



EMPLOYMENT TRIBUNALS

Claimant: Mr Nosa Osawaru

Respondent: APCOA Parking (UK) Limited

Heard at: London South Tribunal **On:** 12th April 2021 **by:** CVP

Before: **Employment Judge Clarke (sitting alone)**

Representation

Claimant: Mr N Osawaru (in person)

Respondent: Ms Yve Montaz (Consultant – Peninsular Business Services Ltd)

RESERVED JUDGMENT ON LIABILITY

- (1) The complaint of unfair dismissal is well-founded. This means that the Claimant was unfairly dismissed by the Respondent.
- (2) A 100% reduction in the Compensatory award for unfair dismissal under the principles in *Polkey –v- A E Dayton Services Limited 1998 ICR 142*.
- (3) A 100% reduction in both the Basic and the Compensatory damages awards for contributory negligence.
- (4) No adjustment to the damages award for failure to comply with ACAS Codes.
- (5) Damages for unfair dismissal assessed at £0.00.

REASONS

Introduction

1. The Claimant was employed by the Respondent as a Parking Enforcement Officer. He was dismissed on 14th February 2020 and notified ACAS under the

early conciliation procedure on 20th April 2020. The ACAS certificate was issued on 20th May 2020.

2. By a claim presented to the employment tribunals on 16th June 2020 the Claimant complained that his dismissal was both procedurally and substantively unfair.
3. The Respondent was granted an extension of time for the submission of its response. The Respondent resists the claim asserting that that it fairly dismissed the Claimant for gross misconduct (namely for dishonesty, falsifying his location whilst on beat and fraudulently claiming overtime) after following a fair procedure and that the decision to dismiss was a fair one in all the circumstances and within the band of reasonable responses open to the Respondent. In the alternative, the Respondent contends that the Respondent would have been dismissed in any event and that the Claimant's conduct contributed to his dismissal.
4. The case was listed as a final hearing on merits and liability on 12th April 2021 with a time estimate of a day.
5. The Respondent confirmed that it was no longer pursuing a postponement application previously made and the Claimant confirmed that he remained unemployed and wished to pursue a remedy of re-instatement or re-engagement.
6. Nevertheless, at the outset of the hearing, it was apparent that 1 day was not a sufficient time estimate and the hearing proceeded in respect of liability only.
7. In the event, following the hearing of evidence there was insufficient time for submissions and judgment and both parties elected to provide written submissions and receive a reserved judgment rather than seek a further date.

The Evidence

8. At the hearing, the Claimant represented himself and gave sworn evidence.
9. The Respondent was represented by a consultant from Peninsular Business Services, Ms Yve Montaz, who called sworn evidence from Ms Joanne Hunwicks (Contract Manager), Mr Neil Gentry (Contract Manager for Maidstone & Kent), Mr Brian Devlin (Senior Contract Manager), and Mrs Chelsey Smith (HR Manager).
10. I was also referred to, and considered, witness statements from each witness who gave oral evidence, various documents contained in a bundle comprising 323 pages and a small amount of additional pages. References in square brackets hereafter are to page numbers within this bundle.
11. Following the hearing, I received written submissions from both the Claimant and Ms Montaz (on behalf of the Respondent).

12. In essence Ms Montaz submits that the Respondent acted reasonably in treating the Claimant's conduct as sufficient reason for dismissal and that the dismissal was fair. She points to the fact that the Claimant has not, either during the investigatory stage or appeal stages of his disciplinary proceedings or in his witness statement for these proceedings, challenged the findings which led to his dismissal and in the investigatory stage appeared to adopt a "hands-up" approach and in his evidence before the Tribunal accepted that he had participated in "ghost-logging", ie falsely inputting locations. She further submits that the investigation was reasonable in the circumstances of this case, that the Respondent had a genuine and honest belief that the Claimant was guilty of the alleged misconduct and that the decision to dismiss was within the range of reasonable responses. She asserts that there had been no procedural unfairness as a result of the address to which the notification of the disciplinary hearing on 14th February 2019 was sent and that the Claimant was given an opportunity to state his case on the substantive matters during the appeal hearing but failed to do so. She asks the Tribunal to conclude that even if there was procedural unfairness, it would have made no difference to the outcome and that the Claimant contributed to his dismissal as a result of his conduct and it would be just and equitable to reduce the basic and compensatory award by 100% for this conduct.

13. In summary, the Claimant submits that he did not attend the disciplinary hearing because he had not been notified of the date (the Respondent having sent letters relating to the hearing to his former rather than current address) and that had he attended the hearing the outcome would have been different and he would have been able to challenge the allegations. He asserts that the charges were trumped up and he had been targeted. Also, that what he was accused of was normal practice accepted by the Respondent and that he should have been cautioned as soon as a discrepancy was identified rather than being monitored for 3 weeks. Further, that he should only have received a final written warning due to his length of service and prior clean disciplinary record and that the termination of his employment was harsh and disproportionate. He also submits that the Respondent failed to follow ACAS procedures and refers to the range of reasonable responses assessment.

The Issues for the Tribunal

14. The list of issues in relation to liability was agreed between the parties to be:
 - (i) Was the Claimant dismissed for a potentially fair reason in accordance with s.98(1) of the Employment Rights Act 1996 ("ERA")? The Respondent relies on conduct which is a potentially fair reason (s.98(2)(b) ERA).
 - (ii) Did the Respondent act reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the Claimant? This is to be determined in accordance with equity and the merits of the case (s98(4) ERA).
 - (iii) Did the procedure followed and the decision to dismiss fall within the range of reasonable responses open to a reasonable employer in the same circumstances?

- (iv) If the Claimant's dismissal was unfair, is the Claimant entitled to a Basic Award and/or a Compensatory Award, and, if so, should there be any of the following adjustments:
- a. A reduction in the Compensatory Award on the basis the Claimant has mitigated or failed to take all reasonable steps to mitigate, his loss?
 - b. Any adjustment to the Compensatory Award as a consequence of any failure (by either side) to follow procedures under the ACAS code?
 - c. Any reduction or limit in the Compensatory Award to reflect the chance that the Claimant would have been dismissed in any event and that any procedural errors accordingly made no difference to the outcome in accordance with *Polkey?* and/or
 - d. Any reduction in either award to reflect any contributory fault on the Claimant's behalf towards his own dismissal?

Relevant Findings of Fact

15. The Respondent is well-established company providing car parking solutions throughout the UK. It employs approximately 2030 persons, including parking enforcement officers, to fulfil the various contracts the Respondent has entered into with other organisations. These include the London Borough of Bromley.
16. The Claimant started his employment with the Respondent on 1st April 2017 having been transferred under TUPE. The effective start date of his continuous employment is agreed to be 16th May 2011 [36].
17. The parties are agreed that the Claimant was dismissed without notice on 14th February 2020 and that the reason for the dismissal was gross misconduct by way of dishonesty. At the time of his dismissal, the Claimant held the post of parking enforcement officer and undertook shifts enforcing parking in the London Borough of Bromley area.
18. The Respondent's parking enforcement officers operate alone. Their role is to patrol a designated area and monitor vehicle parking. Details of any vehicles that are incorrectly parked are recorded and parking tickets are issued.
19. The Respondent requires high standards of honesty and integrity from its parking enforcement officers as they are solely responsible for gathering the evidence which leads to the issue of penalty charge notices (parking tickets).
20. Each parking enforcement officer is issued with a hand-held unit which has inbuilt GPS tracking. They log into the hand-held device at the beginning of their shift and log out and hand back the device at the end of the shift. They are also required to manually log their locations (all streets visited) on this device during their shift, using a drop-down menu of the roads applicable to their route, as well as their travel time and breaks. The GPS tracking information operates in real time but is not automatically monitored in real time. It can however be accessed

by both the Respondent and the Respondent's client for the purpose of parking ticket appeals, freedom of information act requests and to check the Respondent's compliance with the contract. In addition, in the event of an emergency, the GPS record will enable help to be sent immediately and accurately.

21. The GPS information on the hand-held devices cannot be viewed or manipulated by the user, is accurate to within 10-30m and records the location of the device once per minute. None has never been found to be faulty and on a number of occasions the GPS has been successfully used to locate a device in real time.
22. The hand-held devices are not however used for the purposes of determining working hours for pay purposes. The parking enforcement officers sign in and out of their shift on a piece of paper put out each morning and collected in the evening (the "sign-in sheets"). The payroll is collated from the information on the sign-in sheets alone.
23. The cars and radios used by the parking enforcement officers are also issued to, and returned by, the parking officers on the day of their shift and the time the car keys are logged in and out are recorded.
24. The cars and hand-held devices are integral to the work undertaken by the parking control officers and no part of their duties can be undertaken without at least the hand-held device.
25. The Respondent places considerable trust in its parking enforcement officers. Not only in respect of the substance of their work (see para 19 above) but also because they are effectively trusted to determine their own pay by entering correct information on the log in/out sheets from which pay is calculated.
26. In around October 2019 it was brought to the Respondent's attention that the Claimant appeared to be signing out of his shift and claiming overtime on the daily signing in sheet for hours that he had not worked. This prompted Ms Hunwicks to make enquiries of the Claimant's Line Manager Kashif Mahmood and the Operational Support Manager, Oliver Crittenden ("Ollie"). They carried out an investigation of the September 2019 records, namely a comparison of the Claimant's signed daily log in/log out records with the time and location logs of the Claimant's hand-held unit. This was not a period of monitoring as asserted by the Claimant in his closing submissions but a retrospective analysis of a period prior to the point at which the suspicion arose.
27. The comparison disclosed numerous discrepancies over the period which broadly fell into 2 categories:
 - (1) The Claimant's hand-held device indicated that he had completed his shift at a substantially different (earlier) time than his signed logs claimed, meaning that the Claimant had not worked the length of shift declared and had claimed overtime to which he was not entitled; and
 - (2) The GPS data indicated that the Claimant was frequently not in the locations he manually claimed to be in but was in fact static in an unexpected area and/or located close to the base. In particular he

appeared to spend far longer in carpark located on Burnt Ash Lane adjacent to the base than would be expected by the nature of the work likely to be required of him in that location and was also unexpectedly often shown to be in Warner Road (the road next to the base) for long periods.

In total, over the period investigated, the comparison identified 19 days on which there were significant discrepancies.

28. The Claimant was asked to attend an investigatory meeting with Ms Hunwicks on 29th October 2019, which he did. The notes of the meeting are found at [96-106].
29. At the meeting the Claimant was shown the documentation from the logs and hand-held devices identifying the discrepancies. When Ms Hunwicks put the first discrepancy (from 5th September 2019) to the Claimant he accepted that he had worked a 7 hour day but had logged that he had worked 8 hours and had signed for 2 hrs instead of an hour in overtime. He accepted a similar discrepancy in relation to 10th September 2019 and other dates and suggested on several occasions that the Respondent could take the overpaid money back [97-100]. He also said his practices had changed when Ollie briefed him to check the correct hours were written but when asked why he did not tell the Respondent of the previous discrepancies and rectify them he said: "I should of but didn't" [105].
30. As he was unable to give any, or any satisfactory explanation for the various discrepancies raised with him, Ms Hunwicks considered that disciplinary action was indicated. The Claimant was suspended following that meeting and pending a disciplinary hearing. He was physically handed 2 letters regarding the same which were enclosed in a plain envelope with a see-through window showing the name and address on the letter inside. Each of these letters was addressed to the Claimant at an address in Eltham ("the Eltham address") [90- 94] and erroneously dated 28th October 2019. One of those letters notified him of a disciplinary hearing scheduled for 5th November 2019.
31. The Claimant did not, at this time or subsequently, alert the Respondent as to any issue regarding the contents of the letters or where they were addressed to until he sought to appeal his dismissal.
32. Shortly thereafter, on 31st October 2019, the Claimant contacted the Respondent by e-mail to lodge a grievance regarding his treatment, claiming victimisation, hatred and racism and asserting that he had been made a scapegoat. The e-mail in which he raised this grievance also includes the following statements "I am not denying what you had against me ..." and ""All the evidence you have against me has shown to me that I have been a soft target for you because I have made some errors that are classified as gross misconducts and these errors were not just one day it was continuous issues and your OSM that serves as my supervisors could not pull me in for warning but they were quick to highlight it and send it to the manager." [107-108]
33. In a subsequent e-mail dated 1st November 2019 in respect of a wages query the Claimant also appears to accept that the allegations raised by the Respondent

were true in that it states “I agreed I made some silly mistakes which have not been done before and I have accepted my faith(sic)” [115].

34. The grievance meeting was initially scheduled for 5th November 2019 [112] but on 4th November 2019 the Claimant sent in a sick note [118-119]. Accordingly, the Respondent sent a letter to the Claimant by e-mail and re-scheduled the grievance hearing to 14th November 2019 [121]. Despite a reminder sent on 13th November 2019 by e-mail [122], the Claimant failed to attend the grievance meeting and subsequently sent a further sick note covering that period [130].
35. Consequently, the grievance meeting was once again re-arranged and was timetabled to take place on 3rd February 2020. The delay was as a result of the Claimant being on pre-scheduled annual leave between 2nd to 31st January 2020.
36. The re-arranged grievance meeting was notified to the Claimant by e-mail dated 13th January 2020 [136-137] and on 19th January 2020 the Claimant responded by e-mail confirming he would attend [138]. However, despite his union advisor being told that the grievance hearing could not be postponed again [139], on 3rd February 2020 the Claimant failed to attend the grievance hearing [140].
37. On 5th February the Respondent wrote to the Claimant by e-mail indicating that it presumed that the Claimant was no longer pursuing his grievance since he had not attended the hearing [144]. No response was received and that in effect was the end of the grievance.
38. Although the disciplinary hearing had initially been scheduled to take place on 5th November 2019, it was first postponed to 8th November 2019 on receipt of the Claimant’s grievance [195] and was then postponed a second time as a result of the Claimant’s sickness and to permit the Claimant’s grievance to be considered and determined prior to the disciplinary hearing [192], as per the Respondent’s policy and handbook [54 & 86]. Letters in relation to the grievance procedure bore the Eltham address but were sent to the Claimant via e-mail.
39. Following the Claimant’s failure to attend the grievance hearing and the consequent end of the grievance process, a letter was sent to the Claimant on 3rd February 2020 scheduling (for the 3rd time) the disciplinary hearing to take place on 14th February 2020. That letter was sent on 5th February 2020 by post only to the Eltham address [141-142].
40. At a late stage in proceedings the Respondent disclosed an internal e-mail between Mrs Smith and Mrs Hunwicks in relation to the disciplinary hearing on 14th February stating that she had “also advised the union rep of the date”.
41. Whilst this contemporaneous document is highly suggestive of the fact that the Claimant’s union representative was informed of the date of the disciplinary hearing, there is no evidence that he informed the Claimant of the date, and I am not satisfied that he did so. In any event, I find the Respondent’s obligation to inform Claimant was not satisfied by informing only his representative.

42. The Claimant did not contact the Respondent despite being asked in the letter to confirm his attendance, nor did he attend the disciplinary hearing.
43. Mr Gentry conducted the hearing and decided to proceed in the Claimant's absence, as the Respondent's disciplinary policy allowed him to do.
44. He reviewed all material available to him (which included the investigation notes, correspondence with the Claimant, the documents shown to the Claimant during the investigatory meeting and e-mails between the Claimant and Chelsey Smith, the HR manager). He established from the contract team at Bromley that the contract required a set level of deployed hours and deployed persons per day and that overtime was offered to parking officers as necessary to meet deployment levels. I accept that this was the case.
45. After considering the material available to him, he concluded that the Claimant had falsely claimed overtime not worked and had falsified or not provided an accurate account of where he was located or his actual finish time on numerous occasions. Mr Gentry had regard to the staff handbook and disciplinary policy which lists "theft or fraud" as examples of gross misconduct.
46. He considered the level of trust and standards of integrity required by the Respondent and the Claimant's failure to provide any explanation. He took the view that the falsification of location records was more significant than the erroneous overtime claims. He did not consider anything said by the Claimant during the investigatory stage provided mitigation for the Claimant's actions. Accordingly, he considered the appropriate action was to summarily dismiss the Claimant.
47. By letter dated 15th February 2020 [145-147] the Respondent informed the Claimant of decision to summarily dismiss him for gross misconduct. That letter was also sent only by post to the Eltham address. None of the letters sent to the Claimant at this address were returned by the post office.
48. The Claimant's union representative was also advised of the Claimant's dismissal at some point, and by no later than 2nd March 2020 [161].
49. By letter dated 4th March 2019 the Claimant wrote to the Respondent saying he had been advised of his dismissal by his union representative and requesting a copy of the letters sent to his address and delivery slips/proof of receipt [150].
50. On 10th March 2020 the Claimant sent a whatsapp message to an employee of the Respondent, blaming them for his dismissal [243]. He also wrote to the Respondent on 19th March 2020 disputing that he had received the correspondence sent by the Respondent in respect of the disciplinary process and advising that it had been sent to his old address that he had updated in 2017 [200]. Subsequently, by e-mail dated 8th April 2020 the Claimant further confirmed his address details [203].
51. An appeal hearing took place before Mr Devlin on 3rd June 2020 and was attended by the Claimant and his union representative, Mr Raymond Hocking.

The Respondent's disciplinary policy indicates that the appeal hearing is not intended to repeat the detailed investigation of the disciplinary interview, but to focus on the specific grounds of appeal outlined in the letter of appeal. However, the policy also indicates in its principles that "At every stage the employee will be advised of the nature of the complaint and given an opportunity to state his/her case before any decision".

52. The delay between 8th April 2020 and 3rd June 2020 was due to the Covid 19 pandemic, which had led to a national lockdown commencing on 23rd March 2020. A substantial amount of disruption was caused to businesses in the immediate aftermath of the announcement of lockdown and business had to rapidly adapt to constantly changing and unprecedented circumstances.
53. Mr Devlin had had no previous involvement in the disciplinary proceedings. He had available to him the Claimant's correspondence, including that referred to above and all the investigatory and disciplinary documentation and correspondence relating to the Claimant's grievance.
54. The contemporaneous notes taken of the disciplinary hearing are at [212-216]. During the hearing the grounds of appeal as contained in the letter of 19th March 2020 (including non-receipt of correspondence and not having a fair opportunity to respond) were briefly discussed with the Claimant. Although the Claimant was offered the opportunity to provide any further information for Mr Devlin to consider before the conclusion of the hearing, both he and his representative stated there was nothing else [215]. The Claimant did not really raise any issues in respect of the substantive allegations or suggest that he had not committed the acts alleged. Nor did he provide any justification or mitigation for his actions. He merely asserted that he had not received the letters, took issue with the Respondent's procedure and stated that he had found out about his dismissal from his union representative around 15th February 2020.
55. Mr Devlin did not take a decision at the disciplinary hearing itself. After the hearing he reviewed the disciplinary process and noted the existence of 3 different addresses for the Claimant. However, he also took into account that the Claimant had not taken issue with the Eltham address on the correspondence which he did receive. He considered that the Claimant had chosen not to attend the grievance hearing despite confirming that he would do so and that he had not made contact with the Respondent on his return from annual leave. He concluded that it was more likely that the Claimant was aware of the disciplinary hearing but had chosen not to attend.
56. He found no procedural failings on his review of the disciplinary process and concentrated on the sanction and the severity of the sanction. He supported the decision to dismiss due to honesty and integrity being essential qualities in a security officer which could not be compromised. Like Mr Gentry, he considered the falsification of records to be more significant than the erroneous overtime claims. This was because the overtime claims were detrimental to the Respondent alone whereas the falsification of records potentially not only damaged the Respondent's reputation but also that of the Respondent's client (London Borough of Bromley) and was detrimental to the trust and confidence

between the Respondent and its client. He informed the Claimant of the outcome of the appeal by letter dated 10th June 2020 [217-218], namely that the original decision to dismiss remained.

57. Although he considered whether to hold another disciplinary hearing that the Claimant could attend, in light of the clear overwhelming evidence against the claimant on the substantive charges and the Claimant's admission of ghost-logging he did not consider that having another hearing would change the outcome.
58. Contrary to Mr Devlin's conclusion, I am satisfied on the basis of the evidence I heard that the Eltham address was an historical address for the Claimant from which he had moved some time before the disciplinary proceedings commenced and with which he had no ongoing connection. I find it is unlikely that he received the disciplinary correspondence sent to that address. I do not accept that the mere fact that the letters were not returned to the Respondent by the post office is an indicator that they were received by the Claimant.
59. A peculiarity about this case is that, although most other correspondence during this period was sent to the Claimant by e-mail (in relation to his grievance procedure and a wages query), all the letters sent by the Respondent in relation to the disciplinary process up to and including the dismissal letter were sent solely by post to the Claimant and addressed only to the Eltham address, (save for the initial letters dated 28th October 2019 that were handed to the Claimant but bore that address).
60. This is despite the fact that the HR department of the Respondent were aware of 3 separate addresses for the Respondent in this period:
 - (1) The Eltham address, shown on the Claimant's personnel file, which was the address to which they sent correspondence;
 - (2) An address in Croydon, which was the address shown on the payslips sent to Chelsey Smith on 1st November 2019 and 29th November 2019 in connection with a wages query [113-144 & 125-126]; and
 - (3) An address in Streatham, which was the address shown on his sick note sent to Chelsey Smith on 5th December 2019 [128-130].
61. It was the Claimant's responsibility to inform his managers/supervisors of any change in circumstances such as his address [76-77]. He says that he did so in 2017 by informing Duncan Wells, the former contracts manager, who was supposed to have updated it the system. He was however only able to provide very limited details as to how or when this occurred but relied upon the fact that his payslips bear his new address to evidence that he did.
62. This was matter of significant contention between the parties. The Respondent did not accept that the Claimant had validly notified a change of address or that his payslips evidenced that he had done so, although I did not hear from Mr Wells, who no longer works for the Respondent.
63. The evidence of the Respondent's witnesses was to the effect that the address on the payslips derives from a portal service platform that deals with the payroll

and which the employee can amend address details on, but the personnel department does not have access to. Also, that an amendment on the portal does not change the addresses held by HR and that when an address is updated it replaces all previous addresses on the system so that any documents printed after the date of change would bear the updated address even if a contemporaneously printed document dating from prior to the change would have contained the original address.

64. This was not contested by the Claimant, who simply denied that he had changed the address on the payslips this way.
65. In any event, I do not find that anything turns upon this. I find as a fact that the HR department were, or should have been aware, of all 3 addresses as they had sight of documentation bearing all 3 as per paragraph 60 above.
66. A further oddity is that despite claiming that he has been unfairly dismissed both substantively and procedurally, the Claimant provided no challenge to, and limited explanation of, the serious allegations raised by the Respondent which led to the disciplinary process and dismissal. His evidence was almost entirely directed towards the procedural fairness of the process.
67. During the hearing the Claimant gave an explanation for the overtime hours discrepancy and put questions to the Respondent's witnesses in respect of this account to the effect that there were PCN targets - a claim denied by the Respondent's witnesses. Also, that there was an unwritten arrangement whereby once targets had been hit he could go home early but claim for further time, including overtime as a bonus/incentive.
68. I did not find the Claimant's explanation as to his entitlement to a bonus or incentive as a hard worker which was paid via unworked overtime claims to be plausible or credible and I reject it. It is inconceivable that a large company such as the Respondent who wished to reward hard working employees and provide a bonus would do so by encouraging them to claim for overtime that was not in fact worked. Further, both the Respondent's disciplinary procedure and handbook make clear that deliberate falsification of records and theft or fraud amount to gross misconduct which may result in summary dismissal even for a first offence [42, 48, 53-4 and 84-85] and the Respondent's stated values include "honesty" [58]. Additionally, Mr Gentry's explanation of the obligations under the contract with London Borough of Bromley (para 44 above), which I accepted, is far more plausible and is wholly inconsistent with the assertions made by the Claimant.
69. When questioned during evidence the Claimant admitted that the sheets he signed did not reflect the times he actually worked but was unable to explain why it was okay and not dishonest to sign and claim for work that he had not done.
70. Further, I note that on being challenged, he suggested to the Respondent's that they take the money back. Although denying that this was an acknowledgment that he had done something wrong, he advanced no alternative reason as to why

he would readily offer to repay money that he considered he was entitled to and was properly paid.

71. I also did not find his reasons why he was in Burnt Ash Car Park and Warner Road for extended periods to be credible. His assertion that he couldn't log streets whilst driving did not account for the fact that he had logged locations which conflicted with the GPS evidence as to where he was actually located. His suggestions that the GPS had perhaps timed out for an hour or that GPS data was wrong were wholly speculative and unsupported by any evidence and he was unable to give any explanation as to why this was a frequent and repeated occurrence rather than an isolated incident.
72. He also gave somewhat inconsistent evidence as to when he notified by his trade union representative that had been dismissed. During his appeal hearing he stated he had been told on 15th February (which was not contradicted by his representative), in his statement and initial oral evidence he said he found out around 24th February. This further confirmed my impression of his evidence that he was not always a reliable historian.
73. I also find it both surprising and inconceivable that if he had any valid substantive challenge to the allegations of dishonesty, that challenge was not effectively made at any stage, including during his appeal when he was accompanied and assisted by his union representative, or these proceedings, when he was questioned about them. Accordingly, I find that there was no valid substantive challenge to the allegations of dishonesty.
74. By contrast, I found the evidence of the Respondent's witnesses gave evidence in a straightforward, measured and careful manner and their accounts were consistent with the contemporaneous documentation and altogether more coherent, logical and plausible. Where there was a discrepancy between the oral evidence, I preferred that of the Respondent's witnesses.

Relevant Law and Conclusions

75. Section 94 of the Employment Rights Act 1996 ("the 1996 Act") confers on employees the right not to be unfairly dismissed. Enforcement of that right is by way of complaint to the Tribunal under section 111.
76. The Claimant must show that he was dismissed by the Respondent under section 95 but in this case, the Respondent has admitted that it dismissed the Claimant (within section 95(1)(a) of the 1996 Act) on 14 February 2020.
77. Section 98 of the 1996 Act deals with the fairness of dismissals. There are 2 stages that the Tribunal must consider. Firstly, the Respondent employer must show that it had a potentially fair reason for the dismissal within section 98(2).
78. Secondly, having established the reason for the dismissal, if it was a potentially fair reason, as then Tribunal has found that it was, the Tribunal has to consider,

without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason.

79. Section 98(4) of the 1996 Act deals with fairness generally and provides that the determination of the question of whether or not the dismissal was fair or unfair, having regard to the reason shown by the employer:
- (a) depends upon whether in the circumstances (including the size and administrative resources of the employers undertaking) the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee; and
 - (b) shall be determined in accordance with equity and the substantial merits of the case.
80. There is also well-established guidance for Tribunals on the fairness within s.98(4) of misconduct dismissals in the decisions in ***British Home Stores -v- Burchell [1980] ICR 303*** and ***Post Office -v- Foley [2000] IRLR 827***. In summary, the Tribunal must consider whether:
- (i) the employer had a genuine belief in the employee's guilt (this goes to the reason for the dismissal);
 - (ii) such genuine belief was held on reasonable grounds;
 - (iii) the employer had carried out a reasonable investigation into the matter;
 - (iv) the employer followed a reasonably fair procedure; and
 - (v) dismissal was an appropriate punishment as opposed to some other disciplinary sanction, such as a warning.
- The burden of proof in relation to (i) is on the Respondent whereas for (ii) to (v) above the burden of proof is neutral.
81. In considering all aspects of the case, including those set out above, and in deciding whether or not the employer acted reasonably or unreasonably within section 98(4) of the 1996 Act, the Tribunal must decide whether the employer acted within the band of reasonable responses open to an employer in the circumstances.
82. It is immaterial how I would have handled events or what decisions I would have made. I must not substitute my view for that of the reasonable employer – ***Iceland Frozen Foods Limited -v- Jones [1982] IRLR 439***, ***Sainsbury's Supermarkets Limited -v- Hitt [2003] IRLR 23***, and ***London Ambulance Service NHS Trust -v- Small [2009] IRLR 563***.

Potentially Fair Reason for Dismissal

83. In this case, it is not in dispute that the reason that the Respondent dismissed the Claimant was because it believed that the Claimant was guilty of gross misconduct by reason of dishonesty, namely falsifying his location whilst on beat and fraudulently claiming overtime. Misconduct is a potentially fair reason for dismissal - section 98(2)(b). Subject only to the genuineness of the belief, the Respondent has therefore satisfied the requirements of section 98(2).

Genuineness of Belief

84. Having heard from the Respondent's witnesses orally, as well as receiving their written evidence, I find that all the Respondent's relevant management, Mr Gentry and Mr Devlin, held a genuine belief that the Claimant was guilty of misconduct, namely both of falsifying his location whilst on beat by logging inaccurate locations on his hand-held device and by claiming on his daily log sheets for overtime which he did not work and knew he had not worked.
85. Mr Gentry's evidence was clear and unequivocal about why he dismissed the Claimant. He had considered the material arising from the investigation, the lack of any explanation from the Claimant for the discrepancies found and the comments made by the Claimant in both the investigation and subsequent e-mails. He concluded that the Claimant had accepted that he had falsely claimed for overtime that he had not worked and had not provided an accurate account of where he was located.
86. There was ample material which provided an objectively reasonable foundation for a genuine belief, both from the evidence gathered during the investigation, namely the comparison of the various records of the Respondent and the GPS logs [219-238, 252-314 and summarised at 238-241] and arising from the comments made by the Claimant himself. No material was presented that contradicted that evidence and, during the Tribunal hearing, the Claimant did not himself challenge the genuineness of the Respondent's management's belief. Indeed, to date the Claimant has still not sought to challenge the evidence or the allegations but has instead suggested that he had been targeted and that what he was accused of was normal practice accepted by the Respondent (although he failed to provide any evidence other than his own testimony to support this assertion).
87. Mr Devlin was equally clear about why he dismissed the appeal.
88. The contents of the dismissal letter [145-147] and the appeal hearing outcome letter [217-218] are also consistent with this being a genuine belief.
89. In all the circumstances, I find that it was not beyond the range of reasonable responses for the Respondent to reach the conclusions that it did and I am satisfied that the Respondent's belief was genuine and was held on reasonable grounds.

Investigation

90. I must also consider therefore whether, at the time the belief was formed, the Respondent had carried out as much investigation into the matter as was reasonable in the circumstances.
91. The allegations against the Claimant were serious and concerned dishonesty. They could be construed various as theft/fraud, deliberate falsification of records, bringing the Company into serious disrepute and serious breach of confidence,

each of which were categorised as gross misconduct justifying summary dismissal under the Respondent's disciplinary policy [53-54 & 84-85]. In addition, a dismissal for this type of dishonesty would be likely to be highly damaging to the Claimant's future career prospects, particularly as a parking enforcement officer.

92. The Respondent in this case is a fairly large organisation, employing over 2,000 people and operating a number of different contracts. It has an HR department, written policies and an extensive management structure and administrative resources, as indicated by the status and job descriptions of the 4 witnesses who gave evidence on behalf of the Respondent.
93. The Respondent's investigations consisted primarily of obtaining and comparing various documentary records and giving the Claimant an opportunity to comment upon them. The evidence produced by the documents was detailed and compelling and did not rely on subjective considerations for its veracity.
94. No alternative explanation was offered by the Claimant during his initial investigatory meeting which required investigation and indeed, his comments then and subsequently in e-mail correspondence appeared to suggest that he did not dispute the existence of the discrepancies.
95. The Claimant did not investigate the Claimant's assertions that he had been targeted and that his actions were normal practice which the Respondent accepted. However, given the clear wording of the Respondent's written policies and handbook that falsification of records was unacceptable and would constitute gross misconduct, and that the Claimant had failed to pursue his grievance which raised this, I do not find that the Respondent acted unreasonably in failing to make enquiries as to this inherently implausible aspect of the Claimant's case prior to his dismissal or that any reasonable employer would have made such investigations.
96. I have the band of reasonable responses and these factors clearly in mind in reaching my decision as to whether the investigation was reasonable in the circumstances.
97. Taking all the circumstances into account, I do not consider that there were any deficiencies in the extent and quality of the initial investigation conducted by the Respondent.

Procedure

98. I must also consider the disciplinary procedure adopted by the Respondent. The Claimant has taken issue with the procedure adopted by the Respondent in that he asserted that he did not receive the letter inviting him to a disciplinary hearing on 14th February 2020 and was therefore effectively deprived of an opportunity to challenge the allegations.

99. As set out above, the letter notifying the Claimant of the date and time of the disciplinary hearing were sent by post to the Eltham address, the address available to the HR department and I am satisfied that was not a current address for the Claimant on 4th February 2020. Further, I am also satisfied that the Respondent was aware, or should have been aware, that there was some question mark about the Claimant's current address by reason of the matters set out at paragraph 60 above and that the Claimant did not in fact receive the letter.
100. It was clearly important that the Claimant received the information about the date and time of his disciplinary hearing. Indeed, the Respondent was under an obligation to notify the Claimant of this information and would be in breach of the ACAS Code of Practice had it not sought to do so.
101. As the Claimant was suspended from work, he was not physically present at the Respondent's site to receive the letter by hand (the manner in which the letter scheduling the original disciplinary hearing was provided). The Respondent therefore had to send the letter to him by some means and chose to do so by posting it to him. That is not unusual or surprising, nor was it incorrect to do so. However, given the inconsistency in the Claimant's address which was apparent, or should have been apparent to the Respondent's HR department (and in particular to Chelsey Smith who was at least partially responsible for drafting the letter) it is surprising that it was sent solely to only one of the 3 possible addresses for the Claimant without any enquiry to him as to which was his correct and current postal address. It was also a surprising omission that the Respondent did not send a copy of the letter to the Respondent by e-mail notwithstanding that it was the primary, regular and established line of communication between the Claimant and the HR department in the months prior to this letter. This was an odd omission which I consider was not adequately explained by the Respondent's witnesses.
102. Having heard the Respondent's witnesses who were responsible for sending the letter in person, I do not accept that the Respondent deliberately sent it to an address that they knew was historical, or failed to send a copy by e-mail so as to ensure that the Claimant was unaware of the hearing and would not attend.
103. The Respondent's position is that the Claimant failed to notify them of the updated address and did not take issue with the address to which the letter was sent when it appeared on the letters which were hand delivered to him in October 2019 despite that address being readily visible in the clear window of an otherwise blank envelope.
104. I accept that the presence of the Eltham address on the numerous letters received by the Claimant between 29th October 2019 and February 2020 should have alerted the Claimant to the fact that the Respondent's HR address records were not up to date. Further, and in any event, as there was an inconsistency in the addresses on documents submitted by him to the HR department in late 2019, that it would have been in accordance with the Claimant's notification obligations to ensure that HR were informed as to which of these was his correct address.

105. That the Claimant failed to query the fact that the address on the correspondence he received during this period was incorrect or take any other steps to ensure that the address held by the HR department was correct despite providing inconsistent details, no doubt contributed to the fact that the Respondent's HR department were unaware that he had no ongoing connection to the Eltham address.
106. Notwithstanding this, in my opinion, a reasonable employer in the circumstances I have outlined as existing, would have either made enquiries of the Claimant prior to sending the letter to determine his correct postal address or would have sent it to all 3 of the address at para 60 above so as to ensure that it reached him. I also consider that a reasonable employer would have sent the letter of 4th February 2020 both as a hard copy by post and electronically to the Claimant at the e-mail address he was known to correspond through, as they had done with the grievance correspondence.
107. Had the Claimant not received the letter despite the Respondent sending it to all of the addresses known to its HR department and by e-mail, the Respondent might have successfully argued that it had done everything reasonably possible to bring to the Claimant's attention the details of the date and time of the disciplinary hearing. This is particularly the case as, on the basis of the contemporaneous series of e-mails between Joanne Broadhurst and Chelsey Smith on 4th February 2020 regarding the letter sent to the Claimant to notify him of the hearing I am satisfied that Chelsey Smith notified the Claimant's union rep of the details. There is however no evidence before me as to whether or not the union representative subsequently communicated that information to the Claimant, and I cannot conclude that the Claimant was aware of the hearing but chose not to attend. Failure to attend a disciplinary hearing is of a very different character and potential consequence to failing to attend a grievance hearing.
108. However, the Respondent did not take any of the actions I outlined in paragraphs 106 and 107 above but sent the correspondence solely to the Eltham address. In my opinion this was outside the range of reasonable responses, and the Claimant's failure to take issue with the address on previous correspondence the Claimant's failures in this regard did not bring the Respondent's actions within the range of reasonable responses. The result of the Respondent's failure was that the Claimant was not afforded a proper opportunity to attend his disciplinary hearing.
109. When the Claimant did not attend the disciplinary hearing on 14th February 2020 Mr Gentry proceeded with the hearing in the Claimant's absence, reviewing the evidence and reaching a decision to dismiss.
110. I do not consider that it was procedurally unfair for Mr Gentry to proceed with the hearing at that time. I am satisfied that Mr Gentry was unaware that there was an issue with the address on the letter notifying the Claimant of the time and date of the hearing or that the Claimant may not have received the Respondent's correspondence notifying him of the date and time of the hearing.

111. Mr Gentry was mindful of the fact that this was the third occasion on which the hearing had been scheduled (the previous 2 hearings having been postponed as a result of the Claimant's sickness and instigation of a grievance) and I am satisfied that proceeding in such circumstances neither contravened the Respondent's written disciplinary procedure nor the ACAS Code of Practice.
112. However, by the time of the appeal hearing, the Claimant had clearly advised the Respondent that he had not received the letter inviting him to the disciplinary hearing, yet the Respondent took no action to address this irregularity and thus compounded the initial error in procedure.
113. The appeal hearing was brief and the issues dealt with summarily. The notes show the time Mr Devlin spent with the Claimant and his representative did not exceed 20 minutes in total.
114. During that hearing Mr Devlin's questions concentrated solely on the issues raised in the Claimant's appeal letter, in particular about the procedure. Although this was in accordance with the information given in the Respondent's disciplinary policy regarding appeals, he did not ask about the substantive allegations themselves, or apparently ask how the Claimant intended to defend himself even though the Claimant's final point in his appeal letter [207] stated "I have not been given the chance to exercise my right to a fair hearing and to defend myself".
115. This was a surprising omission, given that the Respondent's policy also (under Principles) indicates that the employee will be advised of the nature of the complaint and given an opportunity to state his/her case and particularly so as the Claimant had not attended the initial disciplinary hearing and had given an explanation which, if correct, justified his non-attendance. I do not consider that Mr Devlin's query at the end asking whether there was anything else the Claimant/his representative wanted him to consider (to which both the Claimant and his representative responded "no"), was sufficient to cover this point given that it is apparent from the notes that the Claimant's representative was at that point asking for the disciplinary process to be started again, not suggesting that it should come to an end with the appeal hearing [215].
116. Mr Devlin was aware of the Respondent's assertions about the address and also that there were a number of addresses available to HR. Although he concluded that there was no procedural unfairness and that it was more likely than not that the Claimant had deliberately chosen not to attend the disciplinary hearing, for the reasons set out above I do not accept that that was the case or that it was a conclusion which was within the range of reasonable responses to reach.
117. In light of the information known to Mr Devlin at that time, a reasonable employer would have set aside the decision to dismiss and either treated the appeal as the initial disciplinary hearing and investigated the allegation or scheduled a fresh disciplinary hearing at which the Claimant could challenge the allegations. The Claimant's right to appeal a substantive disciplinary hearing that he had had an appropriate opportunity to prepare for and make representations at would then have been intact.

118. Alternatively, the Respondent should at least have ensured that the substantive merits of the allegations and/or the sanction of dismissal were explored during the appeal hearing. Although the evidence against the Claimant appeared overwhelming, had not been actively challenged previously, and appeared to have been admitted at least in part, at that stage the Respondent could not wholly rule out that the Claimant would raise something that required further investigation or cast a different light upon whether dismissal was the appropriate sanction.
119. The Respondent took neither course. The failure to do either put the Respondent's actions in dismissing the appeal and upholding the dismissal at that time outside the range of reasonable responses of the Respondent and created an additional procedural unfairness as well as failing to remedy the procedural unfairness arising from the Respondent's initial failure to take reasonable steps to ensure that the invitation to the disciplinary hearing reached the Claimant.
120. As a result, of the deficiencies outlined above, I am satisfied that the procedure adopted by the Respondent was materially unfair and rendered his dismissal unfair.

Reasonableness of Sanction

121. I have no hesitation in finding that on the basis of the genuinely and reasonably held and reasonable beliefs of Mr Gentry and Mr Devlin, it was within the range of reasonable responses for the Respondent to characterise the Claimant's erroneous overtime claims and his false location entries on the hand-held device as gross misconduct. That conduct of this nature would be considered to be gross misconduct was clearly set out in both the Respondent's disciplinary policy and its handbook [53-54 & 84-85].
122. Although this was a first offence and the Claimant had a long history of employment without any relevant disciplinary record, the Respondent's disciplinary policy clearly permitted dismissal for a first offences in cases of gross misconduct [48].
123. Both Mr Gentry and Mr Devlin's evidence was also clear about the seriousness with which they viewed the Claimant's conduct. Each considered that the Claimant's actions were dishonest and amounted to a fraud on the company and falsification of records. I accept that such actions potentially directly damaged both the Respondent and its client, the London Borough of Bromley, and could have serious repercussions for the Respondent's relationship with its client. I also accept that for these reasons as well as those set out in paragraph 19 above, the Respondent required a high standard of honesty from its employees and placed substantial trust in them.

124. It was clearly therefore within the range of reasonable responses open to the Respondent once it held a genuine belief in the Claimant's guilt, to summarily dismiss the Claimant.

Conclusion on Fairness

125. For the reasons set out above, I find that the Claimant was unfairly dismissed by the Respondent within section 98 of the Employment Rights Act 1996 as a result of procedural defects in the disciplinary process.
126. I must therefore also go on to consider whether there should be any adjustments to the Claimant's award.

Polkey

127. In accordance with the principles in ***Polkey -v- AE Dayton Services Ltd [1987] UKHL 8***, I must consider whether any adjustments should be made to the compensation element of the Claimant's award on the grounds that if a fair process had been followed by the Respondent in dealing with the Claimant's case, the Claimant might have been fairly dismissed, that is, if the procedural and investigative flaws that I have found had not occurred, what would be the chance of a fair dismissal?
128. **Polkey** reductions tend to arise in cases where there has been procedural unfairness. In this case I have concluded that there was procedural unfairness both as a result of the failure of the Respondent to ensure that the letter notifying the Claimant of the disciplinary hearing on 14th February 2020 was appropriately sent and by the Respondent's subsequent failure to afford the Claimant an appropriate opportunity to substantively challenge his dismissal once it came to light that the correspondence had been sent to an address he no longer had contact with and he had not, or might not, have been aware of the hearing which he did not attend.
129. Ms Montaz's submissions sought to persuade me that if there was procedural unfairness arising from the Claimant not attending his disciplinary hearing it would have made no difference to his dismissal on 14th February 2020.
130. I agree with her. I am satisfied that the objective evidence against the Claimant that he had claimed overtime for hours he had not worked and had falsified location logs was overwhelming. Further, no substantive or realistic defence to these matters has ever been advanced (even to date) and the Claimant has made admissions about some of the allegations.
131. Had the Claimant been properly notified of the disciplinary hearing prior to 14th February 2020 and therefore been afforded a proper opportunity to present his case on that day, his dismissal would have occurred on that day.

132. Even if the Claimant had successfully established at a disciplinary hearing that others had been guilty of similar conduct, I find that the chances of the Claimant not being dismissed are so vanishingly small as to be insignificant. For the reasons set out above, the sanction of dismissal for the Claimant's conduct was fair. On the basis of the evidence that I heard as to the high standards of honesty and integrity required, the potential detriment to the Respondent of such actions, and the consequent seriousness with which the Respondent's managers considered these actions, a more likely outcome had the Claimant established that his actions were common practice is that other staff who were found to have acted the same way would also have been similarly disciplined.

Contributory Fault

133. The Tribunal may reduce the basic or compensatory awards for culpable conduct in the slightly different circumstances set out in sections 122(2) and 123(6) of the Employment Rights Act 1996.

134. Section 122(2) provides:

“Where the Tribunal considers that the conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly.”

135. Section 123(6) provides:

“Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.”

136. The Claimant did not address me on the issue of contributory fault. Ms Montaz asked me to find that the Claimant's conduct was such that he contributed to his dismissal and reduce both the basic and contributory awards by 100%.

137. In determining whether any deduction should be applied to either part of the Claimant's award as a result of contributory fault, I must first identify what conduct on the part of the Claimant could give rise to contributory fault. I must then also consider whether any such conduct was culpable, blameworthy or unreasonable and whether the blameworthy conduct caused or contributed to the dismissal to any extent.

138. In this instance the Claimant's conduct which could potentially give rise to contributory fault are his inaccurate claims to overtime and his falsification of location logs on his hand-held device.

139. For the reasons set out at paragraphs 29, 32-33, 54, 66-73 and 86 above, I am satisfied on the balance of probabilities that the Claimant was guilty of this conduct and that his actions were culpable, blameworthy and unreasonable.
140. I also find that his conduct caused or contributed to his dismissal. In all the circumstances, in particular the volume and credibility of contemporaneous evidence of the Claimant's conduct, the Claimant's acceptance of some of the misconduct, his failure to put forward any substantive challenge to the substance of the allegations either on appeal or during the Tribunal proceedings, and the seriousness of the allegation in the context of the Claimant's job responsibilities, I am not satisfied that the outcome of the Respondent's disciplinary process would have been in any way different even if the Claimant been given an opportunity to make substantive representations to the Respondent prior to the decision to dismiss being taken.
141. I therefore consider that the Claimant's conduct contributed to his dismissal to the extent of 100%. Also, that it is appropriate, just and equitable to make a deduction from both the Claimant's basic and compensatory awards on the basis of contributory fault.
142. Whilst I appreciate that it is a rare case where the employee's conduct is so bad as to deprive him or her of any compensation at all despite the employer treating him unfairly, such an outcome is neither unheard of nor impermissible – see ***Ladrick Lemonious -v- Church Commissioners [2013] UKEAT/0253/12/KN***. Taking all the circumstances of this case into account, I find that this is such a rare case.
143. The reasons for this are set out in more detail above but can be briefly summarised as follows:
- (i) There was no material before me which reasonably suggested that the procedural unfairness on the part of the Respondent that I have found had causally contributed to the Claimant's dismissal;
 - (ii) The actions the Claimant is alleged to have taken were unquestionably dishonest;
 - (iii) There is substantial objective, credible and contemporaneous evidence to support the allegations;
 - (iv) The Claimant has not mounted any credible denial of his actions and indeed, has admitted some of them;
 - (v) The Respondent's disciplinary policy clearly states that allegations of this sort amount to gross misconduct which may result in summary dismissal;
 - (vi) The Claimant gained financially as a result of the alleged conduct;
 - (vii) The alleged conduct had the potential to have a very serious detrimental impact on the Respondent and its client and were therefore of a very serious nature;
 - (viii) The allegations did not relate to a single isolated incident but were numerous and took place regularly over the sample weeks in respect of which enquiry was made; and
 - (ix) The Claimant was in a role which required a high degree of honesty and integrity and his actions demonstrated neither.

144. Accordingly, notwithstanding that I have found that the Claimant was unfairly dismissed, both the basic and compensatory awards for unfair dismissal will be reduced by 100%, which will result in no financial compensation being due to the Claimant.

ACAS Adjustment

145. The list of issues which the parties agreed to be relevant at the start of the hearing included whether or not any adjustment should be made as a consequence of a failure (by either side) to follow procedures under the ACAS code. Neither party made any particularly relevant submissions on this issue. I have nevertheless considered it.

146. No argument that there had been any breach of the ACAS code by the Claimant was advanced by the Respondent.

147. It is clear from the evidence that that the Respondents had in place an appropriate disciplinary policy and followed a process of suspension, investigation, disciplinary hearing and appeal and that they sought to follow it.

148. In the event however they failed to notify the Claimant appropriately of the date and time of the disciplinary hearing, as they were required to. Nevertheless, I am satisfied, for the reasons set out above, that that failure was inadvertent rather than deliberate. Were it not for that failure, they would have complied with the ACAS requirements.

149. I am also satisfied that the Claimant's own actions and inactions also contributed to that failure, as I have set out at paragraph 103-105 above.

150. I therefore find that in all the circumstances, whilst the Respondent's did breach the ACAS code it is not appropriate to impose an adjustment on the damages award.

Mitigation of Loss

151. I heard evidence and submissions solely in respect of liability and adjustments relating to liability, I have not therefore considered the issue as to whether a reduction to the compensatory award would be due on the basis that the Claimant has mitigated or failed to take all reasonable steps to mitigate, his loss.

152. That is a matter which I would have considered and determined at any hearing on remedy. However, in light of my conclusions at paragraphs 131, 141, 144 and 150 above, a hearing on remedy is unnecessary as the value of the award will be assessed at £0.00 in any event.

Re-instatement/re-engagement

153. The Respondent considered the Claimant's request for re-instatement or re-engagement but avers that the only 2 vacancies they had have been filled with starters who began training from 12th April 2021.
154. In any event, the Respondent asserts that it would not be comfortable with re-employing the Claimant due to their continued concerns regarding his honesty and the fact that the position of parking enforcement officer requires a high level of honesty and integrity. The Respondent's HR manager, Ms Smith gave evidence that she did not consider that there would be the necessary and appropriate trust and confidence between the Claimant and Respondent for the role given the evidence presented during the disciplinary process.
155. This view is clearly both reasonably, genuinely and rationally held for the reasons I have already discussed above and is well within the range of reasonable responses open to the Respondent.
156. Consequently, neither re-engagement nor re-instatement are practical or appropriate remedies in this case.

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Employment Judge Clarke
Date: 4th August 2021