. Mr Jeremy Robinson was accompanied by Mr Mark Mason. Mr Mark Robinson, and indeed his solicitor, did not allege that Mr Jeremy Robinson had no authority to conduct this meeting on behalf of the respondent company.

99. This meeting appears to have been somewhat diffuse and lengthy. It dealt with the dispute between the two brothers as directors, their different shareholding, the validity of the will and other matters and it appears to have touched on the relevant issues for the purposes of the present claims only on an intermittent basis.

100. At one point however, Mr Mark Robinson was asked if he believed that a contract had been entered into with Catax by Ms Barrett. Mr Mark Robinson stated that he did not believe that a contract had been entered into as nothing was signed. Mr Mark Robinson was asked if Ms Barrett had had the authority to enter into a contract. Mr Mark Robinson's response was that no contract had been entered into. He stated that the respondent company should dispute this invoice on the basis that there had been no legally binding contract. The fact that Mr Mark Robinson was denying that a contract had been entered into, despite the clear terms of the agreement signed by Ms Barrett and despite his responsibilities as Ms Barrett's line manager, concerned Mr Jeremy Robinson.

101. There was a discussion then about Mr Mark Robinson's attendance and time keeping record. Mr Mark Robinson stated that he worked outside normal office hours and that other employees with sick absence had not been investigated.

102. There was a discussion about customer complaints. In relation to complaints from Mr Don Hawthorne, he stated that sale reps try to play one director off against another. He queried why Mr Hawthorne had not complained directly to him at the time. He disputed that he had shouted at Mr Hawthorne. He stated that perhaps Mr Hawthorne wanted Mr Jeremy Robinson to go to Mr Mark Robinson and get better treatment for him so that the company would get a higher priority from the respondent company.

A different incident with W G Baird was discussed. Mr Mark Robinson said he did not believe this was an issue and that W G Baird had continued to trade with the respondent company. It was put to Mr Mark Robinson that he had told an employee at W G Baird that he could *"do whatever the F*** he liked",* Mr Mark Robinson stated that the complaint had been made for *"leverage and to curry favour"* Mr Mark Robinson denied that he had sworn at the employee of W G Baird.

Mr Mark Robinson was asked then to comment in relation to another matter concerning a different company, Knocklayd. Again Mr Mark Robinson stated that sometimes customers *"cannot get what they want and they complain to get their preferential treatment. It is the standard tactic in the industry".*

Mr Mark Robinson was asked to comment on another matter where a customer had complained that they had been asked to pay upfront. Mr Mark Robinson asserted that the customer had telephoned him in relation to this matter. Mr Jeremy Robinson took the view that Mr Mark Robinson was not telling the truth in relation to that matter.

Mr Mark Robinson did not allege that these complaints had not been made.

103. On 22 May 2018, a disciplinary letter was sent to Mr Mark Mason requiring him to attend for disciplinary hearing on 30 May 2018. It stated that the following disciplinary charges would be considered:

> *"(i) that you failed to properly manage Georgina Barrett in her interactions (including entering into a contract) with R&D Tax Credit Company, with the result that the company is faced with an invoice of £5,912.48 due to Georgina's mismanagement of this contract.*

(ii) *That you failed in your duty as a Director to keep me informed about the situation as it was developing with R&D Tax Credit Company.*

(iii) *That you shouted at our customer, Don Hawthorne, from Nicholson and Bass on two occasions on the phone on 6 and 7 December leading to Mr Don Hawthorne calling me to complain about your behaviour towards him.*

(iv) *That you swore at a visitor to our premises when they arrived to collect their job on 29 November 2017.*

(v) *That some of our customers refused to interact with you because of the treatment they received from you. For example, Richard at Knocklayd Print has taken most of his work elsewhere and has advised me that this is because he does not like the attitude with which you treat him.*

(vi) *That you called our customer at In-house Publications to advise him that it was company policy to require payment in advance and, when challenged on this, you denied making the call, stating that the customer called you and offered to pay in advance. It is alleged that this is contrary to the customer's account and the call log which shows an outgoing call on 26 November 2017.*

(vii) *That you gave a false account of your discussions with Philip Jamshidi at W G Baird in that you said he had advised you that their job was needed on a certain date but Philip told me that he told you that when he needed it completed two days later than that, leaving ample time to complete the job. You told me that the customer was lying to me and that your version was accurate. It is alleged that the customer would have no reason to lie. It is alleged that the company lost business because of you telling the customer that we could not complete the job in time.*

(viii) *That your attendance and timekeeping record from January 2017 to February 2018 fell well below the standards expected of any employee of the company".*

104. The letter went on to state:

"In relation to these specific allegations, it is alleged that our working relationship as Directors has broken down beyond repair because of your actions, particularly your conduct relating to the tax credit issue and your actions towards customers. It seems to me from our discussions and my discussions with customers that you have not been truthful with me in your account of these various matters. This leaves me wondering if I can believe what you are telling me about any given situation. Further, when I questioned you about in-house publications, you said that I was lying and that you did not believe anything that I said and that you had no respect for me. It appears that the breakdown of trust is mutual and therefore it is

asserted that we cannot continue working together and this amounts to a substantial reason why your employment with the company should be terminated."

105. In the course of the disciplinary hearing on 30 May 2018, Mr Robinson still disputed that a contract had been entered into by Ms Barrett. He asked whether a written statement had been obtained from Mr Don Hawthorne. He was told that it had not been obtained and that that would not have been the normal practice in respect of customers. He continued to deny allegations 3, 4, 5, 6 and 7. He repeated that the customers wished to *"curry favour".* In relation to allegation 8 concerning attending late or being absent, Mr Mark Robinson alleged there had been a culture of bullying and aggression. However he accepted that he had a higher than average sickness record.

106. On 11 June 2018, the respondent company dismissed Mr Mark Robinson.

107. After discussing unrelated allegations which were made by Mr Mark Robinson against him, Mr Jeremy Robinson, dealt with the first disciplinary charge (alleged mismanagement of Ms Barrett). He stated:

"I consider this allegation to be upheld. You had accepted that at no point during the process of Georgina being in contact with the Tax Credit company did you think to look at any of the communication. It is extremely concerning that you still continue to insist that no contract was entered into. It is clear from the terms of the business what the agreement was. I believe that you failed to properly manage Georgina with regard to this matter. If you had kept a closer eye on what was going on, I do not believe that we would have been invoiced or, at the very least, we would have been invoiced for a lesser amount."

108. In relation to the second disciplinary charge (failing to keep Mr Jeremy Robinson informed about developments with the Tax Credit company) Mr Jeremy Robinson concluded:

"In response to this allegation you said that your understanding was that Georgina was working on facts and figures and that you would have brought the matter to me at the time of making a claim. I believe that your answer further demonstrates mismanagement on your part. We were well past the stage of deciding whether to make a claim before I found out what was going on because you had not been keeping on top of what Georgina had been doing. Having said that, I am prepared to accept that you did not have a grasp of what was going on and this provides an explanation for why you did not refer the matter to me at any stage prior to me finding out about it in March 2018."

The second disciplinary charge was therefore not upheld.

109. In relation to the third disciplinary charge (the complaint from Mr Don Hawthorne), the charge was upheld. Mr Jeremy Robinson stated:

"I do not believe that Don would have had cause to ring me to complain if your behaviour towards him had not been as alleged. I do not believe that

your explanation that he was trying to play one of us against the other to curry favour is credible. I do not believe that people operate in this way and certainly not to the extent alleged by you in the investigatory and disciplinary meetings."

The third disciplinary charge was upheld.

110. In relation to the fourth disciplinary charge (swearing at a visitor on 29 November 2017), that charge was upheld. Mr Jeremy Robinson stated:

> *"I do not believe that this allegation would have been made against you by Patrick Moffett if it was not true. I cannot accept that Patrick Moffett was trying to curry favour by playing you and I off against each other as alleged by you at the investigatory meeting."*

111. In relation to the fifth disciplinary charge (that customers refused to interact with Mr Mark Robinson because of the treatment they had received eg Knocklayd Print), the charge was upheld. Mr Jeremy Robinson stated:

> *"You suggested that it was in Richard's interest to complain to get preferential treatment. I find this repeated explanation for each of the customer complaints not credible. I believe that Richard does not deal with you because of your attitude and him complaining about your attitude is not an attempt to win favour or get preferential treatment."*

112. In relation to the sixth disciplinary charge (in-house publications and the phone call) the charge was upheld. Mr Jeremy Robinson stated:

> *"In relation to the issue of whether or not payment in advance was required, this was not the main issue but rather the main issue was that it was alleged that you had been dishonest with me in your account. I cannot understand why the customer would tell me that you phoned him to require payment in advance if this was not the case."*

113. In relation the seventh disciplinary charge (Philip Jamshidi) the charge was upheld. Mr Jeremy Robinson stated:

> *"You again suggested that Philip Jamshidi was trying to curry favour by raising this issue. I simply do not accept this."*
>
> *"You told me that Philip Jamshidi was lying to me in his account of what had happened. I can think of no reason why he would lie. I believe that you are the one that was lying. I therefore find this allegation to be upheld."*

114. In relation to the eighth disciplinary charge (timekeeping/attendance) the charge was upheld. Mr Jeremy Robinson stated:

> *"I do not believe that I am to blame for your absences. I accept that we have on occasions have cross words. This has been mutual and, from my perspective, came from a place of frustration with your lack of commitment and dedication to the company, evidenced by you working whatever hours suited you and being totally unaccountable for your timekeeping and*

attendance. You were late on several occasions with no good explanation. I do not accept that taking some calls out of hours entitles you to time off in lieu on other occasions. A director with a 49% shareholding should expect to undertake some additional duties outside the normal working hours. Further, your 14 occasions of absence in a period of a year is totally unacceptable."

115. Mr Mark Robinson was dismissed with no notice. Mr Jeremy Robinson stated:

> *"Regrettably, I do not believe that there is any alternative but to dismiss you. In coming to this conclusion, I have taken into account your long service with the company with no prior formal disciplinary record. I have also taken into account the senior position held by you within the company. Unfortunately, I can no longer believe what you are telling me about your interactions with customers and this has led to a breakdown in trust between us. I have received several complaints about you from customers and your consistent explanation that various customers are complaining to obtain preferential treatment lacks credibility. One person might behave that way but I find it hard to believe that all the customers that we have discussed would behave that way."*

116. Mr Mark Robinson was advised of his right to appeal.

117. On 18 June 2018, Mr Mark Robinson appealed his dismissal.

The appeal was heard by Ms Sophie Irwin, an independent HR consultant engaged by the respondent company. The appeal was heard on 7 July 2018 and Ms Irwin interviewed Mr Jeremy Robinson and Mr Mark Mason after hearing from Mr Mark Robinson.

The grounds of appeal put forward by Mr Mark Robinson included that the shareholding in the private limited company had been unfairly distributed following the father's death, that Mr Jeremy Robinson had hired Mark Mason to dismiss him, that Mr Mark Robinson had invested a significant amount of money in the firm, that he felt that Georgina Barrett had not entered into a contract with Catax and that sales reps had played him and his brother off against each other to curry favour. He denied the allegations in relation to customers.

118. The appeal was dismissed on 10 August 2018. Mr Irwin stated:

> *"It is my belief that clients brought issues to Jeremy Robinson due to frustration. I do not believe this was sought out by Jeremy Robinson as it would not make good business sense to go to customers to seek out complaints against a director. On that basis it appears you did act wrongly towards clients, reps and Managing Directors of customers."*
>
> *"In addition, evidence suggests that you did not correctly investigate a costly business transaction with Catax, that you took off significant time and refused to be accountable for your time, that you treated your customers unprofessionally and did not give full information when requested."*
>
> *"It is my consideration that the company acted in a reasonable manner in its decision to terminate your employment."*

DECISION

Georgina Barrett

119. The tribunal must first determine whether the reason for the dismissal was a potentially fair reason for the purposes of the 1996 Order.

120. Ms Barrett alleged that the reason for her dismissal had been an ongoing directors dispute between Mr Mark Robinson and Mr Jeremy Robinson and that, as the partner of Mr Mark Robinson, she had been collateral damage in the process.

121. The respondent argued that the reason for the dismissal of Ms Barrett had been misconduct; specifically her conduct in relation to the relationship between Catax and the respondent company as set out in the charge letter inviting Ms Barret to the disciplinary hearing on 9 May 2018.

122. The tribunal, after hearing the witnesses and after examining the documentation, accepts that there had been a long outstanding and heated dispute between the two brothers, Mr Jeremy Robinson and Mr Mark Robinson. Nevertheless, the tribunal notes that the trigger for the disciplinary process in relation to Ms Barrett had been the letter from Debt Guard Solicitors which had been brought to the attention of Mr Jeremy Robinson, who had then been acting as Managing Director, and that no disciplinary action had apparently been contemplated in relation to Ms Barrett before that letter had been received. An examination of the conduct of Ms Barrett in relation to Catax had disclosed several issues which properly raised concerns with Mr Jeremy Robinson; principally the fact that a contract had been entered into by Ms Barrett and that Ms Barrett had failed to comply with the terms of that contract.

123. The tribunal therefore reaches the unanimous conclusion that the reason for the dismissal of the claimant in this case had been misconduct; a potentially fair reason for the purposes of the 1996 Order. The tribunal also unanimously concluded that the respondent believed that it had sufficient grounds to dismiss Ms Barret on that basis, following a careful investigation.

124. The next issue for the tribunal to consider is whether or not the dismissal of the claimant had been either automatically or procedurally unfair.

125. The tribunal is satisfied that the statutory three step procedure had been followed in this case. The claimant had not argued to the contrary, in the course of the present hearing, and it seems absolutely plain that there had been an appropriate charge letter, an appropriate disciplinary hearing and an appropriate appeal hearing. Ms Barrett had been permitted representation and had been given every opportunity to respond to the disciplinary charges.

126. In terms of the fairness of the procedure, the claimant alleged that the procedure had been unfair and predetermined. She alleged that Mr Jeremy Robinson had not been independent in dealing with her disciplinary hearing. Nevertheless, it is clear that there was a detailed and careful investigation of the issues raised in the charges against Ms Barrett. The suspension had been reasonable. The charges had been clear and specific and there had been a full and detailed disciplinary

hearing at which Ms Barrett had been given the opportunity of being represented. Furthermore although this was a small company with limited headroom once Mr Jeremy Robinson had heard the disciplinary case, Mr Jeremy Robinson did not hear the appeal against the dismissal decision although in strict terms he would have been entitled to do so. He appointed an independent Human Resources consultant to hear that appeal.

127. The tribunal unanimously concludes that the procedure had been fair.

128. The first disciplinary charge that had been put to Ms Barrett had been:

> *"That you, without authority, committed the company to a contract with R&D Tax Solutions on 27 April 2016."*

It is clear that the document to which Ms Barrett had appended her electronic signature had been a binding contract between the respondent company and Catax. The document contained, immediately above Ms Barrett's signature, express terms which could only have been read as indicating that it had been a contract. Ms Barrett had been an experienced business person and had been occupying a responsible role in the employment of the respondent company. Her arguments thereafter that somehow she had not known that it had been a contract or that she had not been supplied with a copy of the terms and conditions of that contract are not at all credible and do not rebound to her credit. From the point of view of the present claim, the respondent company had been entitled to conclude that the claimant knew that she had entered into a contract with Catax on 27 April 2016. Furthermore the respondent company had been entitled to conclude that she had done so without authority. Mr Mark Robinson had avoided giving a proper answer to the question whether he had given authority to Ms Barrett to enter into a contract. He put forward the proposition that he believed there had been no contract. Again that proposition is not credible. Ms Barrett and Mr Mark Robinson put forward the tortured explanation that Ms Barrett had had authority to enter into negotiations but not to enter into a contract and that there had been no contract. The respondent company had been entitled to conclude that that attempted explanation had had no basis in reality.

129. The second charge put to Ms Barrett had been:

> *"That, having entered into this contract, you failed to engage properly with R&D Tax Solutions (later known as Catax) resulting in the company being charged £5,912.48 for their time spent on this matter.*

130. It is clear from the sequence of events as set out in the findings of facts above, and in the documentation relating to the disciplinary and appeal procedure, that Ms Barrett had consistently and repeatedly failed to respond properly to Catax. She had consistently and repeatedly failed to provide the necessary information to Catax as required by Clause 5.1. She had done so even though on two occasions, before the final occasion, invoices had been levied by Catax. It had been made plain on those two occasions that a contractual liability existed and was going to be enforced on the basis of her non-compliance with the contractual terms. The tribunal has concluded that her behaviour in this regard was frankly inexplicable. She had known from 27 April 2016 that she had entered into a contract and she had known that she had certain obligations to provide information to Catax from that

point. That knowledge had been reinforced on not one but on two occasions when cancellation invoices had been levied by Catax. Even after the second such occasion, she failed to properly address this matter and put the respondent company in a position where it faced a potential and substantial financial liability.

131. The unanimous decision of the tribunal is that the respondent company had been entitled to conclude that this charge was upheld.

132. The third disciplinary charge put to Ms Barrett had been:

> *"That you gave a dishonest account of the circumstances at an investigatory meeting on 11 April 2018 when asked to explain why you had committed the company to this contract you said you had the authority of Mark Robinson. It is alleged that you had no such authority."*

133. Again it is clear that Ms Barrett had indicated to Mr Jeremy Robinson on 11 April 2018 that she had had the authority of Mr Mark Robinson in acting as she did. It is only after this point that Ms Barrett and Mr Mark Robinson muddied the water by drawing the tenuous distinction between authority to negotiate and authority to enter into a contract. It is absolutely beyond argument that the document of 27 April 2016 had nothing at all to do with negotiations; it had been a clear and explicit binding contract.

134. The respondent company had been entitled to conclude that a dishonest account had been provided by Ms Barrett in the course of the investigatory meeting on 11 April 2018.

135. The next matter for the tribunal to look at is whether the decision to dismiss with notice had been a decision which a reasonable employer could reasonably have reached in all the circumstances of the case.

136. The tribunal takes into account the fact that this had been a first disciplinary offence on the part of Ms Barrett. Nevertheless the pattern of behaviour shown by Ms Barrett had been significant and repeated. She had entered into a binding contract on 27 April 2016 which she then subsequently, and without any basis, sought to deny. She then entered into a sustained pattern of behaviour with Catax which was, as indicated above inexplicable, and lasted for a significant period of time. She deliberately and without any apparent explanation failed to comply with the contractual requirements and exposed her employer to significant financial risk. She had then, when challenged with her conduct, on receipt of the Debt Guard solicitor's letter, sought to argue that Mr Mark Robinson had given her authority to act as she did.

137. Even allowing for the fact these three charges were the first charges put to Ms Barrett in the course of her employment, there had been significant and repeated conduct on her part. Having regard to the responsible position which she occupied in the employment of the respondent company, a reasonable employer could reasonably have dismissed in these circumstances with notice.

138. The claim for unfair dismissal is therefore dismissed.

Mark Robinson

139. As with Ms Barrett's claim, the first task for the tribunal is to determine whether the reason for the dismissal had been a potentially fair reason for the purposes of the 1996 Order.

140. It is difficult to discern on what basis Mr Mark Robinson sought to challenge the reason for his dismissal. His witness statement is almost completely an account of historical and familial difficulties and only dealt with the disciplinary charges laid against him to a limited extent. In the course of his evidence, he made generalised allegations that the disciplinary charges had been pre-determined and biased. He alleged that Mr Mark Mason had been hired by the respondent solely to dismiss him. He also alleged in his witness statement that the reason for his dismissal had been *"financial gain"* on the part of Mr Jeremy Robinson.

141. The respondent company alleged that the reason for his dismissal had been misconduct as described in the disciplinary charges set out in the invitation to a disciplinary meeting dated 22 May 2018.

142. No evidence has been given of any particular *"financial gain"* which Mr Jeremy Robinson has achieved as a result of the dismissal. The allocation of shares and the contents of the father's will generally is a matter which had been completed before this disciplinary action and can have had nothing to do with the dismissal. Furthermore the allegations which Mr Robinson makes against Mr Mark Mason are extremely serious. He is alleging that Mr Mark Mason accepted an engagement from the respondent company with one objective ie to dismiss Mr Mark Robinson and Ms Barrett. No evidence whatsoever has been produced to substantiate this serious allegation and it is rejected.

143. It is clear that the first time that Mr Jeremy Robinson became acquainted with the ongoing difficulties between the respondent company and Catax was when he received the letter from Debt Guard Solicitors. The contents of that letter, previous concerns about Mr Mark Robinson's attitude to attendance and time keeping together with previous concerns about Mr Mark Robinson's interactions with customers would have led any employer to contemplate disciplinary action. While it is obvious that there had been deep-seated sibling rivalry between the two brothers, that this had provided only the context to the sorry affair. It was also obvious that Mr Jeremy Robinson on behalf of the respondent, had reacted to the conduct of Mr Mark Robinson and that he genuinely believed it to be misconduct.

144. The tribunal therefore unanimously concludes that the reason for the dismissal had been misconduct and therefore that had it been for a potentially fair reason within the meaning of the 1996 Order. The letter from Debt Guard Solicitors, the concerns expressed by customers and Mr Mark Robinson's attendance and time keeping record were all legitimate concerns that needed to be addressed by the respondent company in terms of conduct.

145. Turning to whether or not the dismissal had been automatically or procedurally unfair, the tribunal is also satisfied that the statutory three step procedure has been followed by the respondent company in this case. There had been an investigation meeting, there had been a charge letter and a disciplinary meeting and a decision.

Furthermore, there had been an appeal hearing before an independent HR consultant. No argument had, in any event, been advanced that the respondent had not complied with the three step procedure.

146. The tribunal also has to determine whether the procedure had been unfair for any reason other than non-compliance with the statutory three step procedure. The tribunal is content that the procedure was fair. The suspension had been reasonable. There had been a full and detailed investigation. Comments had been sought from Mr Mark Robinson and from Ms Barrett. A clear set of disciplinary charges had been sent to Mr Mark Robinson. Mr Mark Robinson had been given a full opportunity to respond to the charges laid against him. Rather than doing so, he appears to have spent a great deal of time attempting to raise separate and unrelated complaints against his brother. He failed to properly address the extent to which Ms Barrett had been given authority to enter into a contract with Catax and the extent to which he had engaged in supervising the operation of that contract. Furthermore the respondent company appointed an independent HR consultant to deal with Mr Mark Robinson's appeal even though, in strict terms, it had not been obliged to do so.

147. The first disciplinary charge was:

> *"That you failed to properly manage Georgina Barrett in her interactions (including entering into a contract) with an R&D Tax Credit Company with the result that the company is faced with an invoice of £5,912.48 due to Georgina's mismanagement of the contract."*

148. Mr Mark Robinson's response to this charge centred on his repeated assertion that there had been no binding contract and that he had given no authority to enter into any such contract. That simply flew in the face of reality. The document signed on 27 April 2016 was clearly and unarguably a binding contract. If Mr Mark Robinson had failed to read that document or had failed to understand it, that would have been serious enough. If Mr Mark Robinson had been actively trying to misrepresent the situation that would have been even more serious. In any event, the respondent company was entitled to reach the conclusion that Mr Mark Robinson had failed to properly manage Ms Barrett in this respect. It is, as indicated above, beyond argument that Ms Barrett had entered into a clear and binding contract with Catax. It is also beyond argument that Ms Barrett had been alerted, not just once but on two separate occasions in relation to her failure to actively progress that contract, when cancellation invoices were issued. It is also beyond argument that despite repeated requests for a response, Ms Barrett had refused or had failed to comply with those requests. As indicated earlier in this decision, the tribunal finds Ms Barratt's actions to be inexplicable. That said, the fact remains that Mr Mark Robinson, as Ms Barrett's line manager and as a senior employee in the firm, failed to properly manage Ms Barrett in this respect. It is clear that his failure to ensure either that Ms Barrett did not enter into a binding contract or his failure to ensure that, once she had done so, she fulfilled the requirements of that contract, meant the respondent company faced a liability which was significant.

The respondent company was therefore entitled to uphold that disciplinary charge and did so.

149. The second disciplinary charge was:

> *"That you failed in your duty as a director to keep me informed about the situation as it was developing with the R&D Tax Credit Company".*

150. That disciplinary charge was not upheld since Mr Jeremy Robinson took the view that because Mr Mark Robinson had failed to keep himself informed with what Ms Barrett had been doing, he had been unable to keep Mr Jeremy Robinson informed as to the developments. Whether he should have been in a position to do so was another matter.

151. The third disciplinary charge was:

> *"That you shouted at our customer, Don Hawthorne, from Nicholson and Bass, on two occasions on the phone on 6 and 7 December, leading to Don Hawthorne calling me to complain about your behaviour towards him."*

152. The response from Mr Mark Robinson to this disciplinary charge was that no formal witness statements had been obtained from Mr Hawthorne. Mr Jeremy Robinson's response to this was that it would not have been normal or indeed desirable to seek formal witness statements in these circumstances from a customer. The tribunal accepts Mr Jeremy Robinson's position. He had received complaints from Mr Don Hawthorne and had been obligated to investigate those complaints and to reach a determination. The further response from Mr Mark Robinson to the effect that Mr Hawthorne was trying to curry favour or trying to play one director off against the other was simply not credible. The respondent company had been entitled to conclude that the charge had been upheld.

153. The fourth disciplinary charge was:

> *"That you swore at a visitor in our premises when he arrived to collect their job 29 November 2017".*

154. Again the response from Mr Mark Robinson was simply not credible. He alleged again that the complaint had been trying to curry favour. The respondent company had been entitled to uphold this charge.

155. The fifth disciplinary charge was:

> *"That some of our customers refused to interact with you because of the treatment they received from you. For example, Richard at Knocklayd Print has taken most of his work elsewhere and has advised me that this is because he does not like the attitude with which you treat him."*

156. As with the previous two charges, the fact that formal witness statements were not obtained from the individual in question is not relevant. This was an internal disciplinary dispute and it would not be expected that a company would contact its customers to seek their involvement in that dispute to that extent. Furthermore the repeated response of Mr Mark Robinson to the effect that there had been an attempt to curry favour, get preferential treatment, or play one director off against another was simply not credible.

The respondent company had been entitled to conclude the charge of being upheld.

157. The sixth disciplinary charge was:

> *"That you called our customer at In-house Publications to advise him that it was company policy to require payment in advance and, when challenged on this, you denied making the call, saying the customer called you and offered to pay in advance. It is alleged that this is contrary to the customer's account and the call log which shows an ongoing call of 24 November 2017".*

158. The substance of this charge was, as indicated, not the request for payment in advance but an inaccurate account of the event given by Mr Mark Robinson in response to queries from Mr Jeremy Robinson. It is clear that the respondent organisation had been entitled to conclude, on the basis of the call log, and on the basis of the customer's version of events, that Mr Mark Robinson's account of this interaction had been inaccurate.

159. The seventh disciplinary charge was:

> *"That you gave a false account of your discussions with Philip Jamshidi at W G Baird in that you said that he had advised you that their job was needed on a certain date but Philip told me that he told you he needed it completed two days later than that, leaving ample time to complete the job. You told me that the customer was lying to me and that your version is accurate. It is alleged that the customer would have had no reason to lie. It is alleged that the company lost this business because of you telling the customer that we could not complete the job in time."*

160. Again a formal witness statement from the customer had not been required or desirable in these circumstances. Mr Jeremy Robinson had been entitled to rely on his recollection of the telephone call and he had been entitled to conclude that there had been no reason for Mr Philip Jamshidi to have misrepresented the discussion or to have lied about it. He had been entitled to place some reliance on the call log. The respondent company had been entitled to uphold this disciplinary charge.

161. The eighth disciplinary charge was:

> *"Your attendance and time keeping record from January 2017 to February 2018 fell well below the standards expected of any employee in the company."*

162. The details of the attendance and time keeping record of Mr Mark Robinson are discussed earlier in this decision. It is clear that Mr Mark Robinson's time keeping had been poor and that he had had a significant absence record with no valid explanation other than a vague allegation that he had been shouted at and put under stress by Mr Jeremy Robinson. The tribunal had not been drawn to medical evidence of workplace stress or bullying and neither had Mr Jeremy Robinson.

The respondent company had been entitled on the facts to uphold this disciplinary charge.

163. On the basis of seven out of the eight charges being upheld, the respondent concluded that the working relationship had broken down and that trust and confidence had been lost. The claimant was dismissed on that basis.

164. The claimant appealed against that dismissal and the appeal was heard by an independent HR expert Ms Sophie Irwin. The decision to dismiss had been upheld on appeal after a detailed hearing and proper consideration.

165. The tribunal must then consider whether the decision to dismiss was a decision which a reasonable employer could reasonably have taken in all the circumstances of the case.

166. As with Ms Barrett, this had been a first disciplinary offence. However, the disciplinary charges which were upheld disclosed a serious and repeated pattern of misconduct on the part of a senior employee. He had been Ms Barrett's line manager and had failed to properly supervise her activities in relation to Catax. He had exposed the respondent company to significant financial liability. He had clearly caused complaints from customers. He had not denied that the complaints had been made; he simply put forward the argument that the complainants had been trying to curry favour or to gain preferential treatment. Mr Jeremy Robinson had been entitled to conclude that making complaints about a director of a supplier was an unlikely method of achieving either favour or preferential treatment. He had also been entitled to conclude that Mr Mark Robinson had not given an accurate account of his contact with In-house Publications. Furthermore, Mr Jeremy Robinson had been entitled to have serious concerns about the absence/attendance record. The allegations of bullying were made in the course of the disciplinary process but the tribunal was not referred to any contemporaneous complaint of bullying in the course of the hearing. Furthermore it was not referred to any medical evidence in sick notes which referred to bullying. No such evidence had been put forward by Mr Mark Robinson in the course of the disciplinary or appeal procedures.

167. Given the pattern of repeated misconduct, and the fact that Mr Mark Robinson had been a senior employee, the respondent had been entitled to reach the decision to dismiss. It had been a decision which a reasonable employer could reasonably have reached in the circumstances.

168. Both claims are dismissed.

Vice President:

Date and place of hearing: **10, 11 and 12 May 2021, Belfast.**

This judgment was entered in the register and issued to the parties on: