



EMPLOYMENT TRIBUNALS

Claimant: Mr C Vincent

Respondent: International Automotive Components Group Limited

Heard at: Leeds **On:** 5 and 6 November 2020
5 January 2021 (reserved decision in chambers)

Before: Employment Judge Cox

Representation:

Claimant: Mr Henry, counsel

Respondent: Mr Small, counsel

RESERVED JUDGMENT

1. The Claimant was unfairly dismissed.
2. The Tribunal makes no award of compensation.
3. The claim for damages for failure to give notice of termination of employment fails.

REASONS

1. Mr Vincent presented a claim to the Tribunal alleging that his former employer, International Automotive Components Group Ltd (“the Company”), had unfairly dismissed him. He also alleged that the Company had failed to

- observe his right to notice of termination of his employment and that he was therefore entitled to damages to compensate him for that.
2. The Company is a plastic injection moulding manufacturer for the automotive industry. It is part of a worldwide group that develops and manufactures products for the global automotive industry. Mr Vincent's job was as a quality co-ordinator at the Company's Scunthorpe plant.
 3. The Hearing was conducted by video link. It was not practicable to hold the Hearing in person because of the impact of the coronavirus pandemic and the parties helpfully did not object to it being conducted in this way.

The issues

4. At the Hearing, the parties agreed various facts and the Tribunal then identified the remaining issues it needed to decide.
5. Mr Vincent worked for the Company from 29 October 2012 to 27 January 2020, on which date he was dismissed without notice. That was therefore the effective date of termination of his employment within Section 97 of the Employment Rights Act 1996 (the ERA). The reason he was dismissed related to his conduct, a potentially fair reason for dismissal within Section 98(2)(b) ERA. The Company believed that Mr Vincent had been absent from work without authorisation and that in absenting himself he had been guilty of insubordination by failing to obey a reasonable instruction. Specifically, he had asked for permission to take annual leave so that he could go on holiday abroad with his partner and his request had been refused. He had then taken sick leave and gone abroad with his partner on those dates.
6. The issue for the Tribunal was whether in all the circumstances, including the Company's size and administrative resources, it had acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing Mr Vincent. That had to be decided in accordance with equity and the substantial merits of the case (Section 98(4) ERA).
7. Mr Vincent clarified why he believed the Company had acted unreasonably. He accepted that the managers dealing with his disciplinary hearing and appeal genuinely believed that he had been guilty of the misconduct at issue but he did not accept that they had reasonable grounds for doing so. In particular, he had not been given a copy of one witness's statement until the appeal hearing, so he did not have a reasonable opportunity to address her evidence. The Company had added an additional charge of misconduct during the disciplinary hearing which had not been set out in the letter inviting him to the disciplinary hearing, giving him no reasonable opportunity to address that additional charge. More fundamentally, the managers had no reasonable grounds for their belief that his absence had been unauthorised. Specifically, the managers had no reasonable grounds for their belief that he

had repeatedly said he would take the holiday regardless of whether he had authorisation to do so. Further, his absence from work had in fact been due to illness, covered by a Med3 form from his GP the validity of which had not been queried by the Company. There was nothing in the Company's policies or procedures that prohibited an employee travelling abroad during a period of sickness absence.

8. Mr Vincent's contract provided that the Company would give 7 weeks' notice if it wished to terminate his contract. The issue for the Tribunal in relation to his claim for damages for breach of contract was whether, on the evidence before it, the Tribunal was satisfied that the Company had been released from its obligation to give notice because Mr Vincent had been guilty of conduct that amounted to a fundamental breach of his obligations under his contract.

The facts

9. At the Hearing the Tribunal heard evidence from Mr Vincent. For the Company, it heard evidence from: Mr Mitchell Sankey, Quality and Continuous Improvement Manager, who was Mr Vincent's line manager until 10 September 2019 and conducted the disciplinary investigation; Mr Kevin Dallas, Shift Manager, who made the decision to dismiss Mr Vincent; and Mr Adam Fickling, Operations Manager, who heard Mr Vincent's appeal against his dismissal. The Company also submitted a witness statement from Mr Paul Sparkes, UK Dimensional Manager and Mr Vincent's line manager from 10 September 2019 up to the time of his dismissal. The Tribunal decided to accept this witness statement as evidence, but to give it less weight than it would have done had Mr Sparkes been present to be cross-examined on it. In addition, the Tribunal was referred to various documents in an agreed Hearing file.
10. On the basis of this evidence, the Tribunal made the following findings of fact in relation to the issues it had to decide.

Company policies and procedures

11. Mr Vincent's contract of employment stated that he was entitled to 33 days' annual leave (inclusive of Bank Holidays) each holiday year, which ran from 1 January. In March 2019, for reasons related to the Company's need to follow its customers' periods of shutdown and its desire to ensure that employees still had some holiday to take on days they chose, employees were given a further 4 days' leave entitlement, in lieu of the 2019 pay review.
12. The Company's policy and procedure on holidays are set out in its Staff Handbook. This states that an employee's line manager must approve all requests for annual leave in advance. An employee must not book holidays until the request has been formally authorised. The Company will try to co-

- operate with an employee's holiday plans where possible, but this is "always subject to the requirements of the Company's business and to adequate staffing and management levels being maintained at all times". The Company has mandatory shutdown periods during the summer and Christmas periods and employees must take part of their annual holiday entitlement to cover these periods. The Company gives notice of the dates of the annual shutdowns as early as possible and in any event at least one month in advance. As a rule, employees are not allowed to take holidays one week before or one week after the Christmas shutdown period. No more than two weeks' leave can be taken at any one time without prior written agreement.
13. If an employee is incapacitated due to sickness or injury during pre-booked annual leave, they must notify the Company in accordance with the sickness absence reporting procedure. The Company may then decide to reimburse the period of annual leave during which the employee was ill and pay the employee statutory sick pay rather than holiday pay for that period. This reimbursement does not apply, however, in periods of shutdown, because the Company has no work available and requires the employee to be on holiday.
 14. Any period of holiday of more than two weeks is classified as extended leave. A request for extended leave must be made to the Human Resources (HR) department at least six weeks in advance of the proposed leave dates. To apply for extended leave, an employee must not have been granted a period of extended leave in the past four years and must have a good attendance record. The Handbook states: "Employees who fail to obtain written confirmation for extended holiday but take the time off regardless or fail to return on the stated date, are deemed absent from work without permission which could lead to their dismissal. Such employees shall be required to attend a disciplinary hearing upon their return to the Company."
 15. The Company's disciplinary rules set out examples of conduct that will normally be viewed as misconduct to be dealt with under the disciplinary procedure. This list includes "unauthorised absence from work". The rules also give examples of gross misconduct, which will normally lead to dismissal without notice. These include "serious insubordination, or repeated or serious failure to obey instructions, or any other serious act of insubordination" and "refusal to follow instructions".

Background to the December absence

16. In June 2019 Mr Vincent's mother died. His father had trigeminal neuralgia and shingles. Mr Vincent provided care for both his parents but after his mother's death his father required more assistance from him. He had a falling out with his son about attendance at his mother's funeral. At around the same time, his landlord served notice to terminate his tenancy and he had to find somewhere else to live. From 15 July he began a period of sick leave due to

- stress. The Company's summer shutdown period ran from 29 July to 9 August. Mr Vincent continued on sick leave on 12 and 13 August.
17. In a telephone call during his sickness absence, Mr Vincent told Mr Wilson, Senior Quality Engineer, that he wanted to book three weeks' holiday at Christmas. He knew that he did not have enough outstanding holiday entitlement to cover this period but he thought the Company should view his period of illness during the shutdown as sickness absence, not annual leave.
 18. When Mr Vincent returned to work, Mr Wilson told him that he would not get his holiday reimbursed for his period of sickness during the shutdown, because that was not the Company's policy. Mr Wilson also told Mr Sankey about this conversation. Mr Vincent then approached Mr Sankey himself. He said that his partner had booked a holiday to Zimbabwe at Christmas time but it was three weeks starting the week before Christmas and so he would need extended leave. Mr Sankey agreed to look into this, although he thought that Mr Vincent did not have enough leave entitlement left.
 19. On 24 August Mr Vincent's partner booked the flights for herself and Mr Vincent to go to Zimbabwe to visit her family. Mr Vincent had already told her that it was looking unlikely he would have enough holiday entitlement to cover the trip because the Company would not reimburse his absence during the summer shutdown, but his partner booked the flights anyway. Mr Vincent's ticket cost £1,500. At some point around this time Mr Vincent was informed orally that his holiday request had been refused.
 20. On 6 September Mr Sankey forwarded to Mr Vincent an email he had received from the HR department confirming that as Mr Vincent had had extended leave in July/August 2017, he was not entitled to apply for any further extended leave until 2021. The email did not mention the two other reasons why Mr Vincent's request was outside the Company's holiday policy (although he was aware of these): he was asking for several days off work when he had only two days' holiday entitlement remaining and employees were not allowed to take holidays in the weeks before and after the Christmas shutdown.
 21. In his email in reply to Mr Sankey on 6 September, Mr Vincent said that since he was off work with stress (during the shutdown in August) and had a sick note covering him for that period, it was obvious that he had had no holiday then. He asked for that period to be viewed as sickness absence and for his holiday entitlement to be reinstated. He also mentioned that he had had to move house which had been very testing and difficult to deal with. He ended: "I feel that with the strain I have been under in recent weeks that I am deserving and need a rest which I have not been able to." In response, Mr Sankey repeated to Mr Vincent that his request had been denied and that if

- he was unhappy with this decision he should raise it with the Plant Manager. Mr Vincent said he would think about this.
22. Mr Sankey was due to be handing over line management responsibilities for Mr Vincent and the rest of the measurement team to Mr Sparkes on 10 September. In advance of that date, he spoke to Mr Sparkes about Mr Vincent's request for holiday in December and told him that it had been declined and that Mr Vincent knew this. He explained that Mr Vincent did not have sufficient remaining leave entitlement, not having been entitled to have his period of sickness during the annual shutdown reimbursed as holiday, and he was not eligible to apply for another period of extended leave. Further, no holidays could be taken in the weeks before and after the Christmas shutdown.
 23. Mr Sparkes was based at the Company's Solihull plant but visited the Scunthorpe site once a week. On 10 September Mr Vincent asked Mr Sparkes for extended leave in December. He did not mention that he had already asked for this leave and it had been refused. Mr Sparkes told Mr Vincent that he knew this request had already been made to Mr Sankey but Mr Vincent said he had not had an official response.
 24. During a meeting on 23 September, Mr Vincent again asked Mr Sparkes about the status of his holiday request. He said that his partner had already booked the holiday to Zimbabwe and that he could not afford to lose the money they had paid. Mr Sparkes said that his hands were tied, explained all the aspects of the holiday policy the business would have to break to allow him to take extended leave and told him to appeal the decision to the HR department. Mr Vincent would not accept Mr Sparkes's response and raised different reasons why he needed the leave. Mr Sparkes said he would not be engaging in any further conversation about the issue and that he should talk to HR.
 25. Mr Sparkes told Ms Moody, HR advisor, about Mr Vincent's comments and that he was refusing to accept the Company's decision. He asked Ms Moody to write to Mr Vincent officially confirming that his request had been declined. She wrote to Mr Vincent on 8 October confirming this, giving his ineligibility to apply for another period of extended leave as the reason.
 26. On 2 October, Mr Vincent asked Mr Sankey how many days' annual leave entitlement he had left. Mr Sankey checked with the HR department and confirmed to Mr Vincent what they told him, that is, that he had two days remaining. Mr Vincent was unhappy about this and reiterated that he thought he would be reimbursed for his period of sickness during the summer shutdown. Mr Sankey again told him to raise this with the Plant Manager if he was unhappy about it. Mr Vincent again said he would think about it.

27. On 10 October, Mr Sparkes told Mr Sankey about a conversation he had had with Mr Wilson. Mr Wilson had told Mr Sparkes that Mr Vincent had made comments to Mr Wilson about taking the holiday regardless of the Company's decision. Mr Wilson also spoke to Mr Sankey directly to tell him that Mr Vincent was openly saying to colleagues in the works canteen that he would do this.
28. At a team meeting on 22 October at which Mr Sparkes, Mr Vincent and Ms Medeliene was present, Mr Sparkes told Mr Vincent to stop discussing his holiday situation with other employees and to raise the matter with HR instead if he was unhappy. Mr Vincent again gave reasons why he should have his request granted, the main one being that he should have his period of sickness during the summer shutdown reimbursed.
29. Mr Sparkes's evidence to the Tribunal was that Mr Vincent also said at this meeting that he would take the time off regardless of the Company's decision. The version of his minutes of the meeting that Mr Sparkes later supplied to HR contains this text: "Chris Holiday for December – Chris not sure of next steps but says he will go on Stress leave if IAC do not change mind over rejected holiday. Chris has been told to make a decision and inform myself and stop talking about it." The version that he issued to Ms Medeliene at the time was different. This version states only: "Chris Holiday for December – Not sure next steps yet with Chris." Mr Sparkes did not attend the Hearing and so could not be questioned why these versions were different. It has therefore decided to accept Mr Vincent's evidence, which is consistent with what Ms Medeliene later said when interviewed during the disciplinary investigation, that he did not say at this meeting that he would go on sick leave or stress leave regardless of the Company's decision. The Tribunal nevertheless accepts Mr Sparkes's evidence that Mr Vincent did say this to him on at least one other occasion during their many conversations about Mr Vincent's leave request, as this is consistent with the email that Mr Sparkes sent to HR immediately after being told that Mr Vincent had gone on sick leave, as set out below.
30. On Mr Sparkes's subsequent visits to the Scunthorpe site. Mr Vincent continued to ask him questions or make comments to him about his leave request and why it should be approved. On one such occasion, Mr Sparkes told Mr Vincent that he did not want to hear about it anymore. The request had been declined and the reasons made clear.
31. On 30 October, Mr Vincent approached Mr Sankey again, asking for the extended leave and that his period of sickness during the summer shutdown be reimbursed as holiday. On 4 November Mr Sparkes asked Ms Moody for her help. He told her that, although Mr Sparkes had told Mr Vincent of the Company's decision and Ms Moody's letter of 8 October had confirmed it, he was still raising it with Ms Medeliene and Mr Sankey. Mr Sparkes asked her

- to discuss it with Mr Vincent herself. She replied on 11 November that If Mr Sparkes and Mr Sankey had both made clear that the request had been declined, she was not sure “how much clearer we can make it”.
32. During November 2019 it became apparent that Mr Vincent’s father may have bladder cancer. After a team meeting on 12 November, Mr Vincent stayed on in the room with Mr Sparkes and gave further reasons why he should be allowed the extended leave, namely his father’s symptoms and family issues he had with his son. Mr Sparkes was sympathetic but told him there was nothing he could do. He pointed out to Mr Vincent that at no stage had he approached HR about the matter or appealed the decision, as Mr Sparkes had advised him to do.
33. At a team meeting on 21 November, Mr Vincent brought up his extended leave request again. He repeated the reasons he thought it should be granted and added that his father had now been diagnosed with cancer. Mr Sparkes asked Mr Vincent if he had approached HR and Mr Vincent replied that he was just going to go off on the sick. Mr Sparkes emailed Ms Moody and Mr Sankey and told them he had had a chat with Mr Vincent again about his holiday and he was still talking about it. He was still raising the reimbursement of his period of sickness and ignoring the other two policy issues that remained (presumably his ineligibility to apply for extended leave and the fact that no holidays could be taken in the weeks before and after the Christmas shutdown). He asked Ms Moody to call Mr Vincent herself to discuss the issue with him. The Tribunal heard no evidence as to whether or not she did so.
34. On 2 December Mr Vincent went to his GP because he was feeling stressed and depressed. He said to his GP that he was feeling stressed and depressed. He explained that the Company had refused him permission to take time off to go on holiday with his partner and that she was going without him. His GP said that he thought it would be good for Mr Vincent’s health if he went on the holiday. He issued Mr Vincent with a Med3 form confirming that because of “stress-depression” he was unfit for work from 2 December 2109 until 3 January 2020.
35. On 3 December at 8.22 Mr Vincent called the Company under its absence reporting procedure and left a message saying that he was sick with depression and stress and would be back at work on 3 January 2020. When informed of this by HR, Mr Sparkes emailed them: “he told me he was going to do this to get around his holiday”.

The disciplinary process

36. On 6 January 2020, Mr Vincent’s first day back at work, Mr Sankey held an investigation meeting with him, accompanied by Ms Owen, HR and Payroll

- Coordinator. The letter inviting him to the meeting said that the Company was investigating an allegation that he had had an unauthorised absence by taking a period of leave without permission.
37. At the investigation meeting, Mr Vincent explained that he nearly did not go on the holiday. He saw his GP who advised that he go. He said that he had every intention to return to work the next day but his GP said he needed the time off. His partner was going anyway. Her going without Mr Vincent “would have left me in a bad place”. During the meeting, Mr Sankey put it to Mr Vincent that he had repeatedly said that he would “take time off regardless”. He responded: “that was my state of mind at the time”. Mr Sankey put it to him that at a team meeting he had told Mr Sparkes that he would go on stress leave if the Company did not grant him the leave. Mr Vincent denied that he had ever said that. He also said that he had believed his relationship with his partner would break down if he did not go on the holiday. He said that he had been scared to go to HR. When asked why, he said that he needed the time off and wasn’t getting any help. Ms Owen reminded Mr Vincent of the support the Company had given him with his mental health issues during numerous supportive conversations with HR, when he had been provided with contact details for sources of help. When asked why he could not have gone to Zimbabwe during the Christmas shutdown dates (which were 23 December 2019 to 1 January 2020 inclusive), Mr Vincent responded that his partner planned it all.
38. After the meeting, Mr Sankey spoke to Mr Sparkes again, who confirmed that Mr Vincent had definitely said in a team meeting that he would take the holiday regardless of the Company’s decision. He provided a copy of minutes of the meeting of 22 October, which he had already given to Ms Moody on 3 December. As already mentioned above, this version of the minutes included this text: “Chris Holiday for December – Chris not sure of next steps but says he will go on Stress leave if IAC do not change mind over rejected holiday. Chris has been told to make a decision and inform myself and stop talking about it.” On 7 January Ms Owen also interviewed Mr Sparkes. He confirmed that Mr Vincent had repeatedly said that he would go off on the sick, although he had not used the word “stress” and the minutes were not accurate to that extent. He confirmed that Mr Wilson had told him that Mr Vincent had told him he was going on his holiday either way.
39. Ms Owen also interviewed Mr Wilson. He told her that when Mr Vincent had been told he would not be reimbursed his leave during the summer shutdown he was angry and said he would take it anyway. Mr Wilson viewed that as a display of bravado on Mr Vincent’s part. Closer to the time of the holiday Mr Vincent just said that he could not go. He could not recall Mr Vincent saying that he would go off sick or go off with stress for the period of the holiday, although he had said that he might end up going off with stress due to the situation overall.

40. Ms Owen interviewed Ms Medeliene. When asked whether Mr Vincent had ever said at a team meeting that he would go off on sick or go off with stress when discussing his leave request, Ms Medeliene said he did not mention sick leave or going on sick, he just repeated that he had had a very stressful year and did not know what to do. When asked whether she recalled him saying anything like this outside of the team meetings she said she was not sure.
41. Mr Sankey felt that there was enough credible evidence to suggest that Mr Vincent intended to take the time off regardless of the Company's decision. He recommended that the case go forward to a disciplinary hearing.
42. On 21 January, Mr Vincent attended a disciplinary meeting held by Mr Dallas. Ms Moody was there as note taker. Mr Simpson accompanied Mr Vincent as his trade union representative. In the letter inviting him to the meeting, Mr Vincent was told that the meeting was to discuss the allegation that he had taken a period of absence without permission. The letter warned that the meeting could result in him being issued with a formal warning or being summarily dismissed.
43. At the disciplinary meeting, Mr Vincent repeated that he had never said he would go off with stress. He was asked why he had said to Mr Sankey in the investigatory interview, when asked whether he was telling people he would take time off regardless, "that was my state of mind at the time". His response was that he had misconstrued Mr Sankey's question: he was in fact referring to the time when he was initially told he would not be reimbursed for his period of sickness during the summer shutdown. Mr Vincent confirmed that the GP had given him antidepressants and recommended he take some time off work. "He put me on the sick." Mr Vincent confirmed that he had left the UK for Zimbabwe on 10 December and returned on 2 January. These were the dates he had originally requested as extended leave. He also confirmed that he was aware his holiday was not authorised, he had insufficient leave entitlement to take the time off, he was not eligible for extended leave and if he took it there could be disciplinary action taken against him.
44. The meeting was adjourned and Mr Dallas interviewed Mr Sparkes again. He confirmed that Mr Vincent had not mentioned the word stress and the use of that word in the minutes of the meeting on 22 October was a "typo", but he had said repeatedly he would go off on sick leave.
45. Mr Dallas also interviewed Mr Sankey again, who confirmed that Mr Vincent had never said to him directly that he would take the holiday anyway.
46. Mr Dallas interviewed Ms Medeliene again. He went through Mr Sparkes's minutes of the meeting of 22 October at which she had been present and she

confirmed that they were accurate in general but that the version he had sent to her did not include the section about Chris's holiday. She gave Mr Dallas a copy of the version she had received. She confirmed that in the meeting Mr Vincent had spoken to Mr Sparkes about his holiday and said he did not know what to do. Reluctantly and in some distress, she also confirmed to Mr Dallas that Mr Vincent had told her that he would take the holiday anyway, although this was not in the meeting but later. He had said he really needed the time off. She had told him that, whatever he decided to do, he should not include her, as he'd put her in a bad position. He had said, "I can't let it go, it's too expensive, I really need the time off."

47. The disciplinary meeting was reconvened on 27 January. At this stage, Mr Vincent had not received the notes of the additional interviews. At the meeting (at which Mr Vincent was now accompanied by a different union representative, Kim Deighton) Mr Vincent accepted that in August, when he first knew his leave request was not granted, he probably did say he would take the leave regardless, as Mr Wilson had confirmed. Mr Dallas referred to another person having confirmed that he said the same thing in around November, 4 months later. He did not give Mr Vincent Ms Medeliene's name because he did not want to add to her distress at becoming involved when she had not wanted to be. There was then an exchange between Mr Dallas and Mr Vincent:

KD - This goes over a space of 4 months, the latest person you said it to goes as late as November 2019. That doesn't sound like a flippant comment, you planned it.

CV – Its what I wanted to do, I needed the time off, I felt the break did me good.

KD- You were advised that by doing that, it may lead to disciplinary?

CV – Yes

KD- Is there anything else I've missed?

CV – Things were said, I needed a genuine break in all honesty, I didn't know I would go until my partner was packing her bags and I thought I needed to go with her. This whole thing has made me unbelievably stressed.

48. At the end of the meeting, Mr Dallas adjourned to make a decision. He then reconvened the meeting and told Mr Vincent that he had decided to dismiss him. He had found Mr Vincent to be deliberately evasive and dishonest. He had initially denied that he had said that he would take the time off regardless and later had admitted he did. He had made others stressed and put them in

- a compromising situation. (This was a reference to Ms Medeliene's evidence.) He had concluded that this amounted to gross misconduct for refusing to follow procedure and refusing to follow instructions. The letter of dismissal gave the grounds as taking a period of extended leave without permission, serious failure to follow instructions and serious insubordination. In that letter, Mr Dallas confirmed that he had found Mr Vincent to be deliberately evasive in his account of events and that he had contradicted himself. Mr Dallas confirmed that four people had confirmed that Mr Vincent had said he would take the time off regardless of the Company's decision and he himself had eventually admitted that he had said this. He had deliberately decided to take extended leave that he had been refused permission to take and been evasive and dishonest during the Company's investigation.
49. Mr Vincent asked for a copy of all the evidence the Company relied on in reaching its decision, including that from the anonymous source mentioned in the disciplinary meeting. The Company at this point supplied the notes of the interviews Mr Dallas had had with Mr Sparkes, Mr Sankey and Ms Medeliene after the first part of the disciplinary meeting.
50. On 10 February Mr Vincent sent the Company his letter of appeal. His principal ground of appeal was that he had not taken an extended period of leave without permission but had been on sick leave. His GP had advised him during his appointment on 2 December that a holiday would be beneficial to his mental health. He said that the Company was welcome to contact his doctor about his condition. He did not require the Company's permission to go on holiday whilst on sick leave. He criticised the Company for not supplying him with a copy of Ms Medeliene's statement. He said that it was unfair for the Company to have dismissed him for serious insubordination or serious failure to follow the rules when this was not how the allegations had been put during the disciplinary process.
51. Mr Vincent also sent the Company a letter from his GP practice dated 11 February 2020 which confirmed he had been suffering from stress and low mood for the last few months due to various incidents in his personal life. He had attended his GP on 19 October and been diagnosed with depression. He was prescribed medication and advised to self-refer for counselling. He was reviewed again on 2 December 2019 and 13 January and 3 February 2020 to check his wellbeing, compliance with medication and adjust his medications.
52. At a meeting on 13 February Mr Fickling considered Mr Vincent's appeal. Mr Simpson again represented Mr Vincent. Mr Vincent said that he had gone to his GP on 2 December to get his prescription updated and told his GP that he needed a holiday but the Company had rejected his request. His GP said he did not think it was good for him to stay at home whilst his partner was away and issued him with the Med3.

53. Mr Vincent said that at that point he did not know what to do. He had no travel insurance or inoculations but when it got to the point when his partner was packing her bags he made up his mind that he was not going to stay at home on his own.
54. On 25 February Mr Fickling sent Mr Vincent a letter confirming that his appeal had not been upheld. Mr Fickling was satisfied that Mr Vincent had not approached the Company to discuss his diagnosis of depression or his GP's advice on 2 December that he should go on the holiday. Mr Vincent had made no attempt to re-arrange the holiday to fit in with the Christmas shutdown dates. There was sufficient evidence from those around Mr Vincent to indicate that he had said he intended to take time off regardless of the Company's decision. Mr Fickling accepted that Ms Medeliene's statement should have been provided to Mr Vincent earlier, but the failure to do so had not prevented him from defending his actions. Whilst the wording of the disciplinary charges that were given as the basis of his dismissal was different from the original charge of taking a period of leave without permission, they were not new charges but fell within the nature of the original charge. Mr Fickling did not believe that Mr Vincent had decided to go on the holiday only once his GP had advised him to do so. He believed that Mr Vincent had avoided using official channels to resolve the matter to avoid having a further confirmation that his request for leave was refused. In summary, Mr Fickling was satisfied that the decision to dismiss Mr Vincent was correct.

Analysis: unfair dismissal

55. The Tribunal has considered the criticisms that Mr Vincent makes of the Company's decision.
56. The letters inviting Mr Vincent to his investigatory and disciplinary meetings describe the allegation against him as taking unauthorised absence by taking a period of leave without permission. The Company's disciplinary rules categorise unauthorised absence as misconduct rather than gross misconduct. By the time of the decision to dismiss, Mr Vincent's conduct was described differently, as serious insubordination. That is categorised as gross misconduct in the Company's disciplinary rules. The Tribunal is satisfied, however, that at all times Mr Vincent was aware of the allegation he was facing, that he had taken leave after having been repeatedly refused it. That clearly amounts to an act of serious insubordination. Further, the letters inviting him to the investigatory and disciplinary meetings all warned him that he might be dismissed as a result of the disciplinary process. He was therefore aware at all times that the Company viewed the allegation he was facing as serious misconduct. The Tribunal does not accept that the decision to dismiss Mr Vincent was unreasonable because he was not aware of the allegation he faced or how seriously it was being viewed by the Company.

57. The Tribunal also accepts that, at the time he made his decision to dismiss Mr Vincent, Mr Dallas had reasonable grounds for his belief that Mr Vincent had told various people that he intended to take the extended leave he had requested regardless of the Company's decision to refuse it. Mr Vincent had admitted this himself, to Mr Sankey in the investigatory interview. Mr Wilson had confirmed that Mr Vincent had said this to him in August/September, when he had first found he would not have his period of sickness during the summer shutdown reimbursed. Mr Wilson had also told Mr Sankey that Mr Vincent was saying he would take the leave to colleagues in the canteen. Mr Sparkes had told him that Mr Vincent had said it to him repeatedly. He also said that Mr Vincent had said it at the team meeting on 22 October but, as mentioned above, the Tribunal does not accept that he did. Although Ms Medeliene gave Mr Dallas a copy of her version of the team meeting of 22 October on 22 January, neither he nor Mr Fickling considered the significance of the difference between that version and the minutes supplied by Mr Sparkes. The Tribunal does accept, however, that they both had Mr Sparkes's confirmation that Mr Vincent had indicated he would take the time off and they had no reason to doubt the thrust of Mr Sparkes's evidence to them.
58. Mr Dallas also knew that Ms Madeleine had said that Mr Vincent had said to her as recently as November that he was going to take the holiday. The Tribunal does not accept that the failure to provide Mr Vincent with a copy of the note of Ms Medeliene's interview until the appeal stage made his dismissal unfair. He had a full opportunity during the appeal meeting to query her evidence if he wanted to do so but he did not raise or challenge the content of it at all. Even at the Tribunal Hearing, Mr Vincent said only that he could not recall telling her that he was going to go on the holiday. Mr Dallas was entitled to give Ms Medeliene's evidence some weight, given her obvious reluctance to get involved.
59. The Tribunal does consider, however, that it was unreasonable for the Company not to have expressly considered and addressed with Mr Vincent the implications of the existence of the Med3 before deciding to dismiss him. The Tribunal saw no evidence in Mr Dallas's or Mr Fickling's witness statements or in the notes of the meetings they conducted or in their letters confirming their decisions that either of them considered the implications of the fact that, at the time of Mr Vincent's trip to Zimbabwe, he was covered by a certificate from his GP stating that he was unfit for work.
60. There was nothing in the Company's written policies or procedures that prohibited employees from travelling away from home during sickness absence. In his evidence to the Tribunal, Mr Dallas said he could not remember whether the Company had a policy on employees taking holiday during sick leave but accepted that he had not seen anything like that. Mr Fickling was also unaware of any Company policy that says an employee is

not permitted to go away when on sick leave, although he thought that the Company needed to be aware if an employee was going on holiday when on sick leave, because of the need to ensure the Company could still be updated on the employee's state of health.

61. The Tribunal accepts that an employer is not obliged to accept a GP's certificate that an employee is unfit for work as conclusive evidence of that fact. There may be good reasons why the employer doubts that the GP's opinion is reliable, including, for example, where there is evidence that the employee may not have given the GP accurate and complete information about his condition. The Tribunal also accepts that if an employee is involved in activity during sick leave that casts doubt on whether he is in fact incapacitated in the way he claims, an employer can reasonably conclude that the employee is not in fact entitled to sick leave and that his absence is therefore unauthorised. An example might be an employee who claims to be incapacitated with sciatica who is found to have spent his sick leave decorating his kitchen or digging his allotment. But nowhere in their witness statements, the minutes of the meetings they conducted or the letters they wrote confirming their decisions did Mr Dallas or Mr Fickling indicate that, at the time they were considering Mr Vincent's case, they doubted the validity of his GP's certification that he was unfit for work due to stress and depression during the period of 2 December 2019 to 4 January 2020.
62. It was only when questioned about the significance of the Med3 by the Tribunal that Mr Dallas said that he viewed the Med3 as "guidance only". Mr Dallas told the Tribunal that he believed that Mr Vincent had not visited his GP until he required the time off in December 2019, and he had not provided any evidence to suggest that he had visited his GP prior to this. This is not consistent with the minutes of the disciplinary meeting on 21 January, which record that Mr Vincent told Mr Dallas that he had started on anti-depressant medication a few months before, in November or maybe earlier, which would have meant he had seen his GP then. By the time of his appeal, Mr Vincent had supplied a letter from his GP that was consistent with this: it confirmed that Mr Vincent had been prescribed anti-depressants on 19 October and had then been reviewed on 2 December and subsequent dates.
63. When it was put to Mr Fickling at the Tribunal Hearing that the issue for him was that Mr Vincent's sick leave was not genuine, he said that he was suspicious that Mr Vincent had taken sick leave for the same period as the dates of the holiday that had been refused. He accepted that he did not have any reason to believe that Mr Vincent did not have the stress and depression he discussed with his GP at the appointment on 2 December, but added that he did not think that Mr Vincent's condition was as bad as he said it was. He gave the Med3 some weight but said that, in the Company's experience, GPs routinely ask employees: "would you like to be signed off?" and "how long do you want to be signed off for?". Mr Fickling believed that Mr Vincent had gone

to his GP when he did with the purpose of getting himself signed off as unfit for work. He accepted that perhaps he should have put it to Mr Vincent that he was manipulating the system by going to see his GP when he did. Mr Fickling said he would have contacted Mr Vincent's GP for a report if he had felt it necessary to do so, but he did not. He also accepted that it might be beneficial to the health of an employee who was depressed to go on holiday.

64. In summary, the Tribunal has concluded that both Mr Dallas and Mr Fickling's decisions rested on a belief, which they never expressed to Mr Vincent, that:

- a. whilst the Med3 certificate accurately identified that he was stressed and depressed, it was not reliable evidence that Mr Vincent was in fact unfit for work for those reasons; and
- b. Mr Vincent had gone to his GP in the knowledge that it would be easy for him to obtain a Med3 to cover the period when he wanted to go away and with the intention of getting that document, even though he knew he was not in fact so incapacitated by stress and depression as to be unfit for work.

65. The Tribunal has concluded that it was unreasonable for the Company to have reached a decision that Mr Vincent had taken unauthorised absence, and been guilty of serious insubordination in doing so, without expressly exploring these fundamental matters with him and giving him an opportunity to comment upon them. His dismissal was therefore unfair.

Breach of contract

66. It is not in dispute that Mr Vincent knew that there were several reasons why the Company had refused his request to take annual leave to visit Zimbabwe with his partner and that these were in line with the Company's holiday policy. The Tribunal is satisfied, however, that he intended throughout to find a way to go with her. Although his partner knew that the Company had refused him permission to take annual leave, she did not cancel his plane ticket. Mr Vincent's evidence was that his partner made the travel arrangements and they were nothing to do with him, but the Tribunal does not find it credible that he had no influence over whether the ticket was cancelled. As late as November, Mr Vincent was telling Ms Medeliene that he could not afford not to go. It is also noteworthy that Mr Vincent at no time took up the suggestions of Mr Wilson, Mr Sankey and Mr Sparkes that he appeal the Company's decision to refuse his request for leave, either to the Plant Manager or HR. The Tribunal considers it more likely than not that this was because he did not want another formal decision refusing him permission to go when he intended to do so.

67. The Tribunal accepts that Mr Vincent had had a stressful year, with the death of his mother, the demands of caring for his father, a falling out with his son and a forced house move. He was depressed, stressed and in need of a break. The Tribunal is satisfied that he went to see his GP when he did with the intention of obtaining a Med3 to cover the period when he wanted to travel to Zimbabwe. He knew that his GP was likely to give him a Med3 if he explained that he felt low and the Company was not allowing him to go away with his partner. At the disciplinary meeting, however, he told Mr Dallas that he had gone to the GP with every intention of returning to work the next day. This indicates that he was not in fact feeling so stressed and low as to be unfit for work at this time. He was in any event shortly to have 10 days off work because of the Christmas shutdown, which would give him the break he needed. If going to Zimbabwe was really essential for his mental health, he could have tried to alter the dates of his flight so that he could join his partner for the shutdown period, but he did not do so. He told Mr Sankey that, given the length of the flights, it would not have been worth it for the time he would then have had in Zimbabwe. He did not say that a shorter stay would not have helped his mental health.
68. The Tribunal accepts that Mr Vincent's GP told him that going to Zimbabwe with his partner would be good for him, but the Tribunal does not view that as tantamount to medical advice that he should go on holiday for three weeks. His GP was simply stating what amounted to a self-evidence fact: going on holiday for three weeks with his partner would help improve his low mood. The Tribunal does not doubt that the GP was acting in good faith when he certified that Mr Vincent was unfit for work, but he was basing the certificate on what Mr Vincent told him and did not know the full circumstances behind Mr Vincent's visit to see him. In all the circumstances, the Tribunal considers that the Med3 should not be viewed as providing conclusive evidence that Mr Vincent was in fact unfit for work.
69. The Tribunal is in no doubt that Mr Vincent was experiencing a heightened level of stress at this time. But this was more likely than not due to the tension he felt between, on the one hand, his knowledge that, despite repeated requests, he had been refused permission to go away and, on the other hand, his belief that his relationship with his partner would be damaged if he did not go and the £1,500 they had spent on his plane ticket would be wasted. That tension is evident in what he said to Ms Medeliene in November and what he said to Mr Dallas at the end of the disciplinary meeting.
70. In summary, the Tribunal finds that Mr Vincent knowingly obtained a Med3 from his GP in order to provide cover for his trip to Zimbabwe when his repeated requests for authorisation to take that period as annual leave were refused. That conduct was less than honest and in all the circumstances did amount to serious insubordination and a fundamental breach of his contract of employment. The Company was therefore released from its obligation to

provide him with notice of termination of his contract and his claim for damages for breach of contract fails.

Unfair dismissal: remedy

71. Mr Vincent has confirmed that he wishes to be awarded compensation if his unfair dismissal claim succeeds.
72. Compensation for unfair dismissal consists of a basic award and a compensatory award.
73. The Tribunal has power to reduce the basic and compensatory awards by such amount as it considers just and equitable if it is satisfied that the Claimant was guilty of some form of culpable or blameworthy conduct (Section 122(2) and 123(6) ERA; Nelson v BBC (No. 2) (1980) ICR 110). In the case of the compensatory award, this must be conduct that caused or contributed to the Claimant's dismissal.
74. Based on its findings above in relation to the breach of contract claim, the Tribunal finds that Mr Vincent's conduct was culpable and blameworthy. Whilst the Tribunal has sympathy for the predicament in which he found himself, he nevertheless was not honest in the way he chose to resolve that predicament. If he had appealed the Company's decision, as he was repeatedly advised to do by Mr Wilson, Mr Sankey and Mr Sparkes, the Company might well have changed its mind. Instead, he decided to obtain a sick note from his GP to cover his absence. In taking that course, he was the author of his own dismissal. In those circumstances, the Tribunal considers it just and equitable to reduce both his basic award and his compensatory award by 100%.
75. In summary, whilst the Tribunal finds that Mr Vincent's dismissal was unfair, it awards him no compensation.

Employment Judge Cox

Date: 15 January 2021