Case Number: 2204635/09

LJ

5879/23

THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		*Respondent*
Miss J Bah	**AND**	Pret A Manger (Europe) Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: London Central **ON:** 29 30 April 2010

EMPLOYMENT JUDGE: Ms S J Woffenden **MEMBERS:** Ms Newte
Ms Mansfield

Appearances

For the Claimant: Mr E Brown Legal Barrister

For the Respondent: Mr Pritchard of Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that the Claimant's claim of unfair dismissal succeeds and the Respondent is ordered to pay to the Claimant compensation in the sum of £1,397.50.

S J. Woffenden

EMPLOYMENT JUDGE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
19.8.2010
.....
JUDGMENT SENT TO THE PARTIES ON
20.8.2010
.....
AND ENTERED IN THE REGISTER
.....
FOR SECRETARY OF THE TRIBUNALS

LJ

THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		***Respondent***
Miss J Bah	**AND**	Pret A Manger (Europe) Ltd

Date of Hearing: 29 30 April 2010

REASONS OF THE EMPLOYMENT TRIBUNAL

1 The Claimant was employed by the Respondent from 26 September 2000 to 21 August 2008 when she was dismissed.

2 The issues for the Tribunal were as follows:

(i) What was the reason for the dismissal?

(ii) Having regard to that reason, was that dismissal fair or unfair under Section 98(4) of the Employment Rights Act 1996 ("the Act")? In particular, had the Respondent a genuine belief on reasonable grounds after a reasonable investigation that the Claimant was guilty of the misconduct alleged and was dismissal within the range of reasonable responses available to the Respondent in the light of the Claimant's mitigating evidence and the final written warning to which she was subject.

3 The Tribunal heard from the Claimant who gave her evidence by way of a witness statement. During the course of the hearing she applied for an order that her ex-colleague (Morenike Odebade) be permitted to give evidence notwithstanding that no witness statement had been exchanged with the Respondent nor had a draft statement been prepared for her .Her evidence was said to be 'useful' clarification of the conversation the Claimant was said to have had with one of the Respondent's ex-employees Ms Delizo and of the Claimant's appeal. That application was refused on the grounds that it had not been made in a timely way, for her evidence to be given after some of the Respondent's witnesses had given or were in the course of their evidence was prejudicial to the Respondent, and the Tribunal was not satisfied on the information provided that her evidence was directly relevant to the issues in dispute between the parties. The application had not been made in a timely way even on the day in question and, having regard to the overriding objective and the prejudice to the Respondent at that point which appeared to outweigh the prejudice to the Claimant, the application was refused. The Respondent's witnesses were Bertin Akoue (group manager), Jason Myers (assistant manager) at the Respondent's Marble Arch branch, and Pan Christou (operations manager) who all gave their evidence by way of witness

statements. In addition, Ms Delizo's witness statement was put in as evidence to which the Tribunal gave such weight as was appropriate in the circumstances. There was also an agreed bundle of document which we have marked A.

4 From the evidence we saw and heard the Tribunal makes the following findings of fact:

4.1 The Claimant was employed from 26 September 2000 to 21 August 2008 as a team member star two days each week (Tuesdays and Fridays) from 6am to 2pm (16 hours in total). She was working at the Respondent's Marble Arch branch at the time of her dismissal. She received £104 gross a week. Mr Akoue was then the general manager of that branch and Ms Delizo and Mr Myers were assistant managers front ('AMFs').

4.2 On 28 September 2007, the Claimant (who had admitted 12 occasions of unauthorised absence when her late application for a holiday of four weeks was refused by Mr Akoue) met with Mr Carter, an HR Manager at the Respondent, and Mr Akoue to discuss that unauthorised absence. The request had been made by the Claimant because of childcare difficulties during the summer holidays (the Claimant has three young children) and, although Mr Carter told her that if there were any further occasions of unauthorised absence action would be taken against her, he also put in place a system whereby the Claimant would give details of her husband's rota four weeks in advance so that this could be accommodated in the branch's rota when these were prepared two weeks in advance.

4.3 A file note was made on 18 August 2008 that she had behaved inappropriately in asking for free soup and acted aggressively at the Respondent's Bluewater branch where she had originally worked. She agreed not to return to that branch again.

4.4 On 1 September 2008, she received a first written warning imposed for 12 months for 'inappropriate behaviour' for a failure to follow a reasonable request from her team leader. She did not appeal that warning. She was moved to the Marble Arch branch from the Respondent's Regent Street branch because of a family dispute between herself and her sister-in-law who also worked there which partly had precipitated the above. Mr Akoue's evidence, which we accept, was that one of them had to go and he decided that she would transfer to the Marble Arch branch where he was going to work.

4.5 On 5 December 2008, the Claimant received from Mr Akoue a 12 month final written warning for threatening to punch the face of a fellow employee in front of other customers. Her defence (that it was a joke) was rejected. She did not appeal although she was advised of her right to do so.

4.6 The Claimant wanted to work full time in June 2009. In accordance with the existing arrangement she had already given details of her availability for June in May, indicating that she was available on 9, 10, 12, 16, 22, 25 and 29 June. Mr Myers was reluctant to agree to this but agreed to review it on a weekly basis and if he had any more hours available he would give them to her.

His evidence was that had he agreed that she could work full time from that point onwards, he would have put her on the rota. In the event she did work full time for the first week of June. She came into work on Monday 8 June but was ill and was sent home by Mr Myers. She did not attend work for the whole of that week. She telephoned Mr Akoue on his mobile on Wednesday 10 June. Mr Akoue was on holiday although the Claimant did not know that. She told him that she would be off on Thursday and Friday (11 and 12 June). Her evidence was that Mr Akoue had said "See you on Monday." Mr Akoue denies this because he would not have been able to see her on the following Monday because he was on holiday. He did not in any event thereafter return to the Marble Arch branch because he had been promoted.

4.7 Having recovered from her illness the Claimant attended for work on Monday 15 June and discovered that she was not rota'd for work that day. However, she was asked to work by Ms Delizo because they were short staffed at the branch. Her evidence to the Tribunal was that she was told by Ms Delizo, after she had discussed it by telephone with Mr Myers, that she need not attend the next day (a Tuesday and one of her normal working days) and that this conversation was overheard by Morenike Odebade.

4.8 Ms Delizo says in her witness statement that the Claimant became upset because she was not working full time because she had apparently arranged her childcare and travel arrangements on that assumption. Mr Myers had confirmed to Ms Delizo that she should be told that she work the next day. The Claimant did not attend for work the following day nor did she attend until Friday 19 June.

4.9 Mr Myers had already taken a short statement from Ms Delizo (to the effect that she had told the Claimant she was on the rota for the next day and she had to come), Mr Akoue and Ms Fuchsbererova (another assistant manager –kitchen).He had also prepared one for himself which was confined to confirming that he Claimant had not turned up for work on 12 and 16 June 2009 and had not sought prior authorisation from him for her absence. He sent an undated letter to the Claimant asking her to attend a disciplinary interview about her alleged unauthorised absences on those two days warning her that if the complaints were substantiated as she had already received a final written warning 'this is likely to lead to your dismissal'. He did not take a statement from her though the Respondent's disciplinary procedure states that 'they (a manager) need to talk to the person involved to 'decide if a more detailed investigation is needed or if a conversation with the person will be sufficient. The letter did not enclose any of the statements which Mr Myers had taken. It told her of the right to be accompanied by a fellow employee or a trade union representative.

4.10 The Claimant did not attend that hearing and a further letter was sent out to her in relation to a disciplinary hearing on 25 June enclosing a copy of the first. Mr Myers had a telephone conversation with the Claimant some time after the Claimant had received that letter and before taking the second statement from Mr Akoue. The Claimant says that she told Mr Myers that she wanted Morenike Obedabe to come. Mr Myers did not understand what importance

Ms Morenike might have in relation to the issue of unauthorised absence on 16 June because he had never taken a statement from the Claimant as part of his investigation into her unauthorised absence. It is convenient at this point to mention that the Respondent has a conduct policy which states at its introduction "the following conduct/procedure ensures we have a consistent and fair approach when dealing with poor conduct. It is also a legal requirement to have a set procedure that everyone is aware of. Disciplinary action should only be taken after a thorough investigation and is to be used to encourage improvement in people who are not meeting standards. It is therefore important that everyone is aware of what standards and conduct are expected of them. To make sure the conduct procedure is followed correctly, managers must follow the conduct flow charts (see planet prêt) by using this it will ensure people are being treated fairly, consistently and legally.'

4.11 As we have already said Paragraph 2 of the conduct policy states that "Investigation – the first thing a manager should do before taking any action at all is to investigate the situation. As the conduct and flow chart shows, they need to talk to the person involved, look at what has happened previously and decide whether a more detailed investigation is needed or if a conversation with the person will be sufficient.' However it goes on to say that 'If it is found that a detailed investigation is needed then the Manager should do the following:

> 2.1 Decide who should conduct the investigation'. It makes it clear that the manager of the shop should investigate minor issues regarding team members, incidents that may result in minor disciplinary action being required or an informal grievance where a team member has approached their manager. However the operations manager or HR manager should investigate 'any formal grievance regarding the Manager of the shop' or 'serious incidents that the Manager of the shop may be involved with or may be less impartial about.'

4.12 The Claimant and Morenike turned up at the disciplinary hearing on 25 June. Morenike Obedbade had already worked her allotted four hours that day and asked Mr Myers if she could be paid for six hours. He assumed that she wanted to be paid six hours for attending the hearing (rather than an additional two hours) and he declined. He thought she was trying it on. She therefore left. We accept the Claimant's evidence (who was present) that she was only asking for payment for the additional two hours. There are two relevant points from the Respondent's conduct policy to mention here. Paragraph 5.2 states that the right to be accompanied requires at least 24 hours is given to organise a companion to a hearing and if the person requested to accompany someone to a disciplinary hearing is scheduled to work their manager must make all attempts to allow them to attend the meeting. If there is a good reason why they cannot accompany the person 'then again the hearing will be re-scheduled within seven working days'. The policy also provides that if the person wishes to bring someone to the hearing as a witness to the alleged complaint, they can request the presence of witnesses to the person conducting the hearing, with as much notice as possible, who will then arrange these people to attend. The person conducting the hearing will decide whether or not it is appropriate for the requested people to attend the hearing. If this request is denied a full

explanation will be given as to why it was felt inappropriate or unnecessary for them to attend. If the person requested as a witness could not attend the hearing for any reason then the hearing might be re-scheduled or adjourned until they were able to attend. Further when planning a disciplinary hearing paragraph 6.2 of the policy provides that a hearing should be planned in normal working hours where possible and it should be ensured that "they are paid additional hours as necessary if outside hours if the hearing overruns." Under paragraph 6.2, it is stated that if an investigation regarding the complaint was necessary (as was the position here) the person who carried out this investigation should not be involved in the actual disciplinary hearing, either leading the meeting or as a note-taker. In this case Mr Myers carried out the investigation and conducted the disciplinary hearing.

4.13 The Claimant's response to the allegation, the precise role of Morenike Obedabe and why the Claimant wanted her at the disciplinary hearing would have been established had Mr Myers complied with the Respondent's policy. Of course Mr Myers was himself a relevant witness, having had the telephone conversation with Ms Delizo. The Claimant was not provided with the statements from Mr Akoue, Ms Delizo and Ms Fuchsberger a copy of the text message Ms Bah sent to Mr Akoue and a copy of the final written warning on her personnel file until shortly before the hearing on 25 June began.

4.14 The hearing proceeded with Mr Myers in the chair. The note of the meeting records the Claimant "declined" her right to be accompanied. Mr Myers' evidence to the tribunal was that he asked her if she wanted a witness and she said she was happy to go ahead. This was the first opportunity she had had to put her version of events. The Claimant disputed that she had been told by Ms Delizo to attend on the Tuesday. Although it is recorded that she was asked by Mr Myers as a final question when she was in on Monday that she was aware she was working on Tuesday and said that she was fully aware, she was asked to sign the manuscript notes of the meeting there and then. She did so despite not agreeing with their contents, because Mr Myers told her if she was not happy she could appeal.

4.15 After a brief adjournment of ten minutes Mr Myers informed the Claimant that she was dismissed on notice, having found that her absence on 16 June 2009 was unauthorised while she was subject to a final written warning. He did not rely on the allegation relating to 12 June 2009. She was informed of her right of appeal and immediately said she would do so. She had not expected to get fired because she did not think she had done anything wrong.

4.16 A letter confirming the outcome dated 1 July 2009 was sent to her. In that letter Mr Myers refers to the dispute between Ms Delizo and the Claimant about the conversation on 15 June concerning the following day but concludes that because she had confirmed she was aware she was supposed to work that day, her absence was unauthorised.

4.17 Although Mr Myers said he knew the Claimant wanted Morenike Obedbade at the hearing as a witness on the morning before the hearing he said he did not get a statement from her because he assumed she would attend

the hearing. He appeared unclear in his evidence whether he understood her to be the Claimant's companion or witness .He had preferred Ms Delizo's evidence over the Claimant's because he had spoken to her and knew he had told her the Claimant had to come to work.

4.18 The Claimant's letter of appeal of 13 July 2009 explained that she believed following her conversation with Mr Akoue that she had been rota'd to work on 15 June and that she was told by Ms Delizo that she could be off on 16 June having worked on 15 June following a conversation which Ms Delizo had with Mr Myers and that she had a witness to her conversation with Ms Delizo, Morenike. She asked that Morenike Obedbade be interviewed and that the managers should be independently interviewed. She pointed out her length of service, that the matter for which she had been dismissed was trivial and was "window dressed rather than having a full blown investigation."

4.19 Her appeal was heard by Mr Christou on 3 August 2009. Morenike attended with her two young children. They became restless so she left the hearing. Mr Chistou told her they would call her when they needed her. She was then called back in and asked if she could explain what had happened. The notes of the meeting record that after she had told Mr Christou she was on the till near the croissanterie she "heard Stephanie say she didn't have to come in on Tuesday." She was asked no other questions and left the meeting. Mr Panou terminated the appeal having said he was glad that Morenike had attended but that "we'll need to investigate further" and we'll speak to "Stephanie and Bertin regarding your time off and look into the full time agreement and speak to Jason regarding the phone call and discrimination." Again the Claimant was asked to sign the notes of the appeal meeting there and then.

4.20 Mr Panou subsequently spoke to Ms Delizo. In his note she is recorded as having reiterated that she told the Claimant she had to come in and that there were other team members around other witnesses. She was not asked whether this conversation was witnessed by Morenike. He also spoke to Mr Myers who is recorded as having said he had had a conversation with Ms Delizo and that he had rung Mr Panou who had advised him to send a letter asking the Claimant to attend the disciplinary because she had had two unauthorised absences in the same week and her attendance was very poor. He also spoke to Mr Akoue. He made no other inquiries nor did he inform the Claimant of the outcome of his further investigation before he wrote to the Claimant to tell her appeal was unsuccessful in his letter of 20 August 2009. In that letter he explained in relation to the unauthorised absence on 16 June, despite the evidence of Morenike, he found it "difficult to believe" that she would have accepted not coming in on that Tuesday because she had already put in hand her travel and childcare and wanted to work extra hours and Mr Myers and Ms Delizo confirmed she had been instructed to attend that day. Mr Panou's evidence was that when weighing up the two versions of the events in question, he preferred the evidence of Mr Myers and Ms Delizo because he felt Morenike had become a witness "all of a sudden." The Claimant had not told Mr Myers that she had a witness. The only person who had come forward out of a group of people who had heard the conversation was Morenike who he had concluded was a close friend of the Claimant. If the Claimant had told him who the others were he

would have investigated this. He had known Ms Delizo for one and a half years. He had formed the view that the Claimant and Morenike were close friends because when he had visited the shop which he did once a week or so he had often seen them together with their children and believed they helped each other out with childcare. This was a supposition on his part and denied by the Claimant in her evidence to the Tribunal. She said their relationship was that of work colleagues only. Before the Tribunal hearing Mr Panou had been unaware why Morenike had not attended the disciplinary hearing.

4.21 The Claimant has not obtained another job since her dismissal .She said she had attended the Job Centre and applied for several jobs .She gave no details of them nor of any actual difficulties she has encountered in obtaining new employment. She said she had not requested a reference from the Respondent because she felt that she would not get a good one. She produced no evidence whatsoever to corroborate any steps she had taken to mitigate her loss.

The Law

5 Under Section 94(1) of the Employment Rights Act 1996 ('the Act') it is for the Respondent 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 the employee held. One of the reasons in Section 94(2) of the Act relates to the conduct of the employee (Section 94(2) (b). Where an employer has fulfilled the requirements of Section 98(1), the determination of the question whether the dismissal was 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 shall be determined in accordance with equity and the substantial merits of the case. (Section 98(4) of the Act).

6 In conduct cases the Tribunal derives considerable assistance from the test set out in the case of **British Homes Stores Ltd v Burchell [1978] IRLR 379 EAT** namely 1 did the employer believe that the employee was guilty of misconduct 2 did the employer have reasonable grounds for that belief 3 had the employer carried out as much investigation into the matter as was reasonable in all the circumstances? The first question goes to the reason for the dismissal. The burden of showing a potentially fair reason is on the employer. The second and third questions go to the question of reasonableness under section 98(4) of the Act and the burden of proof is now neutral.

7 We remind ourselves that our task is not to decide whether the Claimant did or did not commit the misconduct alleged. Our role is to judge the reasonableness of the employer's conduct. If the decision to dismiss was one available to a reasonable employer (the range of reasonable responses test) we cannot find the dismissal was unfair. To do so would be to substitute our view for that of the employer. (**Iceland Frozen Foods Ltd v Jones [1982] IRLR 439 EAT**)

8 Under Section 124A of the Act, if the Respondent has unreasonably failed to comply with a relevant provision of the ACAS Code of Practice on Discipline and Grievance ('the Code'), the award of compensation shall be increased by up to 25%. The Code has to be taken into account in relevant cases. We have had regard to paragraphs 5, 6, 9, 12 and 26 of the Code.

9 The Respondent's representative referred in his submission to the cases of **Auguste Noel Ltd v Curtis [1990] IRLR 326**. **Ulsterbus Ltd v Henderson [1989] IRLR 251**. **Sartor v P&O European Ferries (Felixstowe) [1992] IRLR 271** and **Taylor v OCS Group Ltd [2006] IRLR 613**, to which we have also had regard.

10 Section 123 (4) of the Act provides that 'In ascertaining the loss [sustained by the claimant] the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.

Submissions

11 The Respondent made oral submissions. It was appropriate for both Mr Myers and Mr Panou to give Ms Delizo's account more weight than the Claimant's. It was supported by Mr Myer's evidence. A forensic investigation into what was a very simple question of fact was not needed. The employer had reasonable grounds to conclude she had committed the misconduct and the panel could take into account the Claimant's employment history. It was not necessary for witness statements to be obtained. The Respondent understood Morenike was to be the Claimant's companion and the Respondent's policy on payment did not bite in this case. They were only aware she was to be a witness at the appeal. The further investigation carried out by Mr Panou to pertinent questions produced detailed responses and management reiterated what they had been saying all along. Mr Myers would have granted an adjournment had he been asked. The Respondent was not required to conduct a trial but to act reasonably and fairly. A Tribunal should look at the procedure as a whole and a good appeal can cure any procedural defects. It was within the range of reasonable responses to dismiss. She had accused managers of lying. She had a colourful employment past and had gone one step too far. If there was a procedural flaw then the **Polkey** reduction was considerable. She had contributed to her dismissal by 100%. She had failed to mitigate her loss. She had not sought a reference and had not offset Jobseekers Allowance in her Schedule of Loss.

12 The Claimant's representative referred to the **Burchell** test. There were two conflicting stories, the Claimant's and senior management. The only way to resolve it was to carry out an investigation. The Respondent's policy set out how this was to be done but had not been followed. Mr Myers was an integral part of the incident. He acted as judge and jury and believed Ms Delizo because he had had a conversation with her. As he was part of the decision his version was right. He should have found out the Claimant's version of events. The disciplinary hearing was not a neutral forum but was fundamentally flawed. She informed Mr Myers that Morenike was a witness. If Mr Myers was really concerned about a fair hearing he would have attending. No attempt was made to get a statement from the Claimant, had this been done, Morenike would have been mentioned. At the hearing the Claimant was not allowed to make her case but only to respond to questions. She had no opportunity to explain. Mr Panou

was not even aware that clarified the position. The only witness was prevented from Morenike was meant to be a witness. A flawed hearing can be cured on appeal but this appeal was fundamentally flawed. Mr Panou drew on his personal knowledge in deciding who to believe and had concluded that the Claimant and Morenike were friends but they were never asked about their relationship. Their crime was they were both black and had children. Mr Panou believed Ms Delizo because he had known her for one and a half years but the Claimant had been working for five years and none of the disciplinary issues indicated dishonesty. He rejected Morenike's evidence because she turned up at a late stage but this was not a question he put to Mr Myers. If the Claimant could have put her own version this might have made a difference to his decision. She had been unfairly dismissed. In terms of mitigation this was the only job she had had in United Kingdom and the only reference she could provide would be a bad one. Why would an employer choose her over someone else. She no longer wanted to be reinstated as she had done before the hearing.

Conclusions

13 It is apparent that the Claimant had had a chequered career with the Respondent. She was indeed subject to a final written warning and her attendance had recently and in the past caused concern. It may be that this influenced the way the Respondent's managers approached the Claimant's absences on 12 and 16 June. Mr Myers breached the Respondent's own procedure when he failed to talk to the Claimant before instigating an investigation. That resulted in his only taking statements from management since he was unaware of any witnesses who could support the Claimant's version of events. He considered himself a relevant witness in relation to the conversation he had with Ms Delizo but did not apparently consider that ,if so , it would not be then be fair for him to conduct the investigation or, as investigator, to also conduct the hearing. By doing so he also unreasonably breached the Code at paragraphs 5 and 6. The size and administrative resources of the Respondent are such that there was no necessity to take this approach. He failed to establish with the Claimant the role of Morenike and thereby deprived the Claimant of a witness. She was unable to prepare adequately for the disciplinary hearing because she was not able to see the statements he had obtained until during the disciplinary hearing itself and then she was not given an adequate opportunity to consider their contents. Paragraph 9 of the Code states it would normally be appropriate to provide copies of any written evidence which may include witness statements with the notification. She was also not given the opportunity to consider whether the notes of the hearing with which she was immediately presented were accurate before being asked to sign them. The disciplinary hearing was in reality the first time she had had the opportunity to give her version of events and unsurprisingly Mr Myers preferred the account of the Respondent's witnesses which included him. As a decision maker he lacked the necessary objectivity and as an investigator he had failed to establish the facts of the case (Paragraph 5 of the Code). The Claimant was not given a reasonable opportunity to ask questions present evidence and call relevant witnesses (Paragraph 12 of the Code).

14 It was also an unreasonable failure to follow the Code (given the size and administrative resources available to the Respondent) that Mr Panou hear the Claimant's appeal .It was he who had advised Mr Myers to call the Claimant to attend a disciplinary hearing because of her past and present attendance record which included the two recent instances which were to be the subject of the hearing (Paragraph 26 of the Code provides that an appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case). Mr Panou was unaware that the Claimant had intended Morenike to be a witness at the disciplinary hearing. He concluded that her evidence was not to be relied on in preference to that of Ms Delizo because she had only turned up in the Claimant's appeal letter. This was not the case. He also formed the belief that she was a close friend of the Claimant based on his personal observations of them on the occasions he saw them together in the shop but took no steps to investigate whether his belief was correct. Had he put the outcome of his further investigations to the Claimant after the appeal hearing but before reaching his decision, he would have been able to establish clearly whether there were indeed grounds on which to prefer the evidence of Ms Delizo before concluding that the Claimant was guilty of the misconduct alleged and if so whether there were any relevant mitigating factors such as a misunderstanding between herself and Ms Delizo about the following day rather than wilful non-attendance. The Respondent again unreasonably therefore failed to follow paragraph 26 of the Code.

15 We conclude that the Respondent did not carry out as much investigation as was reasonable in all the circumstances of the case. The Respondent did not have therefore reasonable grounds for believing the Claimant was guilty of the misconduct alleged. The appeal did not resolve the deficiencies of the earlier stages of the procedure but rather compounded then and introduced additional instances of unfairness. We are unable to find any blameworthy conduct of the Claimant or conclude that a fair procedure would have resulted in the Claimant's dismissal because there was no adequate evidence to enable the Tribunal to resolve the conflict between Ms Delizo and the Claimant. The Respondent failed unreasonably to comply with relevant provision of the Code in respect of five of its provisions .Compensation must be increased by 25%. The Respondent is a large sophisticated employer and there was no reason put forward why it failed to comply with the Code.

16 However there is no evidence on which we can conclude that the Claimant has taken reasonable steps to mitigate her loss. The burden of proof is on her in this regard. She has not discharged that burden. We award compensation made up as follows:

Basic Award 8 x £120 (weekly gross pay) £ 960

Compensatory Award

Loss of statutory rights £350

Increase under Section 124A Employment Rights Act 1996 25%£87.50

Total £1375.50

S. J. Wolfenden

EMPLOYMENT JUDGE

REASONS SIGNED BY EMPLOYMENT JUDGE ON

19.8.2010

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REASONS SENT TO THE PARTIES ON

20.8.2010

.....

AND ENTERED IN THE REGISTER

.....

FOR SECRETARY OF THE TRIBUNALS