



[Tania Castanheira v Empire Catering Limited](#)

Claim:

- Unfair Dismissal
- Breach of Contract in respect of notice pay and a deduction from wages

Ms Castanheira was unfairly dismissed, but the reward was reduced to zero as Tribunal found that she caused or contributed to her dismissal.

Summary:

The employer launched an investigation after finding unusual phone and data charges of over £1,200 on Company mobile phones. The investigation found that, by her own admission Ms Castanheira had taken a company phone without authorisation and given this to a friend. The employer's MD carried out the investigation and was then involved in the decision making at the Disciplinary Hearing, where the decision was made to dismiss. Ms Castanheira appealed the decision and the MD was also involved in the Appeal Hearing (which was chaired by his wife), where the dismissal was upheld. Ms Castanheira was dismissed for gross misconduct, without notice, and the cost of the data usage was deducted from her final wages.

Ms Castanheira put in a claim for unfair dismissal and breach of contract due to not being paid notice and the deduction from her wages.

Tribunal Judgment:

Tribunal found that the process followed was procedurally unfair as the Investigating Officer was a senior director in the business and involved in decision making throughout the process. However, as there was no doubt that Ms Castanheira was guilty of the alleged misconduct, Tribunal reduced the award to zero, as had a fair process been followed, the outcome would have been the same.

In addition, Tribunal found that as Ms Castanheira was guilty of gross misconduct, the employer had the contractual right to dismiss without notice as well as deduct the sums from her final salary

Lessons to be learnt:

A "get out of jail free" escape for the Employer in this case. Following a poor procedure and failing to provide independent, un-conflicted decision makers at hearings will rarely escape so lightly. Having a good procedure, following that procedure and taking HR advice or using HR support is always advisable.