EMPLOYMENT TRIBUNALS

Claimant: Sophie Nkomba

Respondent: DL Insurance Services Limited

HELD AT: Leeds **ON:** 19 April 2018

BEFORE: Employment Judge Buckley

REPRESENTATION:

Claimant: Ms Hashmi, Counsel
Respondent: Mr Wilson, Counsel

RESERVED JUDGMENT

The claim for unfair dismissal is DISMISSED.

REASONS

Claims

1. The Claimant claims unfair dismissal.

Summary of reasons

2. I conclude that the respondent's investigation was one that a reasonable employer could have adopted, and that the respondent had reasonable grounds for concluding that the claimant had fraudulently obtained payment for one night's hotel accommodation and a ferry fare. In relation to the allegation of breach of procedures, I find that the procedure overall was fair and one which a reasonable employer could have adopted. Finally I find that the decision to dismiss fell within the band of reasonable responses. In the light of this it is not necessary for me to make findings on conduct, contributory fault or Polkey.

Issues

3. The issues were agreed and identified at the start of the hearing as:

3.1 What was the reason for the dismissal? The respondent asserts that it was a reason related to conduct which is a potentially fair reason under section 98(2) Employment Rights Act 1996. The conduct relied upon by the respondent is a fraudulent insurance claim for one night's hotel accommodation and a ferry crossing.

3.2 Did the respondent have a genuine belief in the misconduct on reasonable grounds based on a reasonable investigation?

3.3 Did the respondent adopt a reasonable procedure i.e. one that a reasonable employer could have adopted in all the circumstances.

3.4 Was the decision to dismiss a fair sanction: was it within the band of reasonable responses?

3.5 If the dismissal was unfair, was any of the claimant's conduct before dismissal such that it would be just and equitable to reduce the basic award? If so to what extent should it be reduced?

3.6 If the dismissal was unfair, did the claimant's conduct cause or contribute to the dismissal? If so, by what proportion is it just and equitable to reduce the compensatory award?

3.7 If the dismissal was unfair, what is the percentage chance that if the respondent had adopted a fair procedure the claimant would have been fairly dismissed in any event?

Evidence

4. I heard evidence from the claimant, and, on behalf of the respondent, from David Capewell (Rescue Team leader) on the investigation, from Kathryn Rushton (Customer Operations Manager) on the disciplinary hearing and from Richard Wilson (Change Governance Manager) on the appeal.

5. I was referred to and read a bundle of documents.

Findings of fact

6. I did not find the claimant to be a credible witness. Her explanation as to why the Green Flag transcripts recorded her stating that she had booked accommodation in Nice was unconvincing. Further she asserted in evidence that the respondent had invented 'Joel Ecouke' which was not her position in the disciplinary hearing. In contrast I found the respondent's witnesses to be doing their best to assist the tribunal to the best of their recollections.

7. The claimant travelled to France via ferry from Dover on 17 August 2017. She had taken out breakdown cover with the Respondent, which is additional to the UK cover that she receives under her contract of employment. On 22 August she reported to Green Flag (part of the Respondent group) a car breakdown said to have taken place on 18 August in Paris. She told Green Flag that she had taken her car to the garage de la piscine on rue General de Gaulle in Anthony, and that her car was booked in by somebody called Joel who gave her his mobile number. Using this mobile number, Opteven spoke to someone called Joel who confirmed that the claimant's car was in the garage. Arising out of that breakdown Green Flag paid for one night's hotel accommodation on 23 August in Paris and a new return ferry fare to the UK, because the claimant had told them that the car was not ready in time to catch the original booked ferry on 23 August. The calls between the Claimant and Green Flag were recorded, but not transcribed until after the conclusion of the disciplinary process. The claimant made a complaint about the way her claim was handled.

Investigation

8. Mr Capewell, the claimant's line manager, was informed about the complaint and decided to look at the complaint file. A number of issues raised alarm bells with him. For example he noted that the claimant had been attempting to claim for hotel bills when she would have known that this was not recoverable because she had not pre-booked a hotel. As a result he, in conjunction with HR and the Respondent's internal investigations team, decided to commence an investigation into potential misconduct by the claimant for making a fraudulent claim.

9. Mr Capewell asked two employees who spoke fluent French to assist with the investigation: Stefano Kalonji and Saiera Ghulam. Mr Kalonji telephoned the Hotel de Berny in Paris on 25 August. A French and English version of that transcript is in the bundle. It shows that the supervisor at the hotel said that the claimant's booking had made in advance on 6 July by Joel Ecouke, for 17-21 August 2017, extended during her stay to 23 August 2017. It also states that they accidently charged the claimant 11.28 euros rather than 1128 euros.

10. Mr Capewell took the decision to suspend the claimant during the investigation. She was suspended on full pay by Mr Capewell in a short meeting on 30 August 2017. He gave her a letter informing her that she was being suspended while the respondent investigated an allegation of 'suspicion of gross misconduct for fraud claim' and informed her that it related to an allegation of fraud relating to the claim she made during her trip to France.

11. An investigatory meeting took place on 8 September. The claimant was asked if she wanted a witness but declined. The claimant gave Mr Capewell the following information. She planned to stay one night in Paris and had not pre-booked any accommodation. She had not kept any documentation from her ferry booking. Her car had broken down on the 18th. She had called Green Flag on 22 August and asked if Opteven would cover the cost of the hotel and they had said no. She had kept no receipt from the repairs. P&O would not

allow her to change the ferry because it was too close to the date of the booked return ferry.

12. After the meeting Mr Capewell asked Saiera Ghulam to call the garage de la piscine on rue Charles de Gaulle in Anthony. Two calls were made. The calls were recorded and Saiera Ghulam made a transcript of the calls in French and English. The transcript of the call on 8 September shows that the person answering the phone is called Alonso. He confirms that it is the garage de la piscine on rue General de Gaulle in Anthony. He has no record of the claimant's car and says that the garage was closed from 7 August to 4 September. He says that nobody called Joel works there. The second call was made on 18 September. The person answering the phone refers to Alonso, he confirms that the garage was closed at the relevant time, but says that there is a man called Joel who comes to do body work at the garage occasionally.

13. Saiera Ghulam also prepared for Mr Capewell, at some point during the investigation, a 'timeline' based on the recordings of the Green Flag conversations.

14. Mr Capewell concluded that the correct garage had been telephoned on both occasions, despite a reference in the timeline to a garage on Avenue du General Leclerc, because the address given by the Claimant was General de Gaulle in Anthony and the General de Gaulle, Anthony address was confirmed by the garage during the phone call.

15. Based on the information gathered in the investigation, Mr Capewell formed the view that the evidence showed that the Claimant had attempted to defraud the respondent. He formed this view on the basis that the claimant's version of events did not add up, were inconsistent with the information she gave to Green Flag and were at odds with the reports from the garage and the Hotel de Berny. He also took account of the lack of documentary evidence provided by the claimant and his view that she had presented 'suspiciously' in the meetings. In consultation with HR he decided to escalate the matter to a formal disciplinary hearing.

Disciplinary hearing

16. The disciplinary stage was handled by Kathryn Rushton, a Customer Operations Manager. Ms Rushton reviewed the following documents: the minutes of the suspension and investigatory meetings with the claimant, the suspension letter, the transcripts of the calls to the garage and the hotel and the timeline prepared by Saiera Ghulam.

17. Ms Rushton gave confusing evidence as to the existence of transcripts of the Green Flag calls at this stage. Her witness statement indicated that they did not exist at the time, and that instead she relied on the timeline document and listening to the recordings. In oral evidence she stated that this was wrong and that she had read them at the time. I find, on the balance of probabilities, that the written statement is correct, and that her oral evidence was a

mistaken recollection. I find that no word for word transcripts of the Green Flag calls existed at the time. A further search was carried out by the respondent after this evidence was given and the respondent's representative confirmed that no transcripts existed at the time.

18. The claimant was invited to a disciplinary hearing dated 13 October 2017 by letter dated 9 October 2017. The claimant did not receive the letter until 11 October. The letter states that the allegations that are being made and the specific issues that the respondent wishes to discuss are 'a fraudulent claim'.

19. The letter enclosed copies of relevant documents including: the minutes of the suspension and investigatory meetings; the suspension letter and copies of the transcripts of the calls to the hotel and to the garage. She was not sent a transcript of the Green Flag calls: none existed at the time. The claimant was not sent a copy of the timeline document.

20. The claimant made no request for the hearing to be adjourned to allow her more time to prepare or to obtain representation.

21. The disciplinary hearing took place on 13 October. I accept Ms Rushton's evidence that she went into the hearing with an open mind. The claimant repeated her assertion that she had not pre-booked the Hotel de Berny, and that on arrival she had booked only one night. When Ms Rushton raised the evidence from the transcript of the call to the Hotel de Berny, the Claimant confirmed that Joel was a friend of hers, that he worked in a hotel in Paris, and that he had made some enquiries for her. She said that she did not want to go into the details. Although the claimant, in response to a question from the tribunal, stated that she did not know anyone called Joel Ecouke, and that the Respondent had invented him, the evidence I have just set out as to what she said in the disciplinary hearing was not challenged.

22. In relation to the garage, the claimant said that she had spoken to the garage a number of times using the mobile number she had provided to Green Flag. She had no record of the calls because she had been using her daughter's phone because hers had run out of data. Ms Rushton put to her that they had obtained a landline number for the garage from the internet and the garage had said they had not record of her car, that it was closed at the time and that they have no-one working there called Joel. The Claimant's reply was that she couldn't argue with that but she knew she had taken the car to the garage and left it with Joel. The claimant was asked what was wrong with her car and she stated 'something to do with the injection'. She said she did not get a receipt or any paperwork and had paid the 298 or 287 euros in cash.

23. In relation to the return ferry booking and one night's accommodation the claimant stated that she was due to get the ferry home on 23 August, but because she had collected the vehicle late, they could not get the planned ferry and the the ferry company wouldn't change it because it was too late to change it. She had not changed it before. The claimant provided the confirmation of her ferry booking. Ms Rushton asked her what she had meant when she had told Opteven that she could not change it because she had

already made too many changes. The notes of the disciplinary record her reply as 'nothing, I meant nothing it was just a way of talking'.

24. The claimant was asked if she had anything else to add on a number of occasions, and she provided a written statement. The claimant's statement repeats the information she gave in the hearing. It also states that she does not see the relevance of the Hotel de Berny transcript because although she asked Green Flag to pay the Hotel de Berny costs, they declined to do so. The claimant did not raise any points about her financial/family circumstances at this meeting.

25. Ms Rushton adjourned for 15 minutes and considered her decision. She concluded that the claimant had been lying in order to obtain a payment at Direct Line's expense and decided that dismissal was the appropriate outcome. She based this decision on the fact that claimant had given conflicting accounts about the pre-booking of hotels and cancelling/amending the ferry, that the hotel had confirmed that the booking had been made in advance, that the garage had been closed at the relevant time, the lack of corroborating evidence from the claimant and the claimant's general demeanour. I accept Ms Rushton's evidence that she considered the claimant's clean disciplinary and good employment history and whether a lesser sanction was appropriate, but that because it was fraud, in her words 'we couldn't have someone we couldn't trust in the business'. The claimant was dismissed in the meeting without notice.

26. The claimant's dismissal was confirmed in writing by letter dated 16 October 2017 which explains in more detail Ms Rushton's reasoning summarised in the paragraph above. I will not repeat it here, but I accept that the reasoning set out in that letter accurately reflects Ms Rushton's reasoning.

Appeal

27. The claimant appealed against her dismissal by letter from Currington & Co Legal Services dated 18 October 2017. Her grounds of appeal were said to be that: (i) the decision was wrong and not in accordance with the law and (ii) that the respondent failed to follow the correct procedure. The letter did not explain how the decision was said to be wrong or not in accordance with the law or identify any procedural defects. It did state that the claimant contended that she had not made a fraudulent claim and relied on her written statement and the supporting document. It also stated that the letter of dismissal stated 'at the meeting you did not ask me to consider any mitigation' and that the claimant denied that such a question was asked. It set out the following mitigation: that the claimant has three children; that she pays the fees for one of them to attend boarding school in America; that she pays rent, bills etc.; that she looks after elderly parents; and that she relies solely on her employment income to pay all these costs.

28. She was invited to attend an appeal hearing by letter dated 23 October 2017 and the hearing was held on 8 November 2017. The claimant was informed

that she could be represented by a work colleague or a union representative but that she could not bring a legal representative.

29. The appeal was heard by Richard Wilson, Change Governance Manager. Before reaching a decision Mr Wilson reviewed all the documentation that Ms Rushton had seen, including the timeline document and listened to the transcripts of the Green Flag calls.

30. Although his intention was to carry out a review of Ms Rushton's decision, the appeal hearing was more like a rehearing. The claimant was asked for her version of events, and she confirmed that she did know a Joel in Paris, but that neither Joel nor the claimant had booked the hotel in advance. She said that the garage had provided her with paperwork for the repairs but she had not kept it, although she agreed that she would have advised a customer to keep those documents in the same situation. She said that by the time she picked up the car it was too late to catch the ferry and the ferry company had said it was too late to change the booking. The claimant was given the opportunity to give any further explanation and to explain any mitigation. The claimant did not raise any specific concerns about the procedure that had been followed, other than that she was not told about the potentially fraudulent claim when she was suspended and that she had not been asked about mitigation.

31. After the meeting Mr Wilson undertook some further investigation. He asked a french speaking colleague to call Joel on the mobile number provided by the claimant. Only one call was answered but the recipient hung up after the colleague introduced himself. He also spoke to Warren Kent and Sam Jackson who stated that the claimant was fully competent in her role, that she would be familiar with the claims processes and that she had no performance issues or issues with integrity or behaviour.

32. Mr Wilson upheld the decision to dismiss and informed the claimant of this by letter dated 24 November 2017. I find that the reasons for his decision are set out in that letter and I will not repeat them in full here. He concluded:

32.1 that Ms Rushton had followed a fair procedure,
32.2 that the claimant had been offered the opportunity to provide any relevant information in the disciplinary hearing, even if the word 'mitigation' was not used,
32.3 that he accepted Ms Rushton's explanation of how she had reached the decision that the claimant's actions amounted to fraud.

33. He also considered the information provided about the claimant's financial and family circumstances but concluded that this was not sufficient to overturn the decision to dismiss.

34. Given my conclusion that the dismissal is unfair, it is not necessary for me to make findings relating to contributory fault/conduct.

The law

Unfair dismissal

35. The starting point is section 98 ERA, which provides, relevantly, as follows:

> (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 -
> the reason (or, if more than one, the principal reason) for the dismissal, and
> that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it -
> …
> (b) relates to the conduct of the employee,
> …
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) -
> 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
> shall be determined in accordance with equity and the substantial merits of the case.

36. As this is a conduct dismissal case in determining the statutory question of fairness I am assisted by having regard to the well-known standards laid down by Arnold J in giving judgment for the EAT in **British Home Stores Ltd v Burchell [1980] ICR 303.** It is for the employer to show the reason for dismissal. Then there is a four-stage test in order to determine the question arising under section 98(4):

1. did the employer have a genuine belief in the misconduct?
2. are there reasonable grounds for that belief?
3. did they follow a reasonable investigation?
4. was the decision to dismiss one that is within the band of reasonable responses?

37. When considering whether the employer acted reasonably or unreasonably in treating that reason as sufficient reason for dismissal, I must also determine whether the procedure adopted by the respondent was one which reasonable employer could in all the circumstances have adopted.

38. The reason for the dismissal is to be determined as the set of facts known to the employer or beliefs held by it that caused it to dismiss the employee (per Cairns LJ in **Abernethy v Mott, Hay & Anderson [1974] ICR 323 CA**).

39. Because of a change in the burden of proof since the Burchell decision, the onus is only on the employer to establish that he genuinely did dismiss for misconduct. The burden of proof is neutral for the other elements (see **Boys and Girls Welfare Society v McDonald [1996] IRLR 129, [1997] ICR 693**)

40. When applying section 98(4), I must not put myself in the position of the employer, but instead I must apply the objective standard of the reasonable employer to all aspects of the dismissal: investigation, process, fact-finding and sanction (see per Mummery LJ in **Sainsbury's Supermarkets Ltd v Hitt [2003] ICR 111 CA**). I must recognise that in many cases (though not necessarily all) there may be a band or range of ways in which a reasonable employer may act - there is a range of acceptable ways of investigating and deciding a disciplinary matter. I must only take account of matters known to the respondent at the time of dismissal or raised on appeal.

41. The circumstances in section 98(4) also include the gravity of the charge and the potential effect on the employee:

> 44. … Where disputed, serious allegations of criminal misbehaviour (particularly where these might have an impact upon the employee's future career) must be the subject of the most careful investigation, albeit usually conducted by laymen and not lawyers. The requirement is not that the employer adopts the safeguards of a criminal trial but that a careful and conscientious investigation of the facts is carried out and inquiries should focus no less on any potential evidence that may exculpate or point towards the employee's innocence as the evidence that might prove the charges in question. (**Monji v Boots Management Services Ltd [2014] UKEAT/0292/13)**

42. Elias LJ in **Salford Royal NHS Foundation Trust v Roldan [2010] IRlR 12**1 case said:

> it is particularly important that employers take seriously their responsibilities to conduct a fair investigation where … the employee's reputation or ability to work in his or her chosen field of employment is potentially apposite.

43. The ACAS Code of Practice on Disciplinary and Grievance procedures is relevant to the questions I must answer under s98(4) and therefore I must take it into account. Further if the respondent has unreasonably failed to comply with any provision of the Code any award can be increased by up to 25%.

44. When considering any flaws in the procedure adopted by the respondent, I draw the following principles from the case law:
    - 44.1 The question is whether a reasonable employer could have adopted that procedure.
    - 44.2 Procedure does not sit in a vacuum and runs together with substance under s98(4).
    - 44.3 When determining liability I must not ask whether adopting a fair procedure would have made any difference to the outcome.

45. In Taylor v OCS Group Ltd the Court of Appeal gave guidance on the proper approach to adopt where on claims of unfair dismissal criticism is made of an employer's disciplinary procedure, holding that tribunals should focus on the statutory test and look at the substance of what happened throughout the disciplinary process. What matters is whether the disciplinary process as a whole is fair:

> it should consider the procedural issues together with the reason for the dismissal as it has found it to be. The two impact upon each other and the employment tribunal's task is to decide whether in all the circumstances of the case, the employer acted reasonably in treating the reason it is found as a sufficient reason to dismiss. So, for example, where the misconduct which founds the reason for the dismissal is serious, an employment tribunal might well decide that, notwithstanding some procedural imperfections, the employer acted reasonably in treating the reason as a sufficient reason to dismiss the employee. Where the misconduct was of a less serious nature, so that the decision to dismiss was nearer to the borderline, the employment tribunal might well conclude that a procedural deficiency had such impact that the employer did not act reasonably in dismissing the employee…

Conclusions - application of the law to the facts

Reason for dismissal

46. The respondent asserts that the reason for dismissal was conduct which is a potentially fair reason for section 98(2) Employment Rights Act 1996. It must prove that it had a genuine belief in the misconduct and that this was the reason for dismissal. The conduct relied upon by the respondent is a fraudulent claim for one nights' hotel accommodation and a ferry ticket.

47. When determining the reason for dismissal, I have to determine the facts known to Ms Rushton or beliefs held by her that caused her to dismiss the employee. I find that the reason for dismissal was that Ms Rushton believed that the claimant had made a fraudulent claim. The claimant argued that the reason for the dismissal was instead the fact that the claimant had made a complaint. There is no evidence to support this assertion and I accept Ms Rushton's evidence to the contrary.

48. Having concluded that there was a potentially fair reason for dismissal, I bear in mind that for the rest of the issues under s.98 the burden of proof is neutral.

Investigation

49. I deal firstly with the question of whether or not the respondent undertook a reasonable investigation, i.e. one that a reasonable employer could have adopted in all the circumstances. When assessing this, I take account of the respondent's size and its internal human resources support. I also take account of the fact that the claimant has been accused of fraud and that this is a serious charge.

50. I find that the investigation carried out by the respondent was reasonable. They spoke to the claimant and gave her the opportunity to give her explanation. They gave her the opportunity to provide any documents, receipts, evidence of telephone calls, bookings etc and she provided only the ferry booking. They asked two french speaking employees to telephone the garage and the hotel and to transcribe a translation of those calls. The garage that they called confirmed that it was at the address given by the claimant. I find that this amounts to a reasonable investigation.

51. There is no evidence to support the claimant's allegation that the respondent fabricated the calls to the hotel and the garage.

Procedure

52. The letter inviting the claimant to the disciplinary hearing does not specify that the fraudulent claim was one night's hotel accommodation and a ferry ticket. The claimant did not state during the disciplinary hearing that she was unclear about the allegations against her. It was not one of her grounds of appeal. The claimant knew the detail of the allegations as a result of all the information given to her during the investigation and disciplinary process. I find that the claimant understood the allegations in sufficient detail to allow her to answer those allegations.

53. The letter inviting the claimant to the disciplinary hearing did not arrive until the 11 October. The claimant did not suggest in the disciplinary hearing that she had had insufficient time to prepare. She did not ask that the hearing be postponed. It was not one of the grounds of appeal. I find that she had sufficient time to prepare for the disciplinary hearing. There is no evidence that the claimant did not have sufficient time to arrange a representative. She did not indicate at the time that she had not been able to arrange representation in time. She did not ask for the meeting to be adjourned to allow her to arrange representation, nor did she complain about this in her appeal, nor did she arrange to be represented in her appeal.

54. The claimant was not sent the green flag transcripts (because they did not exist at the time) or the time line. I find that, although it would have been preferable to send the claimant the time line, looking at the process as a whole, this does not render the dismissal unfair. The time line contained background information rather than the substance of the evidence which caused the respondent to conclude that the claim was fraudulent. The case against her was primarily contained in the transcripts of the calls to the hotel and the garage. The claimant was fully aware of the case against her and had the opportunity to respond.

55. The claimant's representative made a number of points about the ACAS code on action short of dismissal in paragraphs 19-21. As paragraph 22 makes clear, this does not apply to acts of gross misconduct. It is not a breach of the ACAS code to dismiss, rather than warn, an employee where an employer has concluded they have committed a fraud.

Reasonable grounds for belief

56. The claimant's representative is right that criminal offences outside work will not always lead to disciplinary action under the respondent's code of conduct. However I find that commencing a disciplinary process when an employee is suspected of fraud against her employer is reasonable even if the fraud was committed while acting in the capacity of a customer.

57. It was submitted that the respondent failed to take account of mitigation such as the claimant's unblemished employment record, her length of service and her family circumstances. I accept that Ms Rushton took account of all these matters apart from the claimant's family circumstances which could have been, but were not, raised by the claimant at this stage. These circumstances were brought to Mr Wilson's attention and considered at the appeal stage.

58. Was Ms Rushton's belief that the claimant was guilty of fraud based on reasonable grounds? I find that it was. It was reasonable for Ms Rushton to rely on the call to the hotel to conclude that the claimant had not been truthful about whether or not she had pre-booked. Whether or not the hotel should have given out that information, it was reasonable for Ms Rushton to conclude that they did give out that information. It was reasonable for her to rely on the transcripts of the calls to the garage. It was reasonable to conclude that the calls were made to the same garage (see the cross-reference to Alonso). It was reasonable to conclude that the calls were made to the correct garage (the garage gives the address given by the claimant). The calls make clear that they have no record of the claimant's car and that the garage was closed during the relevant period. In the absence of any receipts etc. it was reasonable for Ms Rushton to conclude that there was no breakdown.

59. It makes no difference to the fraudulent nature of the claim if the claimant specifically requested payment of items on the basis of a fabricated accident or accepted an offer of payment made on the basis of a fabricated accident. Having concluded that there was no breakdown, it was reasonable of Ms Rushton to find that the claim for one nights' hotel accommodation and a ferry fare arising out of that breakdown, was fraudulent. This was sufficient. The fact that Ms Rushton also took account of, for example, less reliable evidence such as the claimant's demeanour in the disciplinary hearing, does not affect my decision.

Was dismissal within the band of reasonable responses?

60. Did the decision to dismiss fall within the band of reasonable responses? I find that it is within the band of reasonable responses to dismiss someone in the claimant's role for a fraudulent claim against the respondent, even taking account of the claimant's service, employment history, family circumstances and the fact that she was acting in the capacity of a customer.

Summary

61. Taking into account all the above, I conclude that the respondent's investigation was one that a reasonable employer could have adopted, and that the respondent had reasonable grounds for concluding that the claimant had fraudulently obtained payment for one night's hotel accommodation and a ferry fare. In relation to the allegation of breach of procedures, I find that the procedure overall was fair and one which a reasonable employer could have adopted. Finally I find that the decision to dismiss fell within the band of reasonable responses.

62. In the light of the above it is not necessary for me to make findings on conduct, contributory fault or Polkey.

Employment Judge Buckley

Date: 3 May 2017