EMPLOYMENT TRIBUNALS

Claimant: Mr D Lambert

Respondent: McBurney Transport Group Limited

HELD AT: Manchester **ON:** 11 and 12 September 2024

BEFORE: Employment Judge Barker

REPRESENTATION:

Claimant: In person
Respondent: Ms Jones, counsel

JUDGMENT

The claimant was not unfairly dismissed by the respondent. The claimant's unfair dismissal claim fails and is dismissed.

REASONS

Preliminary Matters and Issues for the Tribunal to decide

1. The parties had prepared witness statements which the Tribunal read. The claimant provided a witness statement for himself and also a "character reference" statement from a personal friend, Mr Coyne. The respondents provided witness evidence from Mr Currell, operations manager, Mr McKeown, HR and compliance director, and Mr O'Donnell, divisional director. Additional documents were introduced as evidence by the respondent during the hearing which were not objected to by the claimant. The parties agreed a list of the legal issues for the Tribunal to decide at the start of the hearing, which set out the questions for the Tribunal to decide. The parties made oral closing submissions which the Tribunal has considered.

2. The claimant alleges that he was unfairly dismissed by the respondent. The respondent's response is that he was fairly dismissed for gross misconduct. Where an individual has been dismissed for misconduct, the issues for the Tribunal to decide are:

   2.1. Was misconduct the reason for the claimant's dismissal? The claimant told the Tribunal that he did not accept that this was the reason for his dismissal. He was not able to say what he thought the reason may be, but he told the Tribunal he was entirely unaware of what the misconduct he was supposed to have committed was. He told the Tribunal that he could not understand how matters had got to this point without there being any evidence of misconduct;
   2.2. Did the respondent have a genuine belief that the claimant was guilty of the misconduct alleged?
   2.3. Was the belief in misconduct arrived at having carried out as much investigation into the matter as was reasonable in all the circumstances of the case? The claimant says that he should have been invited to an investigation meeting, with notice of the same, and he was not.
   2.4. Was the procedure within the band of reasonable responses, in other words, would a reasonable employer have carried out the procedure the respondent did? The claimant says that the process took far too long.
   2.5. Was the sanction within the band of reasonable responses, in other words, would a reasonable employer have imposed the sanction that the respondent did?

3. The parties put forward evidence which the Tribunal has considered. However, if the following findings of fact are silent in relation to some of that evidence, it is not that it has not been considered, but that it was insufficiently relevant to the issues that the Tribunal had to decide.

Findings of Fact

4. The respondent is a logistics supplier in the UK and Ireland and employs approximately 160 staff. The claimant began working for the respondent in 2011 as an HGV driver and had a break in his service, returning to work for them in 2019. He was dismissed for gross misconduct on 12 March 2024 and had over four years' service at the time. The claimant told the Tribunal that he has over 25 years' experience in the industry.

5. The parties agree that prior to the events of 17 November 2023, the claimant had a clean disciplinary record and no history of misconduct in his employment with the respondent. On the day in question, the claimant was scheduled to do a 13-hour day. The parties agree that 13 hours was the maximum period he could be working on that day, as he had already done the maximum number of 15-hour days that week. The parties agree that as the claimant started work at 06.25, he would have needed to have returned to the depot at 19.25 that day.

6. The claimant told the Tribunal that when he returned to the respondent's employment in 2019, he had an arrangement with a previous owner of the business, Mr Phil McBurney, to allow him to finish work at 7pm when he needed to collect his son. Neither party has any formal record of this arrangement and Mr McKeown's evidence, as the head of HR at the respondent, was that he had no

knowledge of this arrangement. His evidence, which I accept, was that any such arrangement could be accommodated but that it would have to be formally registered with the respondent's planning department when allocating his work. I accept that it was never registered in this way, and I find that Mr Lambert sought to manage the 7pm finish time informally. This placed him under pressure when he encountered delays, which pressure was unnecessary as the respondent would have been formally able to accommodate his 7pm finish time within his daily schedule had he made them aware of it.

7. I accept that when Mr Lambert returned to employment at the respondent that he was not given a written contract of employment. The respondent should have provided him with a written record of the terms of his employment and they did not. However, nothing turns on this issue for the purposes of the claimant's unfair dismissal complaint. The terms of his employment are not in dispute.

8. The respondent users a driver's app to distribute work to its drivers and the claimant regularly used the app for that purpose. The app also enabled the respondent's drivers to book holidays and request uniform, as well as access important documents such as risk assessments and the staff handbook. The claimant told the Tribunal that he was wholly unable to use technology and so had never accessed the risk assessments or staff handbook via the app, or ordered uniform, or booked holidays that way.

9. The respondent produced a document dated 26 June 2019 which was the claimant's signed copy of a receipt of the respondent's staff handbook, which also stated "I will read and familiarise myself with the contents at my earliest convenience." It was the claimant's evidence that he signed this without receiving a copy of the staff handbook. He was told a copy would be passed to him, and it never was. I find that even if I were to accept the claimant's evidence that he was wholly unable to access an app on his phone to read the staff handbook, he understood by signing the document on 26 June 2019 that it was a document that he needed to read. Had he not been passed a paper copy, and given that he says he cannot read the copy on the app, it was his responsibility to ask the respondent for a paper copy and he did not.

10. The claimant and the respondent agree that all parties, that is, the driver, the haulage company and the customer, are responsible for ensuring that a load is safely loaded and secured before a driver takes the load on a public highway. The claimant said at one point in his evidence that he believed that the driver took the ultimate risk and the final decision, but I accept the evidence of Mr McKeown that this is incorrect. The respondent holds an operator's licence and is insured for the risk of their drivers carrying goods on the public highway in their vehicles, and therefore a driver cannot override or discount the requirements of the respondent when assessing whether a load is safe to take out onto the highway.

11. On 17 November 2023, the claimant was due to collect from a boat from Dublin that was late docking into Liverpool. He arrived at the port before 7am but did not leave until 10.39am. He contacted the respondent's office regarding the delay. In his witness statement he refers on several occasions to the fact that traffic "deteriorates" on a Friday, and the "Friday rush hour". However, I accept the respondent's evidence that their driver planning team factors such predictably busy

road conditions into their planning and would have accommodated for this in the claimant's route. I do not accept that this was an extra unknown factor that added to the risk of him not finishing in time as this had already been factored in to his day's work.

12. He completed his morning delivery to Sheffield and in the afternoon had to travel to Blackburn to a customer called Star Tissue, to collect another load and deliver it to Liverpool before returning to the depot by 7.25pm according to his legal limits, or 7pm according to what he wanted to achieve with his family and collecting his son.

13. He arrived on site at Star Tissue at 16.28. It is the respondent's evidence that this allowed him ample time to load, secure his vehicle and drive back. The estimated driving time from Blackburn to Liverpool is usually one hour, or one and a half hours on Friday afternoon.

14. His evidence was that he was greeted with hostility when he arrived on site, as the load he was collecting was due to be collected the day before. He was told "you're late", which I find he found to be an objectionable comment. The respondent accepts that the load was supposed to be collected the day before and Mr Currell's evidence was that the claimant, as part of providing good customer service, should have either apologised for this or ignored the comment, as it would have been dealt with by those at the respondent who dealt with customer service matters.

15. The claimant's evidence was that he had not been expecting to collect 52 pallets of paper at Star Tissue, which filled his trailer almost to the roof. The respondent did not consider it to be unusual or impossible to load 52 pallets, but Mr Currell agreed that this would have been a more time-consuming job than a 26-pallet load. The claimant told the Tribunal that as he had been to the site many times before, he parked where he was told to and opened the curtains on one side of the trailer. He did not engage in a discussion with those on site about what was due to be loaded or how. His evidence was that he was not aware that the forklift truck driver was loading the pallets on four at a time up to the roof of the trailer as he could not see what was happening from the other side of the trailer.

16. A disagreement broke out between the claimant and the customer's employees. They told him that he needed to strap down the load inside the truck before leaving the depot. His evidence was that this was impossible given the size of the load and the type of trailer he had been sent with. I do not accept his evidence in this regard. He did not raise at any time before these proceedings were issued that he did not have enough rachet straps inside his vehicle to secure the load, and I do not accept that this was the case. He told the Tribunal that strapping the goods inside the trailer would have damaged them, but the respondent's evidence was that it was at the customer's request and had been done on previous occasions by the respondent. The claimant said that as the goods had already been mostly loaded, it would have put him at risk to climb inside the trailer, and he would not have been able to pass the rachet straps over the top of the pallets in any case. Mr McKeown said that there was a pole in the vehicle for that purpose.

17. The respondent's evidence, which I accept, was that another course of action was to ask the customer to unload some pallets so that they could have been lifted onto

the trailer with the rachet straps laid over them, and secured on each side once loaded. The claimant's evidence was that this would have not been possible as he did not have enough time to do this before his driving time ran out. Alternatively the claimant's evidence at other times was that he asked the customer's staff to do this and they refused.

18. The claimant repeatedly said, both on the day in question and subsequently, including in his evidence to the Tribunal, that he did not have enough time to strap down the load. I accept the respondent's evidence that the claimant argued with the customer's staff about the load from approximately 16.45 until he left the site at 17.19. This was ample time to have unloaded the pallets and re-loaded them to allow the rachet straps to be used. I accept their evidence in this regard. I also note that Mr Currell told the claimant that the sat-nav showed that at approximately 5pm he was 90 minutes' drive away from Liverpool at the customer's site and so had he left at 5.19pm and taken an efficient route back, he would have arrived back in Liverpool at approximately 6.50pm.

19. However, Mr McKeown's evidence was that had the load not been able to be secured to the satisfaction of the driver and the customer, the driver should have phoned the respondent's traffic planning desk who would have referred him either to the customer services team or to the respondent's driver trainers who are specialised in safe loading practices and are available to give advice to drivers.

20. Therefore, even if I were to accept the claimant's case at its highest and accept that:

    20.1. The customer was unpleasant and aggressive to him on site;
    20.2. He did not have enough rachet straps in his vehicle to secure the load;
    20.3. The customer was asked by him to unload the pallets and refused;
    20.4. He was under pressure to get back to collect his son at 7pm;

    it was still reasonable of the respondent to find that his subsequent conduct was entirely inappropriate and brought the respondent into disrepute. I find that it would have been reasonable for him to offer to resolve the dispute by telephoning the respondent to ask them to liaise with the customer. He should have waited to allow this to happen. However, he did not wish to wait to allow this to happen. He also did not want to have to unload and reload the trailer, or climb into the trailer to attach the rachet straps in that way.

21. As he was not prepared to take any more action to resolve the issue, or to wait while others negotiated to resolve the issue, I find that he became more and more agitated and hostile towards the customer. This happened relatively quickly. The problem with the load became apparent at about 16.40- 16.45. The claimant gave the customer an ultimatum at that point – that he either drive away without securing the load as they wanted him to, or that they unload the pallets and he drive off with the empty trailer, or that the trailer remained full but he drove off without it. The customer did not wish to accept any of these options, and the respondent's customer services team continued to discuss the matter with the customer over the phone while the claimant was in the customer's yard.

22. The claimant did not wait for the phone calls to resolve the matter, but dropped the full trailer in the customer's yard. The customer closed the site gates to prevent him driving off without the load. At this point I find that the claimant escalated the row, by threatening to drive the HGV through the site gates unless they opened them. When they refused, he phoned Mr Currell and asked him to call the police on the basis that he was being "held against his will". When Mr Currell told him to calm down and let the respondent handle it, the claimant said to him *"…its not my problem, I got here on time, I am not fucking about now, my son's more important than fucking bog roll.*"

23. Mr Currell spoke to the claimant again while he was on the road back to Liverpool, having left the loaded trailer behind at the customer's premises, without waiting for a more acceptable solution to be found. The customer let him out of the gate when they realised that he had called the police. Mr Currell made it clear to the claimant that he considered that his behaviour had been inappropriate. Mr Currell said "*the whole thing could have been handled differently, I just don't think there is any need for you behaving the way you did on the site, you should have let us try and resolve.*"

24. Of particular note was Mr Lambert's repeated insistence that he needed to leave and wanted to get out of the gate due to the three employees of the customer looking at him "condescendingly". He made frequent references to the fact that, when the customer's employees closed the site gates, he was being "held against my will" which was "illegal". The respondent did not accept that this was "illegal" as they had given him a lawful management instruction to wait in the yard while they tried to resolve the issue.

25. He accepted that he had told the customer that unless they opened the gates, he would drive the HGV through them. He said that the reason for saying this was that he was "being held against my will." He accepted that he had both told Mr Currell to call the police and when Mr Currell did not, he agrees that he called the police himself. When it was put to him that this was an over-the-top reaction, the claimant said "No, I don't like someone telling me what to do. This was about them controlling me. I like my freedom. I dealt with it appropriately."

26. It was put to him that it was not unreasonable for the customer to have closed the gates, as he had said that he would drive off with the load as it was, as he considered he had secured it adequately and they did not accept that he had. The claimant's answer to this in cross-examination was to say "I didn't have the time. I had debated it long enough". However, at the time when he approached the customer's gates without the trailer to try to leave, it was still only 17.02 and he was only 90 minutes away from his end destination.

27. It was the evidence of Mr McKeown and Mr O'Donnell that the claimant then deliberately took a circuitous route home, travelling in the wrong direction onto the Manchester ring road (the M602) to go from Blackburn to Liverpool. This was so that he could then say that he was right to leave Blackburn when he did or risk running out of time. Mr O'Donnell put it to him that there were three or four possible routes he could have taken back to Liverpool that would all have been quicker than going via Manchester. Mr Currell told the claimant during their phone call on 17

November that the sat nav showed him to be 90 minutes away from Liverpool at the time they spoke, which was around 16.50.

28. Mr Lambert does not accept that he did anything wrong on that day. He referred to the events of 17 November during the hearing as “a small thing” and that he could not understand what the respondent thought he had done wrong or why he had been dismissed. However, when speaking to Mr Currell at 17.50 on the day in question, he asked Mr Currell “do you want me to empty the lorry out when I get back”, meaning, was he going to be dismissed. I find that he understood the seriousness of his actions at the time, but sought afterwards to defend them.

29. The respondent’s evidence was that Star Tissue ended their relationship with the respondent after the row on 17 November and that the respondent lost about £60,000 of revenue as a result. Mr Lambert does not accept that he caused the relationship to end. He considers that the events of 17 November were entirely the fault of the respondent and the customer.

30. I therefore find that the events of 17 November 2023 were reasonably clear to both the claimant and the respondent at the time they happened. There is not much disagreement on the important facts, and the key issues that the respondent considered to be most serious, such as threatening to drive the HGV through the gates and calling the police, were not disputed. This is relevant because it has an impact on the reasonableness of the respondent’s subsequent investigation and disciplinary process.

31. The claimant returned to work following the incident but was put on night shifts. He complains that on 24 November 2023 he was forced to fill in what he describes as a “questionnaire” about the incidents on 17 November 2023. I note that the document is a series of questions, many of which are open questions such as “Can you give an explanation of the events that occurred on this site?” and “Is there anything you would like to add?”

32. He says that the respondent refused to let him take it home and complete it and he was tired when he was required to fill it in. His colleague Alan Jones typed his statement as he dictated it and the claimant signed it but marked it “signed under duress”. Much of the statement reflects what the claimant presents in evidence to the Tribunal. It is noted that the claimant admits, both in the statement and in his evidence to the Tribunal, to the conduct that the respondent considers to be gross misconduct. When asked “It was alleged that you were argumentative with customer employees during the course of this event, what have you got to say with regard to this?” the claimant’s only reply was “He provoked it.”

33. When asked “it was also alleged that you were abusive to the customer security staff at the gatehouse and that you threatened to call the police what have you got to say with regard to this?” the claimants response was “I did call the police, they weren't allowing me to leave site which escalated the situation.” They also asked him “we are aware that you can coupled the trailer within the customer site and “bounced” back to Liverpool without consent from the customer, office planning staff or management, is this correct?” and the claimants reply was “I can't remember whether I told Stuart what I was doing or not as this was creating a welfare issue.”

34. The claimant was then invited to a disciplinary hearing scheduled for 27 November 2023. He said that he did not receive the letter this invited him to this disciplinary hearing and which set out the charges against him. However, he became aware that he had been invited to a disciplinary hearing and presented a sick note signing him off work with stress. The meeting was rearranged. The claimant became aware that Lyle Watson, a director at the respondent with whom he had previously had a conflict , was involved in the disciplinary process and was due to conduct his disciplinary hearing and had written the disciplinary invite letter which set out the charges against him including that the respondent considered his behaviour to amount to gross misconduct which may result in his dismissal.

35. The claimant set about trying to have Mr Watson removed from the disciplinary process because of what the claimant considered to be a conflict of interest. It was the claimant's case that Mr Watson had predetermined the entire matter. It is the claimant's case that the respondent delayed unreasonably in rescheduling the disciplinary hearing. However, the claimant continued to present sick notes to the respondent which did not expire until 30 April 2024. This was after the date of his eventual dismissal. I find it was not unreasonable for the respondent to have waited until the claimant was fit enough to attend work to conduct the disciplinary hearing.

36. The claimant eventually contacted a senior member of staff at the respondent's parent company, DFDS, which brought the matter to Mr McKeown's attention as head of HR. He took over the matter from Mr Watson and having understood that the claimant wished the hearing to go ahead despite being too unwell to attend work, the hearing eventually took place on 4 March 2024.

37. The claimant complains about a loss of income during this time as he was only in receipt of statutory sick pay. He also complains that there was no disciplinary investigation meeting and that he received no advance notice of the requirement to fill in the investigation statement on the 24th of November 2023. However, there is no requirement in the ACAS Code of Practice for an investigatory meeting to be held, or for any investigatory stage of the proceedings to be held only once the employee has been given advance notice. I do not accept that the failure to hold an investigation meeting in this case made the respondent's dismissal process unfair.

38. The claimant complaints about Mr McKeown's conduct of the disciplinary hearing. He complains that he was not given a fair hearing. I note but the hearing lasted for one hour and 10 minutes, a fact that the parties do not disagree with. I find that the claimant therefore had plenty of opportunity to put his case forward to Mr McKeown. It is the claimant's case that Mr McKeown did not allow him to say anything much during the hearing and that Mr McKeown did all the talking. It is also the claimant's case that Mr McKeown did not allow certain points raised by the claimant to go in the meeting minutes. It was Mr McKeown's evidence, which I accept, that the claimant sought to introduce matters that were not relevant and that these were therefore excluded from the meeting minutes.

39. I note that on 21 January 2024, the claimant had already emailed Mr Watson with a four-page statement which addressed each of the charges that the respondent had raised against him. Mr McKeown confirmed that he had read this statement.

Mr McKeown had also listened to the recording of the telephone calls between Mr Currell on the claimant on 17 November 2023. These were played to the claimant during the hearing. The claimant complaints that they were not played in full and that Mr McKeown repeatedly stopped them at what he thought were pertinent points.

40. Mr McKeown took the decision to dismiss the claimant and the dismissal was confirmed to him in a letter dated 12 March 2024. The claimant complains about the length of time that Mr McKeown took to give him that decision, but I find that just over a week is not a long period of time for him to take.

41. Having read Mr McKeown's letter, I consider that his decision is clear and is based on the evidence that was before him. He states

"you failed to give any reasonable explanation to why this incident occurred. By your own admissions you had heated exchanges with the customer. You did not contact the transport planners and make them aware of the situation and you decided to bring your vehicle back to Liverpool and end your shift with no communication to the transport planning.... during the meeting you continually answered questions by only stating I had got no time. Given the circumstances and that you failed to present any mitigating information, I have decided to terminate your employment."

42. The claimant was given a right of appeal, which he exercised, and he presented a lengthy appeal document to Mr O'Donnell, the appeal officer on 15 March 2024. The claimant makes no complaint about Mr O'Donnell's conduct of the appeal hearing, but withdrew his appeal before Mr O'Donnell was able to provide him with his decision. The claimant had taken the step of starting ACAS Early Conciliation on 7 February 2024. Early conciliation ended on 20 March 2024. The claimant submitted his ET1 to the Tribunal on 27 March 2024.

The Law

43. It is well established law that determination of an unfair dismissal complaint is to be done, in the first instance, in accordance with section 98 of the Employment Rights Act 1996.

44. A respondent employer must show on the balance of probabilities that it had a fair reason for dismissal. In this the respondent's reason is that of misconduct.

45. Where the potentially fair reason given by the employer is misconduct, the Tribunal is to have regard to the guidance set down in the case of ***British Home Stores v Burchell [1978] IRLR 379*** which is:

45.1. Did the respondent have an honest belief that the claimant had committed an act of misconduct?

45.2. Did the respondent have reasonable grounds for holding that belief?

45.3. At the time that that belief was formed on those grounds, had the respondent carried out as much of an investigation as was reasonable in the circumstances?

46. Although the ACAS Code of Practice on Disciplinary and Grievance Procedures is not legally binding, the Tribunal must have regard to it when assessing both the substantive and procedural fairness of an employer's decision to dismiss. However, it is a well-established feature of the law of unfair dismissal that the investigation and procedure need only be within a range of reasonable actions. For example, the investigation need only be a reasonable one and need not be a forensic examination of all possible evidence. In addition, there is no requirement to hold an investigation meeting or to give an employee notice that an investigation is being conducted.

47. Further requirements of the ACAS Code of Practice are that the employee must have enough information to understand the case against them and must be provided with a right of appeal.

48. The respondent must show that the reason to dismiss was within a range of reasonable responses that a respondent could have taken in that situation. There must be a fair investigation in all the circumstances, and the decision to dismiss must take into account equity and the substantive merits of the case.

49. In Westminster City Council v Cabaj 1996 ICR 960, CA, the Court of Appeal stated that although employers should follow the agreed procedures, a failure to do so would not necessarily mean that a dismissal is unfair. The question a Tribunal must decide in cases of unfair dismissal is not whether in all the circumstances the employer acted reasonably, but the narrower question under S.98(4) of whether the employer acted reasonably in treating the reason shown as a sufficient reason for dismissing the employee.

50. When assessing whether the employer adopted a reasonable procedure, Tribunals should use the range of reasonable responses test - J Sainsbury plc v Hitt 2003 ICR 111, CA; Whitbread plc (t/a Whitbread Medway Inns) v Hall 2001 ICR 699, CA.

51. The Tribunal is expressly cautioned against substituting its view for that of the respondent in reaching the decision to dismiss. The Tribunal must not decide the case on the basis of what it considers to be the correct action in the circumstances, but instead must decide whether the respondent's actions, including the decision to dismiss, were the actions of a reasonable employer in the circumstances.

Application of the law to the facts found

52. As was explained to Mr Lambert at the start of the hearing, a claim for unfair dismissal does not require the Tribunal to decide whether they would also have dismissed the claimant in the circumstances. The Tribunal's job, in an unfair dismissal claim, is to review the respondent's behaviour and to find out whether or not the respondent acted reasonably. One of the main questions for the Tribunal to answer is whether no reasonable employer would have acted as this employer did.

53. It is a long-established principle of the law of unfair dismissal that the respondent's conduct does not need to be flawless for a dismissal to nevertheless be fair. It is possible to criticise the respondent's behaviour in the claimant's case in several respects. For example, there ought to have been better communication between the claimant and the respondent while he was off sick. The respondent ought to

have acted more quickly to replace Mr. Watson with Mr McKeown given the claimant's history of a dispute with him and concerns about his partiality. I accept that this delay could have been avoided if the claimant and the respondent had been in better communication. However, I also note, that the claimant was sent documents by the respondent to his partner's address which he did not collect.

54. The Tribunal took careful note of the information provided to the claimant as it is an essential requirement of procedural fairness that the claimant be able to understand the case against him. In this case, there are very few notes of evidence. The claimant was not provided with the transcript of his phone call with Mr Currell which became an important piece of evidence against him. If the respondent's customers were spoken to about his conduct, no notes of these conversations were provided to the claimant.

55. However, the claimant was provided with several copies of a detailed letter written by Mr. Watson that set out the charges against him. He was also provided with a copy of the respondent's disciplinary policy and procedure and referred again to the documents section of the app. I have already noted that the claimant ought to have been more proactive in notifying the respondent if he was unable to access the app and he was not proactive in doing so.

56. The charges against him were said to be breach of company policies, breach of site rules, bringing the company into disrepute, insubordination, failing to carry out a legal and lawful task, causing considerable unnecessary costs to the company and causing neglectful damage to company profitability. It was made clear to the claimant that the respondent considered that these allegations arose out of his actions on 17 November 2023 and he had already answered a series of investigatory questions which indicated what the respondent's concerns had been with his behaviour.

57. I do not accept that the conduct of the disciplinary hearing was unreasonable or inappropriate. During his cross examination of Mr McKeown, the claimant was hostile towards him. The claimant's hostility was sustained despite warnings from me that he needed to try to moderate his tone. His attitude towards Mr O'Donnell was markedly different. I therefore conclude that the disciplinary hearing was tense, difficult and fraught. I find that Mr McKeown facilitated a fair hearing in the circumstances and exercised his discretion to keep the contents of the minutes to information that was relevant to the allegations in question. There was a final allegation of smoking within a company vehicle that Mr McKeown confirmed was not pursued by the company and formed no part of the decision to dismiss.

58. In any event, I find that the claimant was afforded the opportunity to appeal and considered Mr O'Donnell's conduct of the appeal to be exemplary. He described him as being highly professional and thanked him for his time during the appeal hearing while he was being cross examined by him.

59. In conclusion, it is important to bear in mind that the more serious the allegation against a claimant and the stronger the evidence against him, the less significant any flaws are in the respondent's procedure. The respondent's procedure only needs to be a reasonable one. It does not need to be perfect. There were shortcomings in the respondent's procedure. For example, it was poor practice that two of the claimant's meetings were cancelled with very short notice. It was poor

practice that there was such poor communication and delay during December 2023, January and February 2024. it would also have been good practice for the claimant to have been given transcripts of the phone calls between him and Mr Currell and any evidence that the respondent took into account from conversations with the customers.

60. However, given the strength of the evidence against him, the fact that the claimant admitted to much of the inappropriate conduct in question and the claimant's refusal, until the very end of this hearing, to acknowledge that he had done anything wrong on the day in question, the evidence against the claimant was clear enough that the flaws in the respondent's process did not undermine the fairness of the decision to dismiss him for gross misconduct, or the fairness of the overall dismissal procedure.

61. The claimant was not unfairly dismissed his claim for unfair dismissal fails and is dismissed.

Employment Judge Barker

Date: 16 September 2024

JUDGMENT SENT TO THE PARTIES ON

20 September 2024

FOR THE TRIBUNAL OFFICE

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/