



# **EMPLOYMENT TRIBUNALS**

**(RESERVED JUDGMENT)**

**Claimant:** Mr Nike Hasaj

**Respondent:** Biba's Landscaping Limited

**Heard at:** Birmingham      **On:** 23-26 February 2021

**Before:** Employment Judge Hindmarch  
With Members Mr P Wilkinson, Ms R Payne

## **Representation**

**Claimant:** Mr Lawrence (Counsel)  
**Respondent:** Mr Keith (Counsel)

# **RESERVED JUDGMENT**

The Judgment is a unanimous one.

1. The complaints of unlawful deductions from wages and for holiday pay are dismissed on withdrawal.
2. The complaint of unfair dismissal is not well founded and is dismissed.
3. The complaints of unlawful detriment under ss 44(i)(c) and s47b Employment Rights Act 1996 are not well founded and are dismissed.

# **REASONS**

1. This claim came before the Tribunal for substantive hearing by Cloud Video Platform over 4 days, from 23-26 February 2021. The Claimant was represented by Counsel Mr Lawrence, and the Respondent by Counsel Mr Keith. The Tribunal would like to thank the representatives for their assistance throughout the proceedings.
2. The claim was previously the subject of a Case Management Hearing on 21 April 2020 where a timetable was agreed based on the Claimant giving evidence along with two witnesses and one witness for the Respondent. The timetable factored in approximately a day and a half for deliberations and Judgment. In fact, due to some technical difficulties during the hearing, the Tribunal was only able to begin

deliberating on the fourth day and used that entire day to reach a decision and opted to reserve the decision and to send full written reasons to the parties.

3. At the Case Management Hearing on 21 April 2020 the parties were ordered to agree a list of issues. The list appears at page 83-85 of the bundle. At the outset of the substantive hearing the Claimant withdrew his claims for unlawful deductions from wages and holiday pay. This meant the remaining issues for us to decide and which were agreed at the outset of the hearing were as follows:-
  - a. Unfair Dismissal
    - i) Given the Respondent accepted dismissing the Claimant, was there a potentially fair reason for dismissal? NB the Claimant asserted his dismissal was on account of him having made protected disclosures and/or on account of him raising health and safety dismissals.
    - ii) If the Claimant was dismissed for misconduct (as the Respondent asserted), did the Respondent act reasonably in treating such reason as a sufficient reason for dismissing the Claimant in all the circumstances pursuant to s98 Employment Rights Act 1996?
  - b. Was the Claimant entitled to notice pay?
  - c. Did the Claimant suffer a detriment contrary to s47B Employment Rights Act 1996?
  - d. Did the Claimant suffer a detriment under s44(l)(c) Employment Rights Act 1996?
  - e. If the Claimant was entitled to a remedy we also would need to consider a basic award, compensatory award, notice pay, injury to feelings and arguments as to Polkey and/or contributory fault.
4. There was a Scott schedule setting out the alleged disclosures and the detriments at pages 79-82.
5. We had an agreed bundle of documents running to 312 pages. We had witness statements for the Claimant and for Mr Biba on behalf of the Respondent. There were no other witnesses. We heard evidence from the Claimant and Mr Biba. We heard written submissions from Mr Keith who also made some oral submissions. We heard oral submissions from Mr Lawrence.
6. We wish to start our findings of fact by making some observations about the evidence that was given. We note that both parties have had legal advice throughout the proceedings. An agreed bundle was put together in the summer of 2020 and witness statements followed. Despite both witnesses having had the benefit of seeing the pleadings and the documents before preparing witness statements, both in oral evidence sought to detract from what they had said in their statements and to add additional points and observations.

7. Whilst this criticism is made of both the witnesses, on balance we preferred the evidence of Mr Biba on relevant issues of dispute, particularly because there were documents in the bundle supporting his account. We will return to these matters in our findings of fact.
8. By an ET1 filed on 21 May 2019, following a period of early conciliation from 21 March 2019 to 21 April 2019, the Claimant brought complaints of unfair dismissal and public interest disclosure and/or health and safety detriment. By an ET3 filed on 10 December 2019 the Respondent indicated its intention to defend the claim. The Claimant is Albanian.
9. The Respondent is in business as a landscape gardening contractor, providing services to larger organisations such as civil construction and landscaping companies. The Respondent largely relies on work with few major customers such as Ground Control and Ashlea Limited. The Respondent employs 25 staff, alongside some independent contractors. Mr Biba is the Managing Director of the Respondent who is assisted in administrative tasks by his wife. The business engages an external health and safety consultant. The Respondent has no human resources assistance either internally or externally. The Claimant was not issued with a written contract of employment and there were no written disciplinary rules or procedures.
10. The Claimant stated work for the Respondent on 3 October 2011 in a role that included machine operator, labourer and sometimes supervisor. The Claimant and Mr Biba both described their relationship as a close friendship.
11. Mr Biba accepted he has a duty to provide Personal Protective Equipment (PPE) to his employees. The Respondent has an account with a company Langton Protective Clothing (LPC) from which it largely sources such PPE. Within the bundle were invoices from LPC to the Respondent showing the purchase of some £14,000 worth of PPE over the period February 2017 to December 2018 (pages 197-269). These do not specifically reference the Claimant.
12. In his witness statement the Claimant said he was provided with hi-vis clothing, but not safety boots. The Claimant said he would have to go to the PPE suppliers, purchase boots on the Respondent's account using its discount, and then the Respondent would withhold the cost of the boots from his wages. In the bundle were payslips for 2018 (page 273 to 297). Not a single payslip shows any such deductions.
13. At pages 154 and 155 of the bundle are documents said by the Respondent to be 'Uniform and PPE Issue Record Forms. Mr Biba said these show the dates when specific items of PPE were issued to the Claimant. Mr Biba said he sometimes handed the items of PPE to a supervisor to pass on to the Claimant and he accepted that the entry for receipt headed 'signature of employee' was sometimes initialled by him, not signed personally by the Claimant. We saw some entries of 'NH' (the Claimant's initials) and some of 'Nike', the Claimant's first name.
14. The Claimant said in evidence, although not in his witness statement, that these documents were a fabrication. We were surprised he had not mentioned such

fabrication in his witness statement. Mr Biba in his evidence sought to explain how these records correlate with the invoices from LPC. At page 154 on the Uniform and PPE Issue Record Form is that an entry the Claimant received safety boots on 14 November 2017 and at page 189 is the LPC order and invoice at page 233.

15. At page 155 on the 'Uniform and PPE Issue Record Form' is an entry that the Claimant was issued with safety boots on 23 March 2018. Mr Biba explained he would be invoiced in the next 30 days and at page 242 is a LPC invoice dated 27 April 2018. Similarly there is an entry on the Uniform and PPE Issue Form that the Claimant was issued with safety boots on 21 August 2018 and the LPC invoice is on page 252 dated 21 August 2018. Mr Biba says the entry on the Uniform and PPE Issue Form on this occasion was incorrect and should have said July 2018. He is most likely correct given it was common ground the Claimant was abroad in late August.
16. We accept these documents as genuine and as demonstrating the occasions safety boots were issued to the Claimant.
17. The parties agreed the safety boots usually need to be replaced every 4-5 months due to wear and tear. The Claimant was issued new boots around late July 2018. He was on holiday abroad for several weeks in August and September 2018. He alleges in October through to December 2018 he had to repeatedly request new boots. He says Mr Biba told him (the provision of boots) was "not his problem". He then says Mr Biba said, in December 2018, he would provide the boots when the Claimant returned from annual leave (in January 2019). We do not accept the Claimant's evidence. We do not believe he asked for boots in October through to December, due to the records evidencing boots were provided regularly and had been provided that summer.
18. The Claimant also alleges on some unspecified dates in January 2019 he made a broader request for PPE to Mr Biba, broader in the sense it was not just for boots but for 'PPE' and not just for the Claimant but for 'other workers' (unspecified) and that if Mr Biba did not provide this there would be serious health and safety implications. He says Mr Biba assured him he would provide the PPE but did not. Given our earlier observations about credibility, and given the evidence the Respondent regularly provided PPE to the Claimant and others, we do not accept these conversations took place.
19. We know the Claimant was on holiday until 5 January 2019 and was dismissed on 25 January 2019. The parties agree that in January Mr Biba made a loan of money to the Claimant. On page 182 is a copy of a letter Mr Biba provided to assist the Claimant in his immigration application which makes no reference to any disciplinary record. We accept the loan of money and the provisions of the letter were because of the close friendship between the Claimant and Mr Biba. Mr Biba says he had limited work available for the Claimant in January due to firstly only certain customers allowing the Claimant to work on their sites (a matter to which we will return) but also the Claimant being reluctant to work in inclement weather. The parties agree that Mr Biba did find some weekend security guard work for the Claimant in January.

20. It is common ground that the Claimant had had issues on customers sites in the past. In evidence the Claimant recalled being moved from customers sites and incidents involving him, (eating sandwiches in prohibited locations, refusing to work later hours as requested by a customer, and an incident involving a vehicle he was driving being blocked in).
21. The bundle contained warning letters on the Respondent's headed paper addressed to the Claimant. At page 147 is a letter from the Respondent to the Claimant dated 10 March 2015. The Claimant said in evidence he had never received any of these letters. He said they were '*created after I was dismissed*'. He did not say that in his witness statement. In his witness statement he said "I am conscious that the Respondent has disclosed some historical information ... These are all incidents that predate my dismissal ... The Respondent intends to rely upon this in a desperate attempt to legitimate the decision to dismiss me".
22. We did not find the Claimant's position that he ever received the letters, made in his oral evidence, convincing given he had not said this in his witness statement when surely he would have done so, and when he admitted having been involved in previous incidents which had caused him to be removed from customer sites. The fact Mr Biba gave the Claimant a letter in January 2019 to assist with his immigration status, and which does not mention previous disciplinary action does not affect our view on this point. We accept Mr Biba's evidence that he provided this letter to assist his 'close friend'.
23. At page 147 is a letter from the Respondent to the Claimant and dated 10 March 2015. It refers to an incident of the same date and states "*Today you have been red carded from all Galifordtry sites for not respecting the Health and Safety site rules and being aggressive towards the Health and Safety representative when you were told to obey the site rules. The site rules are there to protect you and everybody on site ... should any similar incidents occur you will be dismissed from (the Respondent)*".
24. At page 148 is another letter from the Respondent to the Claimant dated 8 June 2016 headed "written warning". It states "*As you know it took a lot of effort for me (Mr Biba) personally to get you back to work with Ground Control and now the same incident happens again. You were very violent and abusive to site management, to the extent the police were called. The management were frightened you were going to beat them up. This time the decision was made that you don't work for Ground Control ever again. You know that Ground Control is one of the main clients of (the Respondent), and as such we cannot afford to lose them as clients due to your bad behaviour, your lack of respect for authority and your disregard for Health and Safety regulations. This is your last written warning letter if this incident occurs again you will be removed from the (Respondent's) employment*".
25. The aforementioned warning letters demonstrate that in both 2015 and 2016 the Claimant was involved in incidents which warranted his being barred from customer sites and which resulted in him being warned about possible future dismissal if further incidents were to occur. We find the Respondent was perhaps lenient with the Claimant at this time due to their 'close friendship'.

26. Two days later on 10 June 2016 Mr Biba held a 'Site Behaviour and Work Attitude' toolbox talk, with 20 employees including the Claimant.
27. The notes of what was said, and the list of attending employees, are at pages 149-150. They record a warning that employees should not 'be disrespectful', that the Respondent 'will not tolerate anti-social behaviour' and that employees should 'use the correct PPE'. They state further, 'Anyone caught miss (sic) using PPE then immediate dismissal will occur no warning written or verbal will be given'.
28. The Claimant denies that he attended this meeting and says his signature recording his attendance is essentially a forgery. We did not accept this. We find the fact the meeting occurred only 2 days after an incident involving the Claimant suggests it did occur and that the Claimant was present.
29. At page 153 is a letter dated 11 June 2016 that the Respondent sent to the customer (Ground Control) confirming he had spoken to his employees and that '(the Claimant) has been given a written warning and he will not work for in any Ground Control sites, he does regret what happen(sic)'.
30. Again, the above documents are contemporaneous with the warning given to the Claimant on 10 June 2016.
31. 2 years later in September 2018 the Claimant was once again working for the Respondent at a Ground Control site. In the bundle at page 158 is an email from that customers to Mr Biba dated 20 September 2018 referring to an incident the previous day involving the Claimant and stating after internal discussions and '*after incidents on other projects and also previous warnings... (the Claimant) will not be able to work for Ground Control on any other projects in the future*'.
32. On the same day, page 160 Mr Biba wrote to the Claimant informing him he could no longer work at any Ground Control site.
33. On 23 January 2019 the Claimant was working at the Respondent's business premises. Mr Biba asked him to attend at a site the following day where the Respondent was providing services as a sub-contractor to Ashlea Limited who in turn were sub-contracted by Galliford Try. Mr Biba effectively substituted the Claimant for another of his staff members who had been working on that site. The Claimant travelled to the site at Nuneaton on the morning of 24 January 2019 with two other members of the Respondent's staff, SB and SR. SR was acting as the supervisor for the Respondent's staff. The Claimant alleges SB who was the driver of the vehicle the three of them travelled in had no valid UK Driving Licence. We do not find it necessary or relevant to the issues to comment further on this allegation, save to say we are surprised that the Claimant would have agreed to be a passenger in a vehicle which would have been uninsured. Given the Claimant's close friendship with Mr Biba we are certain he would have raised this with him.
34. In his witness statement the Claimant says before setting off he asked Mr Biba for new boots and Mr Biba ignored this. In his evidence the Claimant said however Mr Biba said he could get new boots on the way home. We find it likely the latter occurred given Mr Biba had always provided boots in the past.
35. Ashlea Limited, the Respondent's client, provided a written report compiled by their Safety, Health, Environmental and Quality Manager to the Respondent evidencing what occurred when the Claimant and his colleagues arrived on site, page 183-185. This is an independent account of a party with no interest in these

proceedings and is relatively contemporaneous and we have had due and proper regard to it.

36. The document is headed 'Accident/Incident investigation' and refers to an incident occurring at 8:45(am) on 24 January 2019 involving MH described as 'forman/supervisor' at the time. It records *'(The Respondent) have been supplementing Ashlea's own labour force on site ... on 24 January one of the workforce wasn't on site and he had been replaced with (the Claimant) ... the (Respondent's) operatives arrived on site late ... there was no ability to have a site induction ... (the Claimant) was not wearing the correct PPE (hi-visibility trousers) and notably no HARD HAT. MH had gestured to (the Claimant) to wear his helmet. (The Claimant) appeared to be non-responsive to a number of MH's gestures and when (MH) walked over to him and asked, he point blank refused. (The Claimant) stated he wouldn't wear his hard hat, as he hadn't had his induction. MH had made arrangements for (the Claimant) to be inducted on site. (MH) asked (the Claimant) a number of times to wear his helmet as it was common site rules and practice but each time he refused and this culminated in (the Claimant) picking up a hard hat and smashing it on the floor. There was a heated exchange and given that there were members of the public in attendance, Mike (foreman from Galliford Try) also intervened and received the same level of abuse'*.
37. This report was sent to Mr Biba as 25 January 2019 by PJ, the Safety, Health, Environmental and Quality Manager at Ashlea Ltd. The accompanying email stated *"Thankfully for us, this seems to be going no further with the management of Galliford Try but can I also urge you to reiterate to your employees that when they are working on a site that we have engaged you as a subcontractor, that they are deemed to be working underneath Ashlea's 'banner' and in turn their conduct not only reflects badly on Bibbas (sic) but Ashlea's reputation. I understand that you have already taken the action of sacking Nike and it goes without saying that we would have requested that he not be sent back to any of our sites in the future, anyway ... we would have deemed the refusal to wear (when requested) the (PPE) items gross misconduct prior to taking into consideration the aggression and abuse forwarded to (MH) and Galliford Try's Foreman..."*
38. In his oral evidence Mr Biba sought to persuade us that he actually saw the report that was attached to the email of 25 January 2019, on 24 January 2019. We do not accept this evidence. We find the events of the 24 January 2019 are as set out in the Ashlea report.
39. After the incident in the morning CB, Ashlea's Contract Manager spoke to Mr Biba by telephone to report the conduct of the Claimant. We accept his conduct was as set out in the Ashlea report, it being a relatively contemporaneous document from an independent party. Mr Biba spoke to his own supervisor SR who confirmed Ashlea's account. The Claimant prepared a document which was in the bundle at pages 307-308 and described as a 'timeline', he says soon after these events. In this document he describes himself as 'angry'.
40. It was the Claimant's first time on the site and found that he would have had to undergo an induction. He accepts he was not wearing the PPE. He gave various accounts as to why he had no hard hat, firstly he expected the contractor to provide it at the induction, then he said there were only two hats in the van and there were three of them. We find he should have had the PPE. He regularly worked on 'building' sites and should have been aware of the requirements. On 10 June 2016 he had been told by Mr Biba to *'use the correct PPE'*.

41. The Claimant and his colleagues returned to the Respondent's workplace arriving about 12 noon. The Claimant gave two accounts of what occurred, saying Mr Biba met him at the gate and dismissed him but also saying he met with Mr Biba in his house. Mr Biba says they talked in his office for an hour and then he sent the Claimant home. We prefer Mr Biba's account again, given that they were 'close friends'.
42. Mr Biba had several conversations with CB during the day and believed the Respondent would lose the contract with Ashlea on account of the Claimant's behaviour that morning. This is supported by the email of 25 January 2019 in which PJ says "Thankfully ... this seems to be going no further with the management of Galliford Try", to whom Ashlea were sub-contracting.
43. On the evening on 24 January 2019 Mr Biba prepared the dismissal letter. This is at page 186, is dated 24 January 2019, and states "After lots of consideration, several verbal and written warnings you had left me with no option but to terminate your employment with (the Respondent) with immediate effect.
44. The reason for termination of employment are;
- "You have been banned from most of the sites (the Respondent) work on,*
- for arguing with Site Supervisors and Managers*
  - verballing (sic) abusing them*
  - showing aggressive behaviour*
- As a result of your bad behavior, (the Respondent) has lost contracts with these clients and our reputation has been tarnish (sic)".*
45. On 26 January 2019 Mr Biba delivered the dismissal letter to the Claimant. There was no appeal.

### **Submissions**

46. We had detailed written submissions from Mr Keith for the Respondent. These set out the law and made observations on the evidence and on the credibility of the Claimant. We also heard brief oral submissions from Mr Keith which mainly spoke to the issue of credibility.
47. We heard oral submissions from Mr Lawrence for the Claimant. He also spoke to the issue of credibility. On the event of the 24 January 2019 (which he described as the 'main event') he invited us to accept the Claimant's account namely that he was expecting to receive PPE from Ashlea at the site, he was the victim of a misunderstanding between himself and site management and that he was the unjust recipient of the foreman's aggression. In his submission Mr Biba should have properly considered these mitigating factors before dismissing the Claimant, but instead delivered a predetermined decision. He wrote the dismissal letter before he had received the report from Ashlea and in circumstances where he had not been told the contract was terminated. Mr Lawrence did end his submissions with two concessions. Firstly, that given the Claimant's oral evidence that he had worked on the 'black market' after dismissal, the period for which compensation was being sought in the Schedule of Loss should be reduced. Secondly, on the issue of Polkey, there was a chance that the Claimant would have been dismissed in any event such that a relevant deduction to compensation should be made, but such deduction should not be 100%.



## The Law

48. s98 Employment Rights Act 1996 provides

*“(1) in determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –*

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and*
- (b) that it is either a reason falling within subsection (2) ...*

*(2) A reason falls within this subsection if it –*

- (b) relates to the conduct of the employee*

*(4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)*

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
- (b) shall be determined in accordance with equity and the substantial merits of the case.”*

49. Conduct cases are assisted by the well known case of British Home Stores v Burchell (1978) IRLR 379 which sets out the test for the Tribunal as follows:

- Did the employer believe the employee to be guilty of misconduct?
- Did the employer have reasonable grounds for such belief?
- At the time the employer held that belief, had it carried out as much investigation as was reasonable.

50. The cases of Iceland Frozen Foods Ltd v Jones (1982) IRLR and Sainsbury’s Supermarket Ltd v Hilt (2003) IRLR 23 confirmed that the Tribunal must not substitute its own view for that of a reasonable employer and that it must decide whether the investigation and the sanction fell within a range of reasonable responses open to a reasonable employer.

51. Taylor v OCS Group Ltd (2006) IRLR 613(CA) established that if there are procedural flaws, they should be considered alongside the reason for dismissal, when the Tribunal comes to assess whether in all the circumstances, the employer acted reasonably in treating the reason as a sufficient one for dismissal.

52. Warnings that have expired when new conduct issues arise cannot be taken into account to justify dismissal where the misconduct itself does not justify dismissal – Dinosynth Ltd v Thomson (2006) IRLR 284 (CSIH). Contrast this with the situation where the new conduct of itself constitutes gross misconduct, here the

expired warnings can be taken into account when considering whether dismissal is a reasonable sanction – Airbus Ltd v Webb (2008) EWCA Civ 49.

53. s103(A) Employment Rights Act 1996 provides

*“An employee who is dismissed should be regarded for the purpose of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure”*

54. S100(I)(c) Employment Rights Act 1996 provides

*“An employee who is dismissed shall be regarded for the purposes of the Part as unfairly dismissed if the reason (or, if more than one, the principal reason) is that*

–

*(c) Being an employee at a place where - ... he brought to his employer’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety”*

s86 Employment Rights Act 1996 provides entitlement to statutory notice pay, some that subsection (6) allows for termination *“without notice by reason of the conduct of ... party”*.

55. S47B Employment Rights Act 1996 provides

*“a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure”*

56. S44(i)(c) Employment Rights Act 1996 provides

*“a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that*

*(c) Being an employee at a place where – he brought to his employer’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety”*

57. The dismissal will be automatically unfair if it fails within s100(I)(c) or s103(A). there must be a casual link between any protected disclosure and/or raising of a health and safety issue and the dismissal. To amount to a protected disclosure the worker must disclose information within the meaning of s43(B)(i) (a)-(f), he must reasonably believe the information to be true and make the disclosure in the public interest.

## Conclusions

### Unfair dismissal

What was the reason for dismissal?

58. The reason for dismissal was clearly the conduct of the Claimant on the morning of 24 January 2019.

59. As detailed in our finding of fact the Respondent relies heavily on a small number of customers. The Claimant had been given previous warnings about his conduct and had previously been barred from other customer sites. It is clear from the contemporaneous accounts Mr Biba received, that the Claimant was not wearing PPE and refused to wear it when the customer, and the customer's customer, challenged him. In the Claimant's own words he became angry and his previous warnings suggest he had 'form' for such behaviour on past occasions. We are able to conclude on the balance of probabilities that he was displaying misconduct that morning. In our view it was gross misconduct.

Did the Respondent act reasonably in treating the Claimant's conduct as a sufficient reason for dismissal?

60. We find the Respondent did act reasonably. Mr Biba had 'first hand' accounts from his own supervisor and the customer. He feared he would lose the contract. The Claimant did not deny that he was angry and that he did not have the PPE in question. Whilst the Tribunal might have expected a formal disciplinary process to have taken place, we reminded ourselves we should not substitute our view for that of a reasonable employer. We also had regard to the size and administrative resources of the Respondent's relatively small undertaking. Mr Biba had conducted as much investigation as was necessary on the facts, and formed a reasonable belief in the Claimant's guilt. Dismissal was within the range of reasonable responses.

Did the Claimant make any protected disclosure?

61. We find the only time the Claimant raised the matter of PPE, was on 23 January 2019 when he requested safety boots. We find Mr Biba said he would arrange for these to be obtained the following day, albeit events overtook matters. We did not find a simple request for boots to be a protected and qualifying disclosure however. We did not find the request amounted to a disclosure of information, not that it was in the public interest.

62. Further we do not find the request for boots to be a health and safety matter. The Claimant had been provided with boots in July 2018. Requesting a new pair in January 2019, without saying that his existing boots were in some way unfit for purpose, is not a matter of 'harm or potential harm'.

Did the Claimant suffer any detriment?

63. We did not find the Claimant suffered any detriment. When he requested boots, Mr Biba responded positively. The misconduct by the Claimant on 23 January 2019 was entirely unconnected with his request for boots. We also, for the avoidance of doubt, find the dismissal was unconnected with any health and safety issue raised by the Claimant.

Notice Pay

64. Given we have found the Respondent was entitled to find the Claimant had been guilty of gross misconduct, no notice pay is awarded.

For the reasons above the claims must fail.

Employment Judge **Hindmarch**  
19 March 2021