Case Number: 2301992/2016

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE MARTIN**
Ms Dengate
Ms Upshall

BETWEEN:

Christopher David Calver	**Claimant**
AND	
Royal Mail Group Ltd	**Respondent**

ON: **26 – 29 June 2017**

APPEARANCES:

For the Claimant: **In person (assisted by Ms Flemming mental health advocate on day 2 and Ms Connolly PSU on day 4)**

For the Respondent: **Mr Summers – non practicing barrister**

JUDGMENT

1. The judgment of the Tribunal is that the Claimant's claim of unfair dismissal fails and is dismissed.

2. The Claimant's claims of disability discrimination fail and are dismissed.

REASONS

1. Full reasons were given at the conclusion of the hearing These written reasons are provide as requested by the Claimant.

2. By a Claim Form lodged at the Tribunal on 6 October 2016 the Claimant

claimed disability discrimination, his claim was later amended to include unfair dismissal and disability discrimination in relation to his dismissal. This matter was heard over three days with Judgment being given on day four. We heard oral evidence from Mr Paul Julian (Delivery Office Manager), Mr Clyde McHardy (Delivery Office Manager), Ms Linsey Miller (Delivery Office Manager) and Mr Steven Potter Appeals Casework Manager on behalf of the Respondent and the Claimant in support of herself. We have carefully considered such documents as we have been taken to in the bundle (comprising 767 pages) and read and listened to the closing submissions of the parties.

3. The Claimant has limited mobility and therefore with his consent, Mr Potter and Mr Julian sat by him when he had no one accompanying him and turned up the pages in the bundle referred to during the course of the hearing. The Claimant did not feel able to cross examine the Respondent's witnesses and the Employment Judge, knowing he had prepared questions for the witnesses offered to put them on his behalf. The Claimant agreed, however the document he gave was not a list of questions but comment and submissions on the witness statements. The Employment Judge assisted by putting the points to the witnesses. The Claimant confirmed that she had put the matters he wanted and he had no further questions. Adjournments were granted whenever the Claimant needed one.

4. In relation to the reasonable adjustment claims, the Claimant had not identified the relevant PCP's. The Tribunal decided that given the Claimant was a litigant in person and the difficulties he had in presenting his claim not to take an overly legalistic approach but to try to discern what the appropriate PCP was from the evidence he had given.

Unfair dismissal

5. It is for the Respondent to show that there was a potentially fair reason for dismissal. In this case the Respondent asserts that it was for a conduct reason. Once that reason is established we have to consider section 98(4) of the Employment Rights Act 1996 to consider whether in all the circumstances of the case the Respondent acted reasonably or unreasonably in treating conduct as a sufficient reason for dismissing the employee whilst considering the equity and the substantial merits of the case. It is not for the Tribunal to substitute its own view for that of the Respondent but only to consider whether or not the processes and the decision to dismiss fell within a band of reasonable responses. In conduct cases we am to be guided by the case of ***British Home Stores v Burchell [1980] ICR 303***, and we need to consider whether the Respondent held a genuine belief in the Claimant's misconduct on reasonable grounds following a reasonable investigation and whether the decision to dismiss fell within the range of reasonable responses.

Reasonable adjustments

6. An employer is required to make reasonable adjustments under ss.20 and 21 Equality Act 2010 where a provision, criterion, or practice (PCP) applied, placed a disabled person at a substantial disadvantage in comparison with non-disabled persons. Failure to do so amounts to unlawful disability discrimination. Tribunals determining whether it would be reasonable for the employer to have to make a particular adjustment in order to comply with the duty must take into account the extent to which taking that step would prevent the disadvantage caused by the PCP (Equality and Human Rights Commission's Code of Practice on Employment).

7. The case of Environment Agency v Rowan [2008] ICR 218 set out guidance on how to approach reasonable adjustment cases. It held that the Claimant must show: there was a PCP; the PCP put the Claimant at a substantial disadvantage in comparison to persons who did not share his disability; the adjustment would avoid that disadvantage; the adjustment was reasonable in all the circumstances and the failure to make the adjustment caused the losses alleged.

Discrimination arising from disability s15

8. Section 15 of the EqA provides:

> "(1) A person (A) discriminates against a disabled person (B) if –
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim."

9. It therefore needs to be established whether there was a causal connection between the unfavourable treatment and the disability. If there is the burden shifts to the employer to establish justification i.e. a proportionate means of meeting a legitimate aim.

10. This type of discrimination occurs not because the person has a disability, but because of something connected with the disability. It can only occur if the employer knows, or could reasonably be expected to know, that the person is disabled.

Burden of Proof

11. The burden of proof reversal provisions in the EqA are contained in section 136. Guidance is provided in the case of Igen Ltd –v- Wong [2005] IRLR, CA. In essence, the Claimant must, on a balance of

probabilities, prove facts from which a Tribunal could conclude, in the absence of an explanation by the Respondent, that the Respondent has committed an act of unlawful discrimination. The Tribunal when considering this matter will raise proper inferences from its primary findings of fact. The Tribunal can take into account evidence from the Respondent on the primary findings of fact at this stage (see Laing –v- Manchester City Council [2006] IRLR 748, EAT and Madarassy –v- Nomura International plc [2007] IRLR 246, CA). If the Claimant does establish a prima facie case, then the burden of proof moves to the Respondent and the Respondent must prove on a balance of probabilities that the Claimant's treatment was in 'no sense whatsoever' on racial grounds.

12. The term 'no sense whatsoever' is equated to 'an influence that is more than trivial' (see Nagarajan –v- London Regional Transport [1999] IRLR 573, HL; and Igen Ltd –v- Wong, as above).

13. Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating on why the Claimant was treated as they were, and postponing the less-favourable treatment issue until after they have decided why the treatment was afforded. Was it on the proscribed ground or was it for some other reason? (per Lord Nicholls in Shamoon –v- Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285, HL).

14. The Supreme Court in Hewage –v- Grampian Health Board [2012] UKSC has confirmed:

> *"The points made by the Court of Appeal about the effect of the statute in these two cases [Igen and Madarassy] could not be more clearly expressed, and I see no need for any further guidance. Furthermore, as Underhill J pointed out in Martin v Devonshires Solicitors [2011] ICR 352, para 39, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other."*

The Tribunal's findings of fact and conclusions

15. The Tribunal has made the following findings of fact on the balance of probabilities having heard the evidence and considered the documents. These finding of fact are limited to those that relate to the issues and are necessary to explain the decision reached. All evidence was considered.

16. The Claimant was employed, the Respondent from 17 February 1986 until his employment was terminated by reason of gross misconduct on 17 February, 2017. Since 1998 the Claimant has had symptoms relating to his various medical conditions. The Respondent accepts that the Claimant is a disabled person in relation to various muscular skeletal conditions and migraine pursuant to section 6 equality act 2010. The Claimant's claims of discrimination on the grounds of disability arise from

2010. It is the Respondent's position that some of these claims are out of time.

17. The Tribunal first dealt with the claims of disability discrimination as set out in Employment Judge Cheetham's order of 12 January, 2017 in turn.

18. The first is a claim that there was a failure to make reasonable adjustments by not paying for shoes and glasses. The Respondent supplies shoes for staff from a catalogue. The Claimant needs slip on shoes as he cannot bend to tie laces. There are no slip-on shoes in the catalogue so the Claimant bought shoes elsewhere and wanted reimbursement. He raised a grievance on 18 July, 2016. The Claimant also wanted payment for glasses required for computer use and that issue continued until he was suspended on 23 September, 2016.

19. The PCP in relation to shoes is that the Respondent provides shoes for all staff which must be purchased from a specific catalogue. This had a significant effect on the Claimant as he needed slip on shoes which were not in the catalogue. Therefore the duty to make reasonable adjustments in relation to the shoes applied.

20. The Claimant had received payment for glasses on previous occasions and on this occasion, was only given a partial payment. The Claimant's case is that the Respondent did not deal with his grievances and he therefore had to refer to ACAS to resolve. As a result, presumably of that contact with ACAS, the Respondent appointed Ms Anna Walsh to consider his grievances and she wrote to the Claimant on five occasions between 25 November, 2016 and 27 January, 2017. In these letters, she invited him to meet with her to discuss any outstanding grievance that he may have, i.e. whether he had previously raised them or not. The Claimant declined her first invitation because he considered that ACAS had dealt with it and did not respond to the subsequent four letters. In his evidence, the Claimant said that he wrote to Ms Walsh seven times, however, that evidence was not before us in the bundle. The Tribunal has looked at the letters written by Ms Walsh which clearly state that no response had been received to the previous letters sent. The Tribunal particularly noted a letter dated 27 January, 2017, which refers to a previous letter dated 19 January, 2017, which he failed to respond to. In this letter, Ms Walsh set out the dates of all the letters that she had sent specifying the they were sent by post or by email and concluded, that the Claimant was not pursuing his grievances and closed the matter. The Tribunal finds on balance that Claimant did not respond to Ms Walsh. The Claimant accepted in evidence he could have handled this issue better.

21. The PCP is that staff are paid for glasses for computer use. The Claimant's complaint is that he was not paid for his glasses and this is a detriment.

22. The Respondent has now offered to pay the Claimant for the shoes and the balance of the payment for his glasses and there is no reason to

suppose that they would not have done this earlier had the Claimant responded to the communications from Ms Walsh. Whilst the Tribunal accepts that there may be delays in dealing with the grievances, the Tribunal also find that the Respondent ultimately put in place procedures whereby all grievances could be heard. Ms Walsh made concerted efforts to meet with the Claimant which he rebuffed. The Claimant went to ACAS because the Respondent was not dealing with his grievances and then, when they did, refused to engage with them. There is little more Tribunal can see that the Respondent could have done in the Tribunal does not consider this to be a failure to make reasonable adjustments and this part of the claim is dismissed.

23. The second allegation of disability discrimination is that the Respondent failed to evacuate the Claimant during a fire drill on 26 January, 2016. This is a complaint of discrimination arising from disability. The Respondent accepts that it did fail to evacuate Claimant and has taken steps to change its practices. This failure is clearly a very serious the Tribunal can understand that the Claimant would feel vulnerable as a result. The Respondent also accept the seriousness of the situation. Having said this, the incident referred to occurred on 26 January, 2016. The primary time limit expired on 25 April, 2016 which, taking into account ACAS early conciliation would have bought the last date presentation the claim approximately 25 May 2016. The Claimant's claim was not presented until 6 October, 2016.

24. The Claimant was a member of the GMB union and was advised throughout the relevant period. In particular, he said the union told him that he should put in a claim with regards to the fire evacuation at the time it happened but he did not do so. He also told the Tribunal that he sought advice from the Citizen's Advice Bureau. The Claimant has also brought two claims to the Tribunal, one of which the Tribunal knows was settled by means of a compromise agreement.

25. The Claimant's case is out of time and it is for the Claimant to give reasons why he did not present his Claimant in time or within a reasonable time thereafter to persuade the Tribunal that it is just and equitable to extended time for the presentation of his claim. The Tribunal's conclusion in relation to this claim is that the Claimant has not provided sufficient reasons and as such that Tribunal does not find it just and equitable to extend time. The Claimant knew or should have been known or at the facility to find out about the time limits and he was told by his union to claim should be brought. This part of the Claimant's claim is dismissed.

26. The third issue relating to discrimination is that he the Claimant was prevented from using the staff canteen and therefore socialising with colleagues owing to the inadequacy of the tables and chairs; this is a complaint of discrimination arising from disability. The Claimant had difficult relations with his colleagues at the Wimbledon sorting office following a strike in 2007, which he worked through. At one time, he says he had a special chair in the canteen, but in 2011 time the chair

went missing. The Claimant did not make a written grievance about the canteen issue. The only evidence produced by the Claimant of notifying the respondent are two diary entries in November 2014 which record that he spoke to Mr McHardy who was his line manager at the time. Mr McHardy's evidence was that he does not recall the Claimant mentioning it at that time or at any time. He said that November is a very busy time and if the Claimant had mentioned it in passing it may well have been forgotten. The Claimant accepts that he did not mention the canteen issue to management after November 2014.

27. Therefore, the Claimant's claim is on the face of it out of time by a substantial period. Again, as noted above, the Claimant has given no reason why he did not bring a claim that time. The points noted above in relation to advice from the Citizen's Advice Bureau and his union membership advice are pertinent to this issue too. The Tribunal has not been provided with evidence on which it can exercise its discretion to extend time on the grounds that it is just and to do so. This part of the Claimant's claim is therefore dismissed.

28. The Claimant complains that he has not been provided with work or sufficient work since June 2015 when there was an office revision. This is a complaint of discrimination arising from disability and a failure to make reasonable adjustments. Due to the Claimant's disabilities, he was unable to do certain aspects of his work and the Respondent constructed a specially designed office for him and put him on indoor duties. This had tables and chairs made to specific heights and other equipment. The Respondent has a policy of not making compulsory redundancies.

29. The Tribunal heard evidence from Mr McHardy and Mr Julian who were the Claimant's line managers various times. They both gave evidence that they found it difficult to find sufficient work to fill the Claimant's full working days, given the limitations he had due to his disability. Mr Julian said that he even gave such work that he had which the Claimant do to him to do. As an additional difficulty in that there was another employee who is also disabled also could not work outdoors. The Respondent have a policy or practice whereby if there are two disabled employees who both have the same requirements in terms of the type of work they can do but there is only one role available for that work that the employee was a great length of service will be allocated at work. The other employee had greater length of service and was allocated work he could do over and above the Claimant.

30. The Respondent accepts that the Claimant was underemployed, but not by as much as Claimant sets out in his evidence. The Claimant clearly feels very strongly about this and wrote his MP asking for her assistance. The Tribunal accepted the Respondent's evidence that they tried to give the Claimant such as they had available, but because of the limitations he had in watching the due to his various disabilities. Another difficulty, the Respondent has is that all staff work to an agreed set of duties (318), which were agreed with the CWU. It is therefore difficult for them to take duties off one member of staff and transfer them to another.

31. The Tribunal finds the PCP is that employees should undertake work on their agreed duties. The Claimant did not have a formal 318 duty, however duties had been agreed with him. The detriment cited by the Claimant is he did not have enough work to do,.

32. The Tribunal finds that whilst the Claimant was allocated less work than other staff, the Respondent did not intend to terminate his employment by reason of health and/or were unable to consider compulsory redundancy. The Tribunal does not find it less favourable treatment arising from his disability, and this part of his claim is dismissed. The Tribunal's finding is that the Respondent did adjust his workload and his work to those duties that were suitable for him given his medical conditions and that they made reasonable adjustments. Given the particular circumstances that the Respondent operate in. The Respondent also considered whether there was work in other areas and locations which the Claimant could do either within the Wimbledon sorting office or at another location. However, the Claimant did not want to change location, which limited the scope of their adjustments and options that they had available to it. The Respondent also considered moving the Claimant downstairs to the ground floor working with other members of staff but the Claimant did not want to move there because he felt claustrophobic working with a number of people in a room. This part of the Claimant's claim is dismissed.

33. The fifth allegation of discrimination is an allegation that the Claimant's assistant was removed in June 2015, which he alleges is discrimination arising from disability and a failure to make reasonable adjustments. The first point is that the act of discrimination is June 2015 and the claim is therefore substantially time. As set out above, the Claimant had advice from his union and citizens advice bureau and previous experience of bringing claims to a Tribunal. The Claimant has not provided sufficient reasons to persuade the Tribunal to exercise its discretion and extend time on the basis that it is just and equitable to do so. In any event, the evidence was that the work for which the assistant was supplied had been redistributed following automation of that task. When questioned, the Claimant said the assistance he would need would be things like making toast, getting water.

34. A reasonable adjustment is an adjustment to enable the Claimant do his substantive job. Once the work in question was automated there was no need for an assistant to help with the Claimant's substantive role and it would not have been reasonable to assign someone for these tasks. There was no failure to make a reasonable adjustment or discrimination arising from disability and therefore this part of the Claimant's claim is dismissed.

The Claimant's dismissal

35. The Claimant also claims unfair dismissal and that his dismissal was

because of his disability (i.e. direct discrimination). The circumstances leading to the termination of his employment are that the Respondent has various policies dealing with acceptable Internet usage, which prohibits the viewing or downloading of explicit pornographic images. There was some dispute as to which policies the Claimant had seen, but he had seen a policy relating to acceptable standards where this is set out and the Tribunal accepts that the Respondent sends out copies of the policies every two years to all staff and on balance the Tribunal finds that the Claimant was sent them even if he chose not to read them.

36. The Respondent has an IT department which has a monitoring system which picks up inappropriate Internet searches. The IT department is based in Chesterfield. On 9 August, 2016 the monitoring system flagged up that an inappropriate site had been accessed from the Claimant's computer. It is standard practice that the Respondent IT department will then monitor that person's Internet usage for one month to see if there was a pattern emerging. As part of that process, they went back and looked at the Claimant's Internet usage from 1 August to the end of the month. In that period, they found 540 indecent and pornographic over an 11 day period. A number of these messages were defined as category two in the Respondent's policy. Category two is sexually explicit genitalia or intercourse that demonstrates lack of dignity and respect for people. There are three categories in the policy.

37. On the 23 September, 2016 . The security team submitted a IT report to the Operations Director Mr Selby. Mr Selby is not based in Wimbledon and did not know of or have any previous dealings with the Claimant. On the same date, Mr Julian put the Claimant on precautionary suspension. There was a dispute in the evidence as the reason given by Mr Julian. Mr Julian said it was 'missappropriate' use of company equipment namely the computer, the Claimant said he was told it was 'misappropriation' of company property. On balance, the Tribunal finds that Mr Julian said missappropriate' use company equipment and not misappropriation. However, even if he did say misappropriation, the Tribunal is satisfied that the Claimant knew precisely what the allegations were against him. Indeed even before the fact finding interview he prepared a statement in relation to the downloading of the images.

38. The Respondent's policy provides that suspension should be reviewed within 48 hours and that there should be contact with the Claimant every week. The Respondent accepted that this was not done and that the contact with the Claimant was more sporadic. However, the Tribunal finds that the Claimant knew why he was being suspended and knew that investigation were progressing. Indeed, part of the reason for the extension of his suspension was because he was unable to attend the first disciplinary hearing which had been scheduled.

39. There was there a fact-finding interview with Ms Diamond on 6 October, 2016. This interview was adjourned as the Claimant had an accident and was taken to hospital during an adjournment. On the same date, the Claimant submitted his claim to the Tribunal alleging disability

discrimination. The fact-finding meeting was reconvened on 8 November, 2016. At the first fact-finding meeting, and before the Claimant had seen the evidence against him, he presented Ms Diamond with a written witness statement which makes it clear that the Claimant was aware that the allegation against him was that he had downloaded inappropriate images as he makes references to pictures of people nude or scantily clad. The statement says that his curiosity may have made click on a banner or advert with an intriguing headline and he may have ended up on an unwanted image site.

40. After the fact finding interview, the Claimant was invited to attend a formal conduct disciplinary hearing, with Ms Miller. Ms Miller did not work in the Wimbledon sorting office and had no previous knowledge of the Claimant. The Claimant was charged with *"Misuse of Royal mail IT equipment. He has accessed pornographic material from his Royal mail IT account, in contravention of the Royal Mail Acceptable Use Policy".*

41. The disciplinary hearing was originally arranged for 21 December, 2016. However, the Claimant's union representative was unable to attend on that date, and therefore it was rescheduled initially for 30 December and then again to 5 January, 2017. The Claimant attended, accompanied by his union representative. The Claimant was sent copies of all documentation relied on in the letter inviting him to the disciplinary hearing dated 14 December 2017. He had plenty of time to consider those documents prior to the disciplinary hearing.

42. The Tribunal has seen the notes of the meeting and notes that, as with the notes of the fact find and the notes of the appeal, they were sent to the Claimant after the meeting and the Claimant was given the opportunity to make amendments. He made amendments to the appeal notes only. At the hearing before this Tribunal the Claimant maintained that the notes are not an accurate reflection of the meeting. However, having heard Ms Miller and given that the Claimant had the opportunity to make any amendments, the Tribunal find on the balance probabilities that the notes are a fair reflection of the meeting. The Tribunal finds that the Claimant and his representative were given the opportunity to make whatever points they wish. The Claimant also had with him Miss Fleming from the Imagine mental health charity. Ms Miller asked if there is anything further the Claimant or his representative was felt they would like to add or anything they felt had not been sufficiently covered in the interview, or anything they felt they should have been asked had not been. Mr Raven, who accompanied the Claimant said that everything had been covered.

43. At the disciplinary hearing, Mr Raven suggested that the Claimant had not accessed the sites. At the same time, the Claimant suggested that there was a conspiracy and that others may have accessed his computer while he had gone to the toilet for example, and downloaded the images and he had previously said he may have clicked on a banner and got to the sites accidentally. These explanations are contradictory. The Claimant said that he had not had the time to talk properly with Mr Raven

before the disciplinary hearing and that they had not discussed what Mr Raven was going to say. The Tribunal cannot say whether or not that was true, but even if it was true, it was reasonable for the Respondent and Miss Miller take at face value what was being said. The Claimant suggested that the orchestrated plan was because he had raised grievances and gone to ACAS even though there were no repercussions in relation to previous grievances, previous contact with ACAS or previous claims to the Tribunal.

44. The report from IT has also identified the precise times that the images were downloaded. These dates and times were compared with the Claimant's attendance at and were found to match. When the Claimant was not at work inappropriate images had not been downloaded. At in the conclusion to the meeting, it was put forward on his behalf that he had simply had not accessed these sites.

45. During the disciplinary hearing, the Claimant had raised issues about delays and the procedural points he raised in relation to his suspension. Miss Miller then asked Ms Diamond about these matters after the hearing and wrote to the Claimant with Miss Diamond's responses. She asked for his comments within five days and the Claimant responded on 6 February, 2070. On 17 February, 2017 the Claimant attended a meeting with Miss Miller when she gave the outcome of the disciplinary hearing which was that the Claimant was summarily dismissed for gross misconduct. She went through the reasons for her decision in person and gave a written report setting out the basis of her decision and reasons. She rejected the Claimant's suggestion that there was collusion, particularly because the IT monitoring system is completely independent of local management. There is also no evidence that any other person accessed the images from the Claimant's computer and the Claimant did not identify any possible person who could or would have done that. She did not find it a realistic explanation that the 540 images "popped up". She thought one or two may be considered reasonable as pop ups and considered accidental in the course of using the Internet but that it was not reasonable to accept that he accidentally came across 540 pages the course of one month and that he would not remember seeing that level of images.

46. Ms Miller addressed the procedure and the Claimant's criticism that and did not find that the delays relating to the suspension affected the fairness of her decision. The conclusion was that after consideration of all the available evidence, there was sufficient evidence to reasonably believe that the Claimant had access the images identified in the IT report of 22 September, 2060, and that the images were in category one and category two. As such, she terminated the Claimant's employment summarily for gross misconduct. The Claimant was given the right of appeal in which he took up.

47. This detailed letter of appeal is dated 20 February, 2017. On 21 February, 2017 Claimant's union wrote to the Claimant, suggesting that the Respondent may have keystroke entries which would show whether

or not the images were searched for and maybe who had searched for them. The Claimant made a request for this information was made of the Respondent and the IT department reported back that keystroke records are not maintained by the Respondent as it is considered an invasion of privacy and illegal.

48. Mr Potter was allocated to hear the Claimant's appeal and he wrote to the Claimant on 24 February, 2017 arranging an appeal hearing on 3 March, 2017 at the Wimbledon depot. This was then rearranged to 8 March, 2017 at the Claimant's request. The Claimant attended with Mr Raven. Mr Potter had no previous dealings with the Claimant. In accordance with the Respondent's policy. Mr Potter dealt with the matter by way of a rehearing and would consider any facts in the original case and any new facts, issues or evidence. The Claimant was sent notes of the meeting and he made comments on it afterwards, attaching some additional information. Mr Potter listened to all that the Claimant said and his union.

49. It is clear from the evidence given by Mr Potter and from the notes of the meeting that the Claimant was given every opportunity to say what he wanted on his own behalf. Mr Potter considered the additional documents and comments which the Claimant made about the minutes and he also made further enquiries from the IT department. The IT department gave information on how they deal with matters i.e. when the matter is flagged. They monitor the account from month to see if there's any evidence of illegal potentially legally activity account and then they notify local management.

50. There was a query is whether the images were thumbnail images and the IT report was that of 21 random images chosen at random, only one could be considered a thumbnail. He confirmed that they do not capture have access to keystroke data. Mr Potter carefully considered the matters and dismissed the Claimant's appeal. He wrote the Claimant on 10 April, 2013, confirming his decision and enclosing a detailed report as to his decision and the reason for it.

51. The Tribunal concludes one that the Respondent has demonstrated that the Claimant was dismissed for a conduct reason. The procedures carried out within the disciplinary process was in accordance with the disciplinary policy and within ACAS guidelines. The Claimant was given every opportunity to defend himself against the allegations and did so at length with the assistance of the union. We are satisfied that at the investigation and the hearing there were genuine grounds upon which the Respondent held their belief that the Claimant was guilty of gross misconduct and that the decision to dismiss fell within a band of reasonable responses in the same way that we are satisfied that the process was reasonable. The Respondent's investigation was thorough and did not stop with Miss Diamond with both Miss Miller and Mr Porter making further enquiries in response to matters raised in the their respective hearings.

52. The Tribunal is not looking to see whether the Claimant did or did not actually access these images, but rather whether based on the investigation, the Respondent formed a reasonable belief that he had. The Tribunal is satisfied from the investigation that it was reasonable for them to form such a belief in his guilt. Having reached that belief, the decision to dismiss was clearly within the range of reasonable responses open to a reasonable employer and is reflected in the Respondent's policies.

53. Accordingly the Claimant's claims are dismissed.

Employment Judge Martin
Date: 30 June 2017