EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MS S J WILLIAMS	AND	MARR CORPORATION T/A T2 GROUP

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: CARDIFF ON: 10TH SEPTEMBER 2018

EMPLOYMENT JUDGE MR P CADNEY MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- **MR J JONES**

FOR THE RESPONDENT:- **MR G LOMAS**

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim of unfair dismissal is dismissed.

Reasons

1. This is the decision of the tribunal in the case of Mrs S Williams (claimant) v Marr Corporation Ltd trading as T2 Group (respondent). By this claim the claimant brings a claim of unfair dismissal.

2. The tribunal has heard evidence from the claimant herself; and on behalf of the respondent from Mr Craig Luffman (Quality Manager), Ms Michelle Birkin (Lead Internal Quality Verifier), and Anthea Rowley (Head of Quality).

3. The claimant began work in the care industry when she was 18 years old and qualified as a registered general nurse in 1994. Since qualifying she has worked in a range of settings including hospitals, industry, and the private sector. In the care sector she managed a group of homes for adults with learning disabilities and also a twenty nine bed nursing home. She decided in 2010 to become an assessor of health and social care; and subsequently to become an Internal Quality Auditor (IQA). It was at this point that she joined the respondent. There is no dispute that since she joined the respondent that she was an extremely able IQA and there is no question of any concerns about the performance prior to the incident which led to her dismissal.

4. The respondent is awarded contracts by, amongst others, the Welsh Government to provide training leading to a variety of qualifications. It has direct claim status, which permits it to notify the awarding body that the learner has achieved the standards required for the particular qualification which is then awarded. This relieves the awarding body of having to satisfy themselves in respect of each learner, and transfers that responsibility to the respondent. Part of the claimant's role was to "claim" a qualification. This involves checking the learners file and ensuring that the qualification has been completed, and then notifying the awarding body that the learner has satisfactorily completed a particular course and is eligible to receive the particular qualification: it is an assertion to the awarding board, (in the case which led to her dismissal the City and Guilds), that the individual has reached the required standard to be awarded the qualification in question. The claimant was the most senior IQA in her field and there were no further internal checks on a qualification that had been "claimed" by her.

5. The incident led to her dismissal is in general terms not in dispute. She was asked to look at the portfolio of learner named NT. She stated during the disciplinary process that Lisa Shepherd asked her to do a "summative" sample. On looking at that evidence she was satisfied that the learner had met the standard required and so "claimed" the qualification. It is not in dispute that this was incorrect and that the learner had not reached that standard; and that to claim the qualification was inappropriate.

6. Lisa Shepherd spoke to the claimant shortly after and informed her that the qualification should not have been claimed, as she was aware that the learner had not completed the qualification. After that the exact sequence of events is not entirely clear, but there was an investigatory meeting between her and Michelle Birkin on the morning of 11 July to discover how a qualification had been claimed erroneously. During the meeting the claimant accepted that she had made an error, and in a passage which the respondent attaches some weight to, stated that the "learner wasn't going to die" and the error would have been picked up internally in any event. As is set out below the respondent takes the view that the implication of the first point that the error was relatively minor is wrong, and that the second is factually wrong in that there were no further internal checks. Shortly before 1.30pm the same day the claimant emailed Mr Luffman to ask for the claim to be withdrawn.

7. Ms Birkin took the view that the repercussions of this error could have been enormous; if undetected a subsequent inspection by the CIty and Guilds could have

resulted in the loss of the direct claim status, with a possible knock on effect to that or other contracts, and with the learner having the qualification withdrawn. She took the view that this was a very serious error indeed, a position which the respondent has taken throughout and maintains in this hearing.

8. Ms Birkin decided to suspend the claimant; and she was summoned to a disciplinary hearing which was heard by Mr Luffman. At the conclusion of the disciplinary hearing Mr Luffman decided that the claimant should be dismissed. His conclusion are set out in the dismissal letter: " *I acknowledge that some mistakes inevitably are made in the course of work. However you have failed to provide an acceptable explanation for claiming the qualification without ensuring the criteria required by the awarding body has been met. You admitted that you did not look at the RPL when completing the Internal Quality Assessment. You knew that the file was not complete as Lisa had given you that information but failed to complete a full assessment before submitting the claim for the qualification. I consider this to be bad practice and constitutes an act of gross negligence which has the potential to bring the company into disrepute. I am satisfied that you have received the relevant training to understand your role. You have admitted you understand that this could result in the company loses DCS status. You have also stated that you consider this issue to be blown out of proportion as it would have been picked up by the company internal checks. This demonstrates that you will not take accountability for your actions. From what you told us during the hearing am not convinced that you have learned from your behaviour and would not do this again*."

9. The claimant appealed and the appeal was heard by Anthea Rowley. The claimant could not attend and was content for it to proceed in her absence but supplied Ms Rowley with a written submission for consideration. She spoke to a number of witnesses and following the conclusion of the appeal took the view that Mr Luffman had been correct and upheld the dismissal.

10. As this is a misconduct dismissal I have to apply the well-known Burchell test. The first question is whether the respondent has established that a belief in the misconduct was the genuine reason for dismissal. It has not been suggested in the hearing that there was any other reason and in my judgement it clearly has.

11. There are then three further questions; whether there was a reasonable investigation; whether reasonable conclusions were drawn from that investigation; and whether dismissal was a reasonable sanction. The range of reasonable responses test applies to each question, and so I have to ask not whether I would have reached the same conclusions but whether a reasonable employer could have investigated as the respondent did; whether a reasonable employer could have drawn the same conclusions; and whether a reasonable employer could have considered dismissal the appropriate sanction. Although I will deal with each question below, the primary issue in the case is in reality the question of sanction as the claimant tacitly accepted in evidence, in that she agreed that some form of disciplinary sanction falling short of dismissal would have been appropriate.

12. As set out above the facts were not essentially in dispute; the claimant had "claimed" a qualification which on the evidence available to her was not an appropriate thing to have done. In terms of the investigation all that was required was to allow the claimant to explain how she had come to claim a qualification when in fact that conclusion was not available to her from the evidence on file. She was given this opportunity in the original investigation, and in the disciplinary hearing, and appeal (although she relied on written submissions) and I can see nothing that would allow me to conclude that the investigation fell outside the range reasonably open to the respondent. Indeed in terms of investigation it is hard to see what more the respondent could have done.

13. In terms of the conclusions it appears to me that it was reasonably open to the respondent to conclude that this was a very serious negligence which could have had a very serious effect on the company had it not been picked up. The conclusions of Mr Luffman as set out above were all ones reasonably open to him on the evidence and none is irrational or unreasonable. It follows that in my judgement they were entitled to conclude that it was misconduct and very serious misconduct.

14. In my judgement the primary issue in this case is that of sanction. This was, in effect, accepted by the claimant who accepted in evidence that some form of disciplinary sanction but not dismissal would have been appropriate. In essence the claimant's case is that dismissal was too harsh a sanction given her entirely blameless disciplinary history prior to these matters, and that she had proved herself at all other times extremely good at her job, and that this was simply an error, albeit a serious one, and not deliberate misconduct. It was, she contends, in those circumstances an overly draconian sanction which it was not reasonably open to the respondent to impose.

15. Was it then reasonable to conclude that this event was such a serious piece of misconduct that dismissal was the appropriate sanction? The respondent submits that it was entitled to conclude that this was a fundamental failure to perform the role the claimant was employed for and that had the error not be detected it could have had very serious consequences for the entire business. The claimant seemed not to appreciate at any point in the investigatory or disciplinary stages the potential seriousness and appears to have viewed it as a minor error, which led the respondent reasonably to the conclusion that it could have no confidence that it would not happen again. Those two factors mean, submits the respondent, that even if harsh, dismissal was a reasonable sanction.

16. In my judgement the respondent's submissions are correct and the sanction of dismissal did fall within the range reasonably open to the respondent; and it follows that the claim for unfair dismissal must be dismissed.

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EMPLOYMENT JUDGE Cadney
Dated: 11 October 18

Judgment entered into Register
And copies sent to the parties on

.........15 October 2018.................

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for Secretary of the Tribunals