



EMPLOYMENT TRIBUNALS

Claimant: Mr. S Lazarou

Respondent: Retail Motor Industry Federation Limited

Heard at: London Central (by video) **On:** 27th to 29th January 2021

Before: Employment Judge B McKenna (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr R Wayman (Counsel)

This was a remote hearing which was consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP) a face-to-face hearing was not held because it is not practicable in view of the pandemic and all issues could be determined in a remote hearing.

RESERVED JUDGMENT

The judgment of the tribunal is as follows:

1. The claim for breach of contract relating to unpaid wages is struck out under Rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013.
2. The claim for breach of contract relating to salary increases, sick pay and bonus payments is dismissed on withdrawal.
3. The Claimant was unfairly dismissed.
4. The claim of wrongful dismissal is well founded.
5. The Tribunal will decide the remedy for unfair dismissal and wrongful dismissal at a further hearing. This will include the question whether any reduction is to be made for contributory conduct and *Polkey*. The parties are ordered to write to the tribunal with agreed dates to avoid for May and June 2021 within 14 days.
6. The Respondent's application for costs in relation to the breach of contract claim will be considered after the remedy hearing.

REASONS

The Claims

7. The Claimant was employed by the Respondent as a Technical Trainer/ Assessor from 1st March 2015. By a claim form received on 17th April 2019, he claimed breach of contract in relation to sick pay, salary increases, unpaid overtime and bonuses. The claim was resisted. In summary, the Respondent contended that there was no contractual document or agreement entitling the Claimant to the unpaid wages which he said were due and that bonus payments and salary increases were discretionary.
8. The Claimant was dismissed without notice on 9th August 2019. By a second claim form received on 21st of August 2019, he claimed unfair dismissal, notice pay, holiday pay and arrears of pay. He said that the real reason for his dismissal was his having brought a grievance against his line manager and other managers.
9. The Respondent resisted these new claims and said that the Claimant had been fairly and summarily dismissed on grounds of gross misconduct concerning inappropriate behaviour towards his managers, other staff and customers and that all sums due to the Claimant had been paid.

Case Management Hearing

10. A case management hearing took place on 5th November 2019. Employment Judge Glennie ordered that the two claims be heard together. A timetable was established for the request and provision of further information about the claims.
11. The claims and issues were clarified as follows:

6.1 Unfair Dismissal. This will involve consideration of the Respondent's reason for dismissing the Claimant (the Respondent states that the reason was related to conduct, the Claimant states that the reason was that he had made the first claim); and whether the Respondent acted reasonably in treating that as a reason for dismissing the Claimant.

6.2 Wrongful Dismissal (i.e., a claim for notice pay). This will involve consideration of whether the Claimant committed conduct such that the Respondent was entitled to terminate his employment without notice

6.3 Unlawful deduction from wages. This will involve consideration of whether the Respondent failed to pay remuneration that was due to the Claimant.

Further case management orders

12. Employment Judge Glennie issued further case management orders on 2nd January 2020. The Claimant was ordered to provide the following information relating to the breach of contract claim:

1. *details of any contractual provision that he relied upon for overtime,*
2. *a breakdown of his claim for £31,000 for additional hours showing the rates claimed and the time worked: and*
3. *the basis on which he claimed a pay rise and bonus for the period 1st January 2019 to 9th August 2019.*

13. On 21st of February 2020, Employment Judge Glennie directed that there should be a preliminary hearing to determine the following issue:

to determine whether the Claimant's complaint of unlawful deduction from wages should be struck out on the grounds that he has not complied with the tribunal's orders to provide further information/ that it has no reasonable prospect of success.

14. A preliminary hearing was listed for 7th April 2020. In the event due to pandemic restrictions, that hearing did not take place.

Final hearing on 27th to 29th January 2021

15. The final hearing took place by video from 27th to 29th January 2021. The parties were allowed regular breaks and were able to request additional breaks as necessary. I took notice of the fact that the Claimant was unrepresented and was not familiar with tribunal or court proceedings. In particular, I directed him on the legal tests which I had to apply at the start of the hearing and at several points during the hearing. As the Claimant was clearly tired and distressed at the end of his oral evidence on the afternoon of the final day, I asked the parties to prepare written submissions by 15th February 2021. In the event, the submissions did not reach me until 24th February 2021.

Preliminary matters

Withdrawal of breach of contract claim relating to sick pay, salary increases and bonus payments

16. At the start of the preliminary hearing, the Claimant withdrew the elements of his breach of contract claim relating to sick pay, bonus and to salary increases and those elements were dismissed.

Respondent's application to strike out the breach of contract claim relating to unpaid wages

17. I then heard the Respondent's application to strike out the breach of contract claim relating to unpaid wages. I also heard submissions from the Claimant as to why this complaint should not be struck out. Much of the Claimant's submissions related to what he considered to be unfair treatment by the Respondent. The Claimant's principal argument on point was that his contract did not say in terms that he would not be paid for additional hours. He however accepted that the terms of his contract of employment clearly stated that flexibility was required and that any payment for additional hours had to be agreed with his line manager.

18. My decision was to strike out this remaining element of the breach of contract claim for the reasons I gave orally at the hearing.

19. These were in summary:

- a. The burden is on the Claimant to prove that he was entitled to these payments when his employment ended.
- b. His contract of employment stated that while his hours of work were 40 hours per week that additional hours may be required in order to meet the demands of the job. Any additional remuneration had to be agreed with his line manager.
- c. The Respondent said that no such payments had been agreed or paid.
- d. The Claimant had not only failed to show that there was no contractual document or verbal agreement entitling him to payment for hours worked in excess of forty hours per week, but he also accepted on at least three occasions that there was no such entitlement.
- e. His witness statement stated: "I have never claimed to have a contract written or verbal, to say that I would be paid overtime".
- f. In correspondence with the Respondent's solicitor, he also accepted that he was not entitled to overtime, writing that payments for additional hours were "not in my contract and I have never stated it was".
- g. His oral submissions opposing the strike out application, included a statement "it is not in my contract that I will be paid overtime".

Inclusion of audio recordings of phone calls

20. Just before the hearing, the Claimant sent the Tribunal a number of emails with audio files. The Respondent introduced two recordings: an extract of a recording of the grievance appeal hearing the length of which had been extended to include a section at the Claimant's request and a recording of a call between the Claimant and a customer. The Claimant produced twelve audio recordings of varying length. He said that he had recorded many conversations with his line manager and other staff using his car's dashboard camera. Some of the recordings related to hearings for which transcripts had been provided by the Respondent.

21. At the end of the first day, I ordered the Claimant to send to the Tribunal copied to the Respondent by 9.30am the next morning a simple schedule setting out the following details in relation to each recording: the date of the recording, its duration, the identity of the person(s) being recorded, whether or not they were aware they were being recorded and the evidential value of the recording. This had to be sent by 9.30am to enable Counsel for the Respondent to take instructions from his client.

22. The Claimant failed to comply with my order and simply resent his emails containing the audio files without the explanations I had ordered. At the hearing on 28th January 2021, the Respondent objected to the audio files being included. The Claimant said that he thought he had provided sufficient information and that he now objected to the inclusion of the Respondent's two audio recordings as he felt he had been duped by the Respondent. I asked him to explain the evidential value of his recordings. He said that he wanted to include recordings of his line manager

referring to the cost of his sickness absence to the company. I noted that Miss Coward accepted and documents confirmed that she had made this statement. The Claimant said that other recordings would show that he and Miss Coward had a good working relationship. He had edited the recordings to keep them short.

23. The Respondent objected to the inclusion of the recordings on the basis that they had been selectively edited. He also disputed their relevance to the question of unfair dismissal as they appeared to relate to the Claimant's wider grievances during his employment. The Respondent had provided transcripts of the recordings it relied upon. It had discussed its tapes with the Claimant and extended the length of one recording to ensure that it included material which the Claimant wished to rely on.

24. I held a brief adjournment to consider the matter. I decided that it was not in accordance with the overriding objective to include the twelve audio recordings. Introducing them was likely to cause delay and could mean that the hearing did not complete in the time allowed. The Claimant had failed to comply with my Case Management Order which caused prejudice to the Respondent who had not been able to consider and take instructions on the recordings. The Claimant had not established that they were of evidential value.

Evidence

25. I heard evidence from the following:

- a. Ms Heidi Coward, the Claimant's most recent line manager,
- b. Mr Frank Harvey, Head of Member Services at the Independent Garages Association, who conducted the disciplinary hearing and who was the dismissing officer,
- c. Mr Stuart James, Director, who conducted the grievance appeal
- d. Mr. Paul Darwell, Head of RMI Academies, who heard the appeal against dismissal; and
- e. The Claimant.

26. I was provided with two bundles: an unfair dismissal bundle of 594 pages and a separate breach of contract bundle numbering 254 pages. There was duplication between both bundles. I listened to two audio recordings during the hearing. The first was the last eleven minutes of the grievance appeal hearing on 15th March 2019. The second was a recording of the Claimant's telephone call to a customer.

27. With the agreement of the parties, I indicated that I would first consider questions of liability before then, if necessary, hearing evidence on Polkey and contributory fault and argument on remedy.

Findings of fact

28. I have gone into some detail on the Claimant's grievance. That is because the Claimant says the real ground for his dismissal was his having brought a grievance. The Respondent's grounds for dismissal include the Claimant's behaviour at his grievance and grievance appeal hearings.

29. The Respondent is a medium-sized employer which provides services to the motor industry. At the time of the Claimant's dismissal, it employed a HR co-ordinator. One of the Respondent's component organisations is the Independent Garage Association. The Respondent's functions include carrying out inspections and arranging training for its members.

Contract of employment and workplace policies

30. The Claimant was employed from 1st March 2015 as a Technical Trainer on an annual salary of £28,000. His contract of employment fell into two parts: a Statement and Employment Agreement. The Statement describes his hours or employment as being 40 hours per week and also says that "due to the nature of your position with RMIF however, a degree of a level of flexibility is required around these hours". His role involved traveling to RMIF member premises to carry out inspections and deliver training.

31. The Employment Agreement also provides in a section headed Hours of Work "you are expected to be flexible and to work any additional hours that are reasonably required to fulfil the responsibilities of your job or meet the needs of the business with further remuneration as agreed with your line manager".

32. A Section in the Employment Agreement entitled Discretionary Bonus Schemes states:

From time to time, the RMI may operate discretionary (noncontractual) bonus schemes and make ad hoc bonus payments. Payments from any schemes are based on the RMI achieving its targeted profits and you achieving any personal targets or objectives as set by the RMI. All schemes are subject to change or withdrawal by the RMI if without notice or compensation.... Details of any bonus schemes that may be in operation will be advised to you separately'

33. An induction checklist signed by the Claimant on 16 March 2015 confirmed that he had read all the HR policies and processes. These included a Grievance Policy dated July 2011 (page 116), a Bullying and Harassment Policy dated September 2008 and a Disciplinary Policy dated September 2008. He was also referred to the Employee Handbook dated June 2013.

Line management

34. His initial line manager was Mark Champelovier. I found that their relationship was largely good but there were definite flashpoints mainly around the way in which the Claimant interacted with other staff. On 28th July 2016, in a one to one with Mr. Champelovier, the Claimant apologised for having sent a rude email to the Respondent's Press Officer.

35. On 26 September 2016, the Claimant emailed Mr Champelovier to follow up a one-to-one discussion the week before. The email primarily related to a salary discussion but also touched upon the Claimant's manner of communication. The penultimate paragraph of the email states:

"if you see me as being direct then all I can say is I am a conscientious professional worker and I care about my work. I've often worked well beyond my contractual hours in order to improve the quality of the service to our members as well as taking on the various job roles I currently hold.

36. When Heidi Coward became the Claimant's line manager, he welcomed her appointment sending her congratulations. Their relationship however was difficult from the outset. On more than one occasion, he spoke in an aggressive tone when they spoke on the phone. She would threaten to end the call "unless he got back in line" and had to hang up more than once. She asked Mark Champelovier to attend meetings as she was fearful of the Claimant's verbal aggression. The Claimant said that his reactions to Ms Coward were provoked by her unwarranted interventions in his management of his diary.
37. Her oral evidence which I found credible was that she had been too lenient of the Claimant's volatile behaviour and that she should have taken steps earlier to address it before his behaviour escalated. She did not formally raise his behaviour requesting that action be taken until 18th March 2021; p.317

Complaints from office staff about the Claimant

38. At a one-to-one meeting on 22nd March 2018, Ms Coward raised concerns from office staff about the way in which the Claimant spoke to them. While Ms Coward acknowledged that the office staff were "a little sensitive" she asked him "when speaking to the girls in the office to be more respectful". Her note of the meeting records that the Claimant "will be mindful of this".
39. The Claimant emailed Ms Coward the following day objecting to the draft record of the one-to-one saying that while he had not made any admission about his behaviour, he agreed to 'be more mindful of the way I can come across and adjust the way I discuss the day- to-day issues of the job". He noted that both Ms Coward and Mr Champelovier said that the staff were 'oversensitive' and he objected to the issue being recorded. Corrections were made by Ms Coward to the record. It now stated that the Claimant did not accept these comments and that he had been "talked to in the way described many times by the office staff and [Ms. Coward]" and recorded his view that she had "a biased approach to the remarks made about me". In her oral evidence, she said that she regretted making these changes and felt manipulated by the Claimant. The Claimant thought that the complaints and Ms Coward's raising them with him were both motivated by bias. I did not find any evidence to support this allegation.
40. Of the two competing accounts, I preferred Ms Coward's evidence. Her regret about the leniency with which she had initially treated the Claimant was genuine. I found that the Claimant lacks insight in respect of his forceful interactions with others for the reasons set out elsewhere in this judgment and that, on balance, it was likely that the complaints raised by office staff were well founded although Ms Coward thought that the staff could be too sensitive. I found that there is a pattern whereby the Claimant when presented with criticisms of his behaviour too readily deflects the criticism onto others.

Incident at Southam Academy on 26th April 2018

41. An incident at a staff meeting at Southam Academy resulted in the Claimant being spoken to about his unacceptable behaviour at a Field Team event including a presentation given by Ms Coward and a note being placed on his HR file. No formal disciplinary action was pursued at the time.
42. I found that the Claimant had repeatedly interrupted Ms Coward's presentation in a manner which resulted in another colleague becoming angry with the Claimant's behaviour. The Claimant and this person had to be separated and taken outside. The Claimant's perspective was that he had been entirely blameless as the other colleague, who was a friend of Ms Coward, was the aggressor. I did not agree with his perception of this incident for the following reasons.
43. Ms Coward's oral evidence was that the Claimant's interjections were designed to sabotage her presentation and that she had felt humiliated. Mr James witnessed the Claimant's behaviour outside the meeting immediately afterwards and told him to stand in the car park until he had calmed down. He told both parties that their behaviour was unacceptable and could have resulted in dismissal. In oral evidence, he recalled the Claimant shouting at him.
44. Mr. James said that he did not go down the HR route at the time as Ms Coward did not want to take the matter further and he respected her wishes. He therefore got both individuals to apologise to conclude the matter. He now regretted this.
45. The Claimant's oral evidence was telling. He said that he recalled that it was a large meeting and that as he does not speak quietly his comments on Ms Coward's presentation might have been perceived as aggressive but that was not his intention. He was asked to quieten down by the other colleague but carried on " I did continue to raise points". The other colleague then told him to shut his mouth but he carried on. This person threatened to hit the Claimant. I found that this reaction by a colleague who was close to Ms Coward indicated that the Claimant's interventions were disruptive. The Claimant attributed the other colleague's attack on him to their loyalty to Ms Coward. He did not display any insight as to how his verbal criticisms of Ms Coward's presentation might have led to this situation.
46. The Claimant also volunteered in his oral evidence that Mr James said to him immediately after the incident:

" I could get rid of you now. I could get you to put your keys on the table".

This only highlighted to me how unacceptable the Claimant's continuing behaviour immediately after the incident must have been for Mr James to give such a stark warning. The Claimant, however, turned this on Mr James later saying that this was "disgusting behaviour by Stuart". He did not appear to recognise the role played by his interruption of Ms Coward and his shouting outside the meeting.
47. A contemporaneous note of this discussion was recorded on the Claimant's HR file. This states that the Claimant accepted that his behaviour was unacceptable and could have resulted in his dismissal. He is recorded as saying that he would

not behave like this again either in a group or one to one setting. The Claimant was reluctant in cross examination to accept that he had acknowledged that he had behaved badly and said that he had done so as he “felt captured by spies”.

48. The Claimant disputed the veracity of the note. He noted that it did not appear on headed paper and was not signed. He also implied that it was sinister that the note had not been presented to him at the time. This reflected much of the Claimant’s attitude to the Respondent’s record keeping on HR matters. No doubt this derives from his technical role where he has to inspect garage records on MOTs etc and prides himself on his meticulous attention to detail. I saw no reason however to doubt Mr James’ evidence that the note was made at the time and that it was an accurate account of events.

Relations with customers

49. While the technical quality of the Claimant’s work was good and praise was passed onto him on 9 June 2017 from Yew Tree Garage regarding his quality control and professionalism on one visit, one customer had concerns about his behaviour on a visit in March 2018.

50. The complaint was made by Rob Collinson of Collison Motoring Services regarding a site visit by the Claimant on 7th March 2018. He had been asked to wait before beginning an MOT quality control inspection as Mr Collinson was dealing with a customer.

51. Mr Collison said that the Claimant ‘had a very bombastic personality wanting to steam roller through the whole process without regard for RC’s request to wait’. Mr Collinson said that he would not allow the Claimant onto his premises in the future. The Claimant recalled this incident but considered that Mr. Collison had been rude to him for which he had apologised. He was not notified of the incident at the time by his employer. The situation was managed by ensuring that the Claimant was no longer sent to jobs at that customer. The Claimant considered that the complaint was manufactured at the behest of Mr. James. I did not find that it was concocted and considered that it had taken place. I also found that it had not been regarded a particularly serious matter by the Respondent at the time as it was not raised with the Claimant.

52. One of the customers for whom the Claimant carried out training was Autologic. Autologic had poor feedback for one of the Claimant’s training courses. They asked that he was not used for their courses again. This was not raised with the Claimant at the time. The Claimant sought to dismiss this feedback attributing it to the customer’s preference for another trainer rather than dissatisfaction with him. I did not need to decide this point. I found it significant that again, this matter was not raised with the Claimant.

Rejection of expenses claim/ Claimant’s threat to resign

53. On 30th November 2018, the Claimant submitted an expense claim which included a claim for work trousers. Ms Coward replied on 4th December at 12.45pm telling him that he could only claim for work boots and not trousers. I will not recount the many emails which this generated to Ms Coward and other staff with accusations of “dictatorial behaviour” save to say that Ms Coward’s refusal to pay expenses

provoked a disproportionate reaction from the Claimant with explosive language including a threat to resign as a result.

Sickness absence in December 2018/ Return to work in December 2018

54. The Claimant went on sick leave for one week self-certifying that this was on grounds of stress. He received statutory sick pay in accordance with company policy.
55. The Claimant returned to work on 12th December 2018. The sickness absence policy required him to have a return-to-work meeting with Ms. Coward. Prior to this meeting, he was asked to attend an informal meeting with Frank Harvey at which Ms Farmer took notes. The purpose of the meeting, Mr Harvey said was to understand what lay behind the Claimant's emails and to move forward "so everyone felt safe, confident and comfortable working together".
56. The Claimant told Mr. Harvey that he understood that he can be "an acquired taste". He said that he clashed with Ms Coward as they had similar personalities. He accepted that he can seem "defensive" and that his "emotions get mixed up". The Claimant was asked to reflect on how his behaviour can intimidate others referring to his interactions with the "admin girls" and to recognise "when he is getting close to the edge of losing control".
57. In response, the Claimant pressed for examples of his behaviour. He noted that "he records his conversations with staff via his dash cam". Mr. Harvey said that the Claimant needed to move forward and to stop analysing past events. The Claimant agreed to draw a line in the sand and move forward in a "positive, professional and respectful manner". The discussion also covered the Claimant's attitude towards Ms Coward. The Claimant was reminded of the need to respect the position of his line manager. The Claimant's evidence was that this meeting had been an interrogation. I do not accept this. Mr. Harvey's evidence which was credible was that he had spoken to the Claimant in an attempt to check his behaviour which was becoming increasingly aggressive to other staff including Ms Coward. Mr. Harvey made a note of the meeting which was added to the Claimant's HR file. The Claimant again objected to any reliance on this note by the Respondent as he had not been given a copy at the time. I did not find any reason to doubt the provenance or accuracy of Mr. Harvey's note of the meeting.
58. The formal return to work meeting with Ms Coward took place after this meeting. The record of the meeting which was signed by both parties noted that the Claimant had been advised "on the impact of his absence, the disruption it can cause to business for the loss of revenue and staff morale due to increased workload". The Claimant said that his stress had been caused by an accumulation of events in his personal life including the falling through of his house sale.

Refusal of inflation related salary increase

59. On 14th January 2019, the Claimant had a heated telephone conversation about his pay with Ms Coward. The Claimant recorded that telephone conversation and provided an extract of his transcript which appears at page 259 of the bundle. The Claimant took issue with a comment made by Ms Coward that he had cost the

company money during his absence on sick leave in December 2018. This was something to which the Claimant took great offence, saying that over the past four years he had worked many hours above his 40 hours – “an average of 10 hours a week I’ve done for 4 years how about I put a bill in for that?” The Respondent witnesses confirmed that it was company policy to make staff aware of the cost of sickness absence.

60. On 19 January 2019, the Claimant wrote to Ms Coward making a case for a pay review. He said that he had extended his skills set adding:

“If you see me as outspoken then all I can say it’s because I am a conscientious worker, I care about my work and the professional standing of my profession. I’ve often worked well beyond my contractual hours, adjusted my leave days to help with important garage audits and worked on my days off in order to improve the quality of the service to our members.
Considering all this, I feel it is only right and fair to ask for a salary that reflect this ...”

61. On 25th January 2019, Mr James emailed the Claimant saying that he could see no justification for an increase in his salary at this moment in time. The Claimant asked him to reconsider this decision and to take into account extra hours he had worked since 2015 “which amounts to at least 2000 hours which was unpaid for and for which I would be entitled to all the time given back’. Mr James replied saying that the contract of employment did not stipulate that pay rises were guaranteed. He said that the Claimant’s role was field-based and “as with any position like this there are long days and there are short days, this is why you have complete control of your own work schedules so you can balance out the working week to suit your personal life’.

Approval of hotel bookings

62. The relationship between Ms Coward and the Claimant continued to deteriorate. A series of email exchanges took place between the Claimant and Ms. Coward between 15th February and 27th February 2019 regarding his request to book hotels for travel to carry out customer visits. Ms Coward recommended changes to his schedule to save costs. The Claimant regarded her intervention as unwarranted interference and submitted a grievance.

Grievance against Heidi Coward dated 18th February 2019

63. On 18th February 2019, the Claimant raised a formal grievance against Ms Coward. This can be found on page 271 of the bundle. This grievance and the disciplinary are closely linked and for this reason, I reproduce the wording of the grievance. Three issues were raised by the Claimant.

1. **Pay Rise and year-end bonus** I believe my performance during the year was entirely satisfactory stop I believe I have been singled out for punishment for being off sick, for a reason I saw my GP and was prescribed medication. My absence was genuine. Constantly being told I cost the company money does not sit well with your policy statement.
2. **Contractual hours, Performance and additional Roles.** I believe my work has been exemplary in this regard stop I have always worked well beyond my contractual hours (not because of inefficiency, but because I work professionally and would not let people down) stop I have also been quite happy to take on

different roles and responsibilities. In doing so my skill set, for which RMI can take advantage of has not been properly recognised in my pay and conditions.

3. **Unfair treatment and bullying.** I have had discussions with Heidi Coward and would describe these discussions as defensive, argumentative and insincere. That, added to the penalising aspect of not been paid for genuine sick absence led to my GP prescribing medication. Even when I return to work I was "interrogated" and the conversation simply revolved around what I cost the company. Again, it goes nowhere near to meet the aspirations of your policy.

64. A grievance investigation meeting took place on 25 February 2019. This was conducted by Kevin Perks, the General Manager who has now left the Respondent. Ms Farmer was also present at the meeting and took notes. The notes appear at pages 271a to 271W.

Ground 1 - Pay Rise and year-end bonus

65. In summary, the Claimant said that he knew his performance had been satisfactory because he got good feedback. He had been singled out for punishment because he had taken sick leave in December 2018 as a result of the build-up of issues with Ms Coward. While there was no contractual entitlement to sick pay, it was his understanding that it had been paid as a matter of discretion to other staff in the past. The non-payment of sick pay led him to deduce that the company did not consider his sickness to be genuine.

Ground 2 - Contractual hours, Performance and additional Roles

66. The Claimant said that his role had expanded since joining the respondent and that he now offered 17 different areas of training. New trainers were being paid at least £1,500 more than him and those trainers had to shadow him to learn their roles.

Ground 3 - Unfair treatment and bullying

67. The meeting with Frank Harvey on his return from sickness absence had not addressed his well-being. He was to draw a line in the sand and move forward but he felt that he needed to defend himself. Mr Harvey was constantly "trying to make me feel that it was my problem, and that was continued when Heidi came in and that I need to look on the way I came across. I need to be aware of how I'm perceived". He thought that Ms Coward's oversight of his diary was designed to goad or provoke him.

68. When asked by Mr Perks what outcome he expected from the grievance, the Claimant said that he wanted to be treated with respect and that he felt Ms Coward was bombarding him with emails. He thought however that he and Ms Coward could continue working together.

69. Mr. Perks concluded the meeting by thanking the Claimant for his honesty and said that he would look into the matters raised emphasising that he would deal with facts rather than emotions. He added:

" I have a concern about the working relationship with yourself and Heidi, so my preference is for you to actually not work tomorrow. Take the day off ... Don't get into

any sort of conflict with Heidi and I will have that conversation with Heidi as well I say look this is what we're doing at the moment, while I'm looking into that. If I need to call you for anything else, you said there are some things you want to send me anyway then please do.'

70. The Claimant thanked Mr Perks for listening to him, saying 'I feel that you've actually listened to me and what you think is another matter of course that is up to you.' On 1st March 2019, the Claimant emailed Mr. Perks and said that on reflection he thought that it would be difficult to continue working with Ms Coward. Later that day, he sent in additional information.

Grievance investigation

71. As Mr Perks has left there was scant information about how he carried out the grievance investigation. This is relevant given the overlap between the grievance and disciplinary proceedings as a matter raised anonymously in the grievance investigation – the Southam Academy incident - and for which no disciplinary action had been taken at the time was then used as a basis for disciplinary charges. In particular and of concern as I explain later in my Discussions and Conclusion, there is no evidence as to whether or not he interviewed Ms Coward which one would expect given that the Claimant's grievance was against her. He appears to have carried out only a paper review of her management of the Claimant. He did however obtain anonymous statements from two of the Claimant's colleagues in circumstances which remain unclear and troubling and which I deal with below.

Grievance feedback meeting 12th March 2019

72. On 12th March 2019, Mr Perks met the Claimant in order to relay the outcome of the grievance. The Claimant's grievance was not upheld on any ground. Mr Perks' report appears on page 285 to 289 of the bundle. He asked for statements from colleagues about the Claimant's professionalism. Two anonymous responses were received. One mentioned the Claimant complaining about his salary and bonuses. The other referred to his aggressive behaviour at the Southern Academy on 26th of April 2018. I did not find Mr Perks' explanations as to how these statements had been solicited in his report or in the transcript of the feedback meeting to be clear or satisfactory. As he did not give evidence, it was not possible to ask him about he conducted the investigation and compiled his report.

73. As he was going through the report, Mr Perks made reference to the anonymous statement from a colleague commenting on the Claimant's frustration regarding his salary and lack of bonus. At that point, the Claimant stated that Mr Perks had 'gone out of the way to blacken his name' and said that felt that Mr Perks had been biased. He stood up as if to leave the meeting. Mr Perks continued going through his investigation report. The meeting concluded as the Claimant was unwilling to continue. He was advised that he had a right of appeal and would receive the grievance outcome in writing. The way in which the Claimant responded to Mr Perks later became grounds for disciplinary action. There is a dispute on the facts. The Respondent says that the Claimant shouted at Mr Perks and was aggressive.

74. The Claimant says that he had an emotional outburst as he felt that his livelihood was at risk but did not accept that he had been aggressive. Here, I found that the Claimant had grounds for feeling ambushed by the inclusion of these anonymous statements. He was not told how many of his colleagues had been asked to express views under the cover of anonymity about his professionalism. He had a not unreasonable fear that personal information about his health problems and other problems might have featured in these discussions between Mr Perks and his colleagues. I do not go so far as to say that this justified the Claimant's angry outburst but it is important context.

75. Mr Perks wrote to the Claimant on 14 March 2019 formally rejecting his grievances and advising him of his right of appeal. The letter concluded:

'Due to the issues brought to light by your grievance, we will take the following actions

- Formal action recommendation – Further investigation in relation to performance matters uncovered,
- Formal action recommendation – management to consider reviewing individual performance review processes"

Grievance against Kevin Perks

76. On 14th March, the Claimant wrote to Stuart James sending him a letter of additional grievance against Mr Perks headed 'Direct Discrimination by Perception/Breach of Confidentiality'. It complained about Mr Perks' obtaining statements from his colleagues. He regarded this as an attempt to discredit his case for discrimination and bullying. He also objected to the notes from the informal discussion with Frank Harvey on 12th December 2018 which he had not seen before. The notes did not reflect that it had been an 'interrogation style meeting'. He said that he wished to raise these additional concerns through a grievance; p.297. The Claimant also wrote to Mr Perks on 15th March saying that he had made the working relationship with his colleagues "difficult and uncomfortable".

Working relationship with Heidi Coward

77. The Claimant's letter to Mr. Perks said that his working relationship with Ms Coward had completely broken down. This is demonstrated by a series of emails between the Claimant and Ms Coward about his appointments in one of which the Claimant accused her of "pushing me to react in a way that you will take advantage of. You are fully aware of issues that I am pursuing ... can you try to understand that you are not treating me in a fair manor."

Contact with Ms Farmer on 15th March 2019

78. The Claimant called her on 15th March as he had been unable to reach Mr Perks by telephone. He wanted to speak to him about the amount of work allocated to him by Ms Coward. Ms Farmer told him that she could not advise on operational matters and that he should wait to speak to Mr Perks. The Claimant then raised his grievance appeal and queried her role in the matter. When she told him that she could not discuss this, the Claimant became angry, called her a liar and hung the up. This call was on Ms Farmer's speaker phone and was heard by Mr James. The

Claimant did not deny that this call took place and that he was upset but he did not accept that he had called her a liar or shouted. This term was not out of keeping with the extreme language which the Claimant was using at this time and I find that he did call her a liar. I also find that he shouted.

79. He also wrote to Ms Farmer objecting to her role in the grievance appeal hearing saying that there was a conflict of interest and that the hearing should be conducted by an impartial person.

Grievance Appeal

80. The Claimant appealed the grievance on the following five grounds:

1. The process that you have in place for dealing with my grievance was unfair. There was no one at the hearings that were impartial due to the status of their positions and the involvement of individuals.
2. Further issues relating to a breach of confidentiality and disclosure of personal circumstances were made (see letter sent 14th March) .
3. Breach of mutual trust and confidence ... without reasonable and proper cause.
4. The issues that were raised on behalf of the RMI against me were not part of the grievance and therefore amount to an attempt to avoid dealing with the grievance and to discredit me.
5. Further stress caused by the effects of being alienated in an attempt to force a decision for me to leave the company.

Grievance appeal hearing on 18th March 2021

81. The Claimant attended a grievance appeal hearing with Mr James on Monday 18th March 2019. A typed transcript of the meeting appears at pp. 301a to 301ee. The notes of that meeting are at pp. 307 to 310. The meeting appears to have started well but became very heated by the end. During the meeting, Mr James had to keep reminding the Claimant to focus on his appeal grounds.

82. The Claimant went through his grounds of appeal and clarified that the second matter raised in his additional grievance overlapped with his original grievance and would therefore be considered with this ground. He elaborated on his grounds of appeal thus:

83. Mr Perks had not been impartial because he did not address the grievance issues and rather had discredited the Claimant's complaints and had gone to lengths to find out information that had nothing to do with the grievance. He said that he had been unaware that Mr Harvey had taken notes of the informal meeting on 12th December 2018 and that those notes were not a true reflection of what was discussed and Mr Harvey had been "interrogative".

84. Mr Perks had approached unnamed colleagues who had made reference to the Claimant's personal circumstances and health problems. He had failed to deal with the direct connection between the Claimant being off and then not receiving a pay rise.

85. The Claimant queried Ms Farmer's role. Mr James said that HR's role is to attend and not to advise or comment. On the question of confidentiality and breaches of

information, Mr James said that he had not produced any evidence to show that there had been breaches. The Claimant said that the document showed that Mr Perks had told others about his grievance. Mr James rejected this saying that they showed that colleagues were commenting on the Claimant's attitude.

86. The Claimant said that he knew his future was finished but that he would not walk away. He felt that he had been managed by Heidi Coward 'in a dictatorship'. His previous managers had spoken wrongly to him too. Mr James brought up the argument at the Academy. The Claimant objected to this being put on the table and said that he wanted to deal with the appeal.
87. The Claimant then suggested that "people who work for Stuart James would feel intimidated and bullied". Mr. James commented that those were strong words and that he thought the Claimant was spiralling downwards. The Claimant was asked if he had been rude to people. The Claimant did not answer this directly saying only that he had health issues and did not feel that his health was being considered adding "if the company keep pushing, it will create a response".
88. Mr James then told the Claimant that a meeting was going to be held on Wednesday in Rugby in relation to the Claimant's conduct with Kevin Perks. The Claimant said that he thought that Mr James was a bully and stood up saying that there was enough information to obtain legal advice against the company. Mr James said that if he was going to take legal advice then he would have to suspend him. Mr James' evidence was that the Claimant not only stood up but then leaned over him and was shouting and finger pointing. The Claimant said that Mr James made him ill and pushed him over the edge. He told Mr James that he was 'pathetic'. He ended the meeting by saying 'I'll see you when it comes to the right time and place. It's disgusting the way you tried to bully me". Mr James said that the Claimant stormed out and slammed the door.
89. A recording of the last portion of this meeting was played at the Tribunal hearing. I heard the Claimant shouting and using the language described on the audio tape. He began to lose control when he was told that he would have to attend a disciplinary hearing. I found that he did not shout however until the point that Mr James told him that he would suspend him if he consulted a lawyer. Obviously, It was not possible to tell the precise manner in which the Claimant left the room from the audio tape but it was evident that he left the meeting abruptly.

Ms Coward's complaint against the Claimant

90. Ms Coward wrote a To Whom it May Concern letter on 18th March 2019 (p.317) complaining about the Claimant's behaviour. He was described as uncooperative, aggressive and uncompromising. She said that she did not feel comfortable meeting him outside the office without someone close by as she feared her personal safety. She said that she thought "that he has an issue with Women or myself being his line manager". No evidence was produced to show that Ms Coward was formally interviewed in respect of the serious allegations she had made.

Sickness absence between March and July 2019

91. On 20 March 2019, the Claimant went on sick leave. His GP completed a MED3 form on 25th of March 2019 recording stress at work as the reasons for his absence. He remained signed off sick until 19th July.

Notification of disciplinary hearing

92. Prior to this, the Claimant was sent a formal invite to a disciplinary hearing on his return from sickness absence. This was to be chaired by Mr Perks with Ms Farmer taking notes. The letter said that the outcome of the meeting may result in a verdict of gross misconduct for which dismissal could apply.

93. The allegations are set out in abbreviated form below:

- Aggressive Behaviour
 1. Aggressive behaviour towards the customer when carrying out the role when carrying out an MOT quality audit approximately March 2018 at: sends motoring services owned by the vice chairman of the independent garage Association, Rob Collinson (RC). Stavros Lazarou (SL) behaviour aggressive and nit picky and caused tension with the MOT tester and RC...
 2. Volatile behaviour towards staff within the organisation
 - (a) since 2016, incidents of rude and offensive behaviour have been across recorded across the company and dealt with as they have arisen with the optimistic outlook that they could have been resolved without the need for formal HR intervention.

The levels of volatile behaviour have increased particularly in the last 12 months when SL chose to aggressively verbally attack his line manager in an open team meeting from which other members of the team became agitated by his behaviour to the extent that one of the team felt his levels of the attack were so unacceptable that he wanted to discuss it outside of the meeting with SL.

(b) on Friday, 15 March 2019, SL called Ms Farmer (HR) in an agitated state ...and became increasingly angry and started shouting, this culminated in him calling her a liar, he then hung the phone up.

(c) a grievance feedback meeting on 12 March 2019. This was chaired by KP and minutes taken by Ms Farmer (HR). KP started to read from the investigation pack a peer statement ...

At this point SL interjected and strongly stated (with raised voices) that he felt Kevin had gone out of his way to blacken his name and accused KP of a deliberate attempt to dismiss his name. Said he is ending this meeting as he was being interrogated. SL stood up and was shouting ...At this point SL sat back down continue to act in an argumentative and threatening way.

(d) on Monday, 19 March 2019, Stuart James held a grievance or appeal meeting as well as an additional grievance against Kevin Perks based on .2 of the original grievance Ms Farmer (HR) was taking minutes. The meeting was recorded by both parties....

SJ explained the meeting had concluded and the next stage was for SL to attend a meeting on the Wednesday morning to discuss his conduct and performance in the role.

At this point, SL immediately reacted, started shouting and stood up leaning over SJ and pointed at him calling him a bully SJ remained calm and asked SL to calm down SL continued to shout and stated that he would not be attending the meeting. ...At this point SL threatened SJ said 'is I'll see you when it comes to the right place and time, he then picked up his bag and stormed out of the room slamming the door behind him.

3. Threatening and intimidating behaviour towards line manager

(a) In recent months, SL's attitude has been more and more difficult to work with, particularly since the dispute on his expenses in December 2018. Since then, there have been several occasions for SL has been uncooperative and progressively questioning every request that is made of him....

Her personal opinion is that he has a serious issue with women or women in a management position and does not feel that the relationship with SL can be resolved. She feels that she cannot perform her role any more in an environment which she feels unsafe and has no desire for any more confrontation directly with SL. HC does not see a resolution due to SL's aggressive and uncompromising nature.

- Conduct & Professionalism

- 1. Reputational damage resulting in refusal to utilise SL on company contracts

- ...Early in March 2019, Frank Harvey was notified by Autologic's training manager) backed up in writing on 20 March 2019 (outlining a number of courses required by them to be delivered and request for SL not to be stop this specific request was due to negative feedback received from their clients. Feedback detail outlined the courses could be more engaging and dynamic and it appeared SL was only reading from the PowerPoint presentation. A lot of time was spent planning through slides with little interaction of the candidates taking place with very little opportunity to ask questions talk about the topic.

Disciplinary meeting 8 August 2019

94. The disciplinary hearing took place on 8th August 2019 and was chaired by Mr Harvey taking the place of Mr Perks who was on annual leave and was not therefore available with Ms Farmer taking notes. The notes appear at pp. 369 to 369u. The Claimant's response to the charges against him was as follows.

Collison Motors

This allegation was manipulated and could be attributed to the fact that Mr Collinson was personally known to Stuart James and that they were both on a company board together.

Incident at Southern Academy.

The Claimant dismissed this allegation as 'thoroughly false'. He said that he had been physically threatened and that the other party was restrained because he wanted to attack him.

Telephone conversation with D Farmer

He was upset rather than angry. He denied shouting down the phone. He said that he had been goaded by his line manager who had been altering his shift patterns and locations of work.

Grievance meeting with Kevin Perks

He had expected this meeting to deal with his formal grievance and had instead been presented with hearsay information. The company had not dealt with his grievance and that, since then, it gone out of its way to fabricate and put together anything to discredit him in order to find a way to dismiss him.

Grievance appeal hearing with Stuart James.

This meeting had failed to address the issues he had raised including a personal data breach. He had told Stuart James that he was directing the managers beneath them as to how to handle his grievance.

Relationship with Heidi Coward

He denied that he had been aggressive towards her. He said that if anyone had been aggressive it was her. He denied that he had a problem dealing with women. He had sent an email to Heidi Coward to welcome her promotion. Said he had while he had criticised the press officer, he had not been aware that the press officer was a woman.

Autologic

He disputed that there had been feedback about his training courses for this customer and said that it preferred to use another trainer called Craig as he believed that they wanted to poach him.

Concluding statements by the Claimant

The disciplinary had only come about because he had accused the company specifically Stuart James of fabricating information following his grievance and that the disciplinary was an attempt to discredit him. He regarded his treatment as “unbelievably despicable”.

Mr Harvey told the Claimant that he would take into account everything he had said and would be in touch with the outcome of the disciplinary hearing.

The Claimant submitted an additional written statement which can be found at pages 370b to c which largely repeated his submissions at the hearing and concluded by saying that the allegations were “false, fabricated and manipulated” and driven by Stuart James.

Outcome of disciplinary hearing

95. The next day, Ms Farmer wrote to confirm the outcome of the disciplinary hearing which was dismissal on grounds of gross misconduct with immediate effect. The letter concluded by confirming the Claimant’s right of appeal. The Claimant immediately notified his intention to appeal by email stating that the decision was pathetic and that they had behaved in a “corrupt and shameful way” . He was asked to submit written grounds of appeal.

Claimant's call to Autologic on 12th August 2019

96. After his dismissal, the Claimant called Damon Howes of Autologic. The call was recorded both by Mr Howes and by the Claimant. A copy of the recording was subsequently provided to Mr Harvey by Mr Howes. Mr Howes confirmed that he had requested that the Claimant not be used as a trainer due to poor feedback. The recording was played at the Tribunal. The Claimant was heard to become angry and said that he would name Mr Howes and his company as what they had done was “despicable” and that they were “quite happy to see people get the sack”. As the conversation went on, it is clear from both the transcript and the recording that I listened to that the Claimant was interrupting Mr Howes and that his voice was raised. He ended the call by saying you are just as dumb as the RMI and all you care about is yourself, your money INAUDIBLE”

*Disciplinary appeal**Written appeal statement*

97. The Claimant submitted a written statement. This can be found at pp.394-6 . Of note, he said that if these were serious allegations, they would have been presented to him at the time and most of them took place between one and three years before.

Disciplinary appeal hearing 29 August 2019

98. The Claimant did not attend the disciplinary appeal hearing which took place at the RMI's office in Rugby . He had been offered reimbursement of travel expenses. a standard return train ticket but objected to travelling anywhere other than to the RMI premises in Winchester. The hearing was chaired by Paul Darwell with notes being taken by Ms Farmer. His report appears at pp.411-414 and outlines the process he followed. Mr Darwell reviewed the Claimant's appeal statement. He listened to the audio recordings of the grievance and grievance appeal hearings and to the call to Autologic which of course post-dated the decision to dismiss. His decision was that all the charges were upheld and that the sanction of gross misconduct still applied and therefore rejected the appeal. The outcome of the disciplinary appeal was notified to the Claimant on 30 August 2019; 415-416.

Relevant Law

99. There is no dispute that the Claimant was an employee of the Respondent, had more than two years' continuous service and was dismissed. As such he qualifies for the right not to be unfairly dismissed.

100. The question of whether a dismissal is fair or unfair is determined by reference to Section 98 of the Employment Rights Act 1996:

“(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 ... a reason falling within subsection (2)*

(2) *A reason falls within this section 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.*

101. The burden is on the Respondent under Section 98(1) to show that the reason for dismissal was a potentially fair one. Under Section 98(4), the burden of proof is neutral.

102. As this dismissal concerns conduct, I must have regard to **British Home Stores Ltd v Burchell [1978] IRLR 379**, which lays down in essence a three-stage test: (i) the employer must establish that he genuinely did believe that the employee was guilty of the misconduct; (ii) that belief must have been formed on reasonable grounds; and (iii) the employer must have investigated the matter reasonably.

103. The test I must apply is whether the employer acted reasonably, not whether I would have come to the same decision myself. In many cases of alleged misconduct there will be a 'range of reasonable responses' open to employers, so that, provided that the employer acted as a reasonable employer could have acted; the dismissal will be fair: **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439**. That test recognises that two employers faced with the same circumstances may arrive at different decisions, but both of those decisions might be reasonable.

104. The range of reasonable responses test applies as much to any investigation and the procedure followed as it does to the substantive decision to impose dismissal as a penalty **Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23**. On the one hand, the employer does not need to carry out an investigation with the same degree of rigour as say a police investigation into a criminal matter. On the other hand, as the ACAS guide to discipline and grievance at work says at paragraph 4.12:

“The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee’s case as well as evidence against.

105. If I find that the dismissal was unfair and have to go on to consider whether there should be deductions from compensation then, on the authority of **Polkey v A E Dayton Services Ltd [1987] IRLR 503**, compensation may be reduced on the basis that had the employer taken the appropriate procedural steps which they did not take then that would not have affected the outcome.
106. Finally, in the event that I make a finding that the Claimant was unfairly dismissed, the provisions of s.122(2) and s.123(6) of the Employment Rights Act 1996 empower me to reduce the basic and compensatory awards because of the Claimant’s conduct or contributory fault respectively.

Submissions

Submissions for the Claimant

107. Briefly stated, the Claimant submitted that the real reason for his dismissal was that he had complained about a culture of bullying by bringing a grievance. He had been forced to work excessive hours and had challenged an aggressive style of management. He had responded emotionally to the threat of losing his livelihood and this had been depicted by the Respondent as intimidating behaviour. Many of the matters raised were not highlighted to him at the time. His grievance and disciplinary hearings should have been conducted by other managers. There was a clear conflict of interest in allowing Ms Farmer to play a role in his grievance and disciplinary as she was Mr James’ PA. He had been disadvantaged by not being able to play his audio recordings and considered that he had misled by the Respondent’s representatives as to how to have these introduced into evidence.

Submissions for the Respondent

108. The Respondent submitted that there had been concerns about the Claimant’s behaviour since 2016. These had been dealt with informally by his previous line manager and then Ms Coward until the point at which incidents had accumulated so that, taken together, they constituted potential gross misconduct and led to disciplinary action resulting in the Claimant’s dismissal.
109. The Claimant’s behaviour at the grievance appeal hearing was the last straw and resulted in the Claimant being asked to attend a meeting with Mr. Perks regarding his conduct. It was accepted that there was no formal investigation report but there was ample evidence that matters were fully and properly investigated by Mr. Perks.
110. The Respondent had a genuine belief that the Claimant had behaved aggressively towards the customer, Mr. Collinson. Similarly, the Respondent had

a genuine belief that the Claimant had behaved unacceptably at Southam Academy. No investigation was required as the Claimant was on record as accepting that his behaviour had been poor and could not be repeated. No investigation was required in relation to the phone call to Ms Farmer as this had been overheard by Mr. James.

111. The final two incidents of volatile behaviour related to the Claimant's conduct towards Mr Perks at the grievance feedback meeting and to Mr James at the grievance appeal meeting. Neither required investigation as the transcript of the grievance feedback meeting sets out the Claimant's words and the audio of the grievance appeal meeting was played at the hearing and speaks for itself.
112. It noted that there was no formal witness statement taken from Ms Coward in relation to her complaint against the Claimant dated 18th March 2019 but the investigation of this complaint was nevertheless reasonable having regard to the size and administrative resources of the Respondent. Ms Coward's oral evidence should lead me to find that the belief in misconduct was genuine.
113. Mr Harvey had a genuine belief that there was an issue in relation to the Claimant's conduct in respect of the Autologic training and that he had verified this with the customer.
114. The Respondent had ample evidence of the Claimant's aggressive and volatile behaviour and it was beyond question that there were reasonable grounds for the Respondent's genuine belief in misconduct. This misconduct was capable of amounting to gross misconduct as it involved "an escalating pattern of behaviour", dismissal was within the band of reasonable responses.
115. The Respondent said that the Claimant had not made specific allegations of procedural unfairness other than alleging a widespread conspiracy. This was not correct and I took into account the fact that the Claimant was a litigant in person. The Claimant had repeatedly queried the role played by Ms Farmer in the disciplinary process in his dealings with the Respondent, at the Tribunal hearing and in his written submissions in addition to his maintaining that the overall disciplinary process was flawed not least to the link between his first grievance against Ms Coward and the disciplinary.
116. The Respondent submitted that the investigation was reasonable, the Claimant had notice of the allegations, the disciplinary hearing was postponed until he returned from sick leave, he had been given a right of appeal and travel costs to attend the appeal hearing. A fair procedure had been followed according to the statutory requirements. The dismissal was substantively fair and the misconduct entitled the Respondent to dismiss summarily.

Discussion and conclusions

117. I take as my basic legal structure the issue set by EJ Glennie together with the three stage **Burchell** test namely (i) the employer must establish that he genuinely

did believe that the employee was guilty of the misconduct; (ii) that belief must have been formed on reasonable grounds; and (iii) the employer must have investigated the matter reasonably.

What was the reason or principal reason for dismissal ?

118. I find that the that the reason for dismissal was the Claimant's misconduct. I do not accept his argument that he had been dismissed for raising a grievance. The close timing between both processes and the degree of overlap in that disciplinary charges related to matters which surfaced during the grievance namely the anonymous statement which brought up the Southam Academy incident and the Claimant's volatile conduct at the grievance investigation meeting and the grievance appeal meeting may have led the Claimant to conclude that the disciplinary process was a reprisal for his grievance. I did not accept that. There was ample evidence that the Claimant was dismissed for his conduct namely volatile behaviour.

Having regard to that reason, was the dismissal fair or unfair?

119. Conduct being a potentially fair reason for purposes of Section 98(2)(b) Employment Rights Act 1996, I need next to consider whether the dismissal was fair in light of the **Burchell** test.

(i) *Was there a genuine belief that the Claimant was guilty of the misconduct?*

120. Having heard evidence from Mr Harvey who was the dismissing officer, I have no doubt that he had a genuine belief that the Claimant was guilty of volatile behaviour. His oral evidence, which is supported by the other evidence, was that there had been an escalation in the Claimant's poor behaviour and lack of self-control. He said that there was a clear pattern in that the Claimant would react badly when he was asked to do something with which he disagreed.

(ii) *If so, was that belief based on reasonable grounds?*

121. I find that there were reasonable grounds for the Respondent's belief in the Claimant's misconduct. Mr Harvey had spoken to the Claimant in December 2018 about the need for him to regulate his behaviour. He was therefore aware of Ms Coward's concerns about the Claimant's behaviour towards her and the complaints raised by the office staff. He had his own note and recollections of the "draw a line" meeting to rely on. He had Mr. James' contemporaneous note of the incident at Southam Academy and transcripts of both grievance hearings. He also listened to the recordings of those hearings.

(iii) *Was there a reasonable investigation?*

122. I find that there had not been a reasonable investigation. The Respondent's policy says " a thorough investigation to establish the facts and circumstances must be carried out and all relevant information gathered"; p.132.

123. The Respondent conceded that there had not been a single discrete investigation culminating in a formal investigation report. Mr Wayman submitted that none was required as the dismissal followed a number of incidents which were investigated, documented and dealt with informally in the hope that the behaviour would not be repeated. Examples of this were Mr James' record of his discussion with the Claimant about the Southam Academy incident and Mr Harvey's record of the "draw a line" meeting. I agreed with him so far as those incidents were concerned.
124. I parted company with him in relation to a number of other matters where I considered that the range of reasonable responses required further investigation particularly in relation to the very serious allegations made by Ms Coward. Mr Wayman invited me to find that there was ample contemporaneous evidence that matters were fully and properly investigated at the time. The evidence was scant.
125. I was pointed to Mr Perks having carried out such additional investigation as was required. I did not accept that there was such evidence. Mr. Harvey's oral evidence referred only to Mr Perks having "done the preparation" noting that Mr Perks had also been due to hear the disciplinary.
126. I also did not understand how Mr Perks could reasonably have investigated the allegations regarding the Claimant's behaviour towards him at the grievance feedback meeting or for that matter having so investigated gone on to hear allegations relating to himself as had originally been planned. This was not within the range of reasonable responses. This cast doubt on the reasonableness of the investigation taking full account of the size and administrative resources of the Respondent.
127. The Respondent conceded that Mr Perks had not formally interviewed Ms Coward about her allegations about the Claimant in that there was not a formal interview statement. Given the nature of her allegations, I found that this was not within the band of reasonable responses. Ms Coward made very serious allegations against the Claimant. She said that she feared for her personal safety and implied that she perceived him as a physical threat. There was a gendered dimension to her complaint in that she said that she believed that the Claimant had a problem with women.
128. Given the seriousness of those allegations and the dictates of the ACAS code that serious allegations require an open mind and more rigorous investigation, a reasonable employer would have interviewed Ms Coward about her allegations. This failure by Mr Perks to interview Ms Coward also jarred with the breadth and rigour of the investigation carried out by Mr Perks in relation to the Claimant's grievance which encompassed gathering evidence from an unknown number of the Claimant's colleagues about his professionalism.
129. Mr Wayman also submitted that no investigation was required in relation to the Claimant's behaviour at the disciplinary appeal meeting with Mr James as the recording of that meeting spoke for itself. I did not agree. The Claimant behaved

poorly during his meeting with Mr. James but he had lost control and shouted at the point that Mr. James threatened to suspend him for consulting a lawyer about his workplace rights. That merited investigation. A reasonable employer would have looked into this further.

Was there a fair disciplinary process?

130. The Claimant had been notified of the charges against him. He was advised of his right to be accompanied and the disciplinary hearing did not take place until his return after several months' sickness absence. He was offered a right of appeal and exercised that right submitting written grounds of appeal. He declined to attend the appeal hearing notwithstanding the Respondent's offer to reimburse his travelling expenses.

131. The role played by the Respondent's former HR officer raises issues of procedural fairness. Her role was described as being only a notetaker. One of the allegations of volatile conduct relates to a complaint from her about the Claimant's behaving aggressively to her during a telephone conversation. While it may have been unsatisfactory to have her present at a disciplinary hearing adjudicating on an allegation relating to her, I accept the Respondent's evidence that she acted only as a notetaker and not as a decision maker on a matter in which she was a complainant. I do not accept the Claimant's submission that her dual role as Mr James's PA rendered the disciplinary process unfair. I take fully into account that the Respondent did not have a HR department and that some duplication of roles in an organisation of the Respondent's size is inevitable.

132. The failure to interview Ms Coward tainted the disciplinary process. A reasonable employer faced with serious complaints that the Claimant posed a physical threat to a colleague and that he had difficulties with women would have investigated such complaints carefully and conscientiously.

133. The Claimant was never interviewed as part of an investigation.

134. On balance, I find that there was not a fair process. The appeal did not cure the defects of the earlier stages. Ms Coward's complaints about the Claimant were not properly investigated as the Claimant's guilt was predetermined. The Claimant was not asked to set out his side of the story before matters were pressed to a disciplinary hearing.

Whether the Respondent acted reasonably in treating that (misconduct) as a reason for dismissing the Claimant

135. I will consider each of the allegations against the Claimant under the broad categories of behaviour towards customers and staff.

136. The allegations against the Claimant in relation to Collinson Motors and Autologic were never raised with him until the disciplinary hearing. Had these matters been as serious as the Respondent suggests, it is likely that immediate steps would have been taken to raise them with the Claimant to prevent other

important customers becoming dissatisfied. It was not within the range of reasonable responses to dismiss on these grounds.

137. Turning to the Claimant's behaviour to staff, no disciplinary action was ever taken in relation to either the Southam Academy incident or the complaints relating to office staff. These had the flavour of old incidents which were resurrected to pad out the disciplinary allegations. To dismiss the Claimant for these matters was not within the range of reasonable responses. The incident with Ms Farmer was inappropriate but dismissal was outside the range of reasonable responses.

138. The Claimant's behaviour to Ms Coward was clearly deteriorating but a reasonable employer would have considered whether his behaviour had yet reached the stage where dismissal was within the range of reasonable responses for his conduct. A reasonable employer would have explored the reasons for the Claimant's behaviour before deciding what sanction to impose.

139. Dismissing the Claimant for his outbursts at the grievance feedback and grievance appeal meetings was outside the range of reasonable responses. The Claimant was shocked to find that Mr Perks had appeared to solicit anonymous statements from the Claimant's colleagues touching on his health and other personal matters and was understandably concerned at the damage this would cause to his relationship with his peers. Dismissing the Claimant for his outburst at this meeting was outside the range of reasonable responses to his conduct. A reasonable employer would have reflected on the impact that this information was likely to have on the Claimant and considered mitigation for the Claimant's behaviour.

140. While the Claimant lost self-control in the disciplinary feed-back meeting with Mr. James, he did so at the point where Mr. James threatened to suspend him for having consulted a lawyer about his employment rights. The notes of the meeting and recording show that he shouted after that point. A reasonable employer in the Respondent's position would not have dismissed an employee who lost control in such circumstances. Mitigation for the Claimant's behaviour would have been considered by a reasonable employer.

141. I have considered the size of the Respondent's undertaking. Although it employed one member of HR staff only and she had other responsibilities, it had detailed and comprehensive policies. Their size and resources do not excuse the unfairness in this case.

142. I find therefore that the Claimant was unfairly dismissed by the Respondent within Section 98 of the Employment Rights Act 1996.

143. I will determine compensation at the remedy hearing.

Wrongful dismissal

144. The Claimant brings a breach of contract in respect of his dismissal without notice. I do not find that the Claimant committed an act of gross misconduct which entitled the Respondent to terminate his contract summarily. He used strong

language and shouted while in stressful circumstances in the hearings with Mr Perks and Mr James. The single incident of shouting at Ms Farmer does not constitute gross misconduct entitling the Respondent to terminate his contract without notice. The customer incidents were too far away in time. His behaviour towards Ms Coward whilst escalating did not yet rise to the threshold of gross misconduct justifying summary dismissal.

Employment Judge **B. McKenna**

Date 12th March 2021

JUDGMENT SENT TO THE PARTIES ON

22/03/2021

.....
FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.