



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr S Gindha**

**v**

**Metroline Travel Ltd**

**Heard at:** Watford

**On:** 23-24 February 2017

**Before:** Employment Judge Bedeau

## **Appearances**

**For the Claimant:** Mr J Sykes, Advocate

**For the Respondent:** Ms H Norris, Solicitor

## **RESERVED JUDGMENT**

The claimant's unfair dismissal claim is not well-founded and is dismissed.

## **REASONS**

1. By a claim form presented to the tribunal on 28 August 2016, the claimant made the single claim that he was unfairly dismissed from his employment as a bus driver after four years' continuous employment.
2. In the response presented to the tribunal on 25 September 2016, the respondent averred that the claimant was dismissed for conduct or for some other substantial reason and that a fair procedure had been followed. Further and/or alternatively, the claimant contributed to his dismissal, therefore, no compensation should be awarded.

### **The issues**

3. It is not disputed that the claimant was dismissed. What was the reason for the claimant's dismissal? The respondent contends that the reason was conduct or some other substantial reason, namely the breakdown of trust and confidence?

4. Did the respondent:
  - 4.1 Have a genuine belief in the claimant's misconduct?
  - 4.2 Were there reasonable grounds for such belief?
  - 4.3 Was that belief based on a reasonable investigation? (ie the Burchell test)
5. If the reason was conduct, this is a potentially fair reason for dismissal, s.98(2)(b) ERA. Did the respondent act reasonably in treating the claimant's conduct as a sufficient reason to dismiss under s.98(4) ERA? In other words, was dismissal within the band of reasonable responses, judged objectively against the standards of a reasonable employer in the same circumstances and the same business?
6. If the dismissal was substantively fair, did the respondent follow a procedure that was within the range of reasonableness open to a reasonable employer, ie the test under Sainsbury's Supermarkets v Hitt?
7. Did the respondent take full account of mitigating factors before considering the sanction?
8. If not, what is the likelihood, expressed as a percentage, that the claimant would have been dismissed in any event but for the defect (ie a Polkey scenario)?
9. If the claimant's dismissal was unfair, to what extent, if at all, expressed as a percentage, did he contribute to his dismissal (s.123(6) ERA)?
10. If the claimant's dismissal was unfair, to what remedy is he entitled, if any?
  - 10.1 The claimant has indicated that he is seeking reinstatement. Does he still wish to be reinstated?
  - 10.2 Would it be just to order reinstatement in light of any findings under (9) above (s.116(1)(c) ERA)?
  - 10.3 If reinstatement is ordered, what orders should be made in this regard (s.114 ERA)?
  - 10.4 If the claimant is not reinstated/re-engaged, what should the claimant be awarded for (i) his basic and (ii) his compensatory awards? Has he made reasonable efforts to mitigate?

### **The evidence**

11. I heard evidence from the claimant. On behalf of the respondent evidence was given by Mr Leonard Farhall, operations manager, and by Mr Bernard McWeeney, deputy operations director.

12. In addition to the oral evidence the parties produced a joint bundle of documents comprising of 207 pages. References will be made to the documents as numbered in the bundle.

**Findings of fact**

13. The respondent is a bus company with garages in London and the Home Counties. One of its garages is situated in Hayes, Middlesex.
14. It has a disciplinary policy with procedures for investigating disciplinary allegations and for the conduct of disciplinary and appeal hearings.
15. In relation to the conduct of a disciplinary hearing, the policy provides that in serious cases witnesses may attend but normally witness statements would suffice (pages 24 and 26 of the joint bundle).
16. On 23 January 2012, the claimant commenced employment as a bus driver by Centrewest London Buses Ltd but that employment was later transferred to the respondent.
17. The layout of the respondent's premises, which is important in this case, has to be explained. As I understand it, at the front of the Output office where the drivers would enter to sign in and receive their duties for their shifts, there is a parking area where the drivers would park their cars and buses. Not all drivers would pick up their buses from the garage as some would have to travel to where their buses would be parked. They are taken there from the garage by ferry drivers. The ferry driver would also park their vehicles in the parking area outside of the Output office and take the drivers to their buses.
18. In front of the entrance door to the office is a handrail. Upon opening the door to the building, the Output office and counter is on the left; the on-site Unite union office is on the right; next to the union office are two managers' offices which are also on the right. There is an open area between the Output office, the union and manager's offices.

Incident on 25 February 2016

19. This case concerns an incident that occurred on Thursday 25 February 2016. Precisely what happened will be referred to later by reference to the witnesses' accounts.
20. The claimant gave an account of what he stated had occurred on 25 February 2016 at 12.20pm in his Irregularity or Occurrence Report which is a formal document recording an incident. He stated that he entered the office to sign in at 12.20pm and approached the duty allocator. He was called by Mr S S Bains, union chairman, to Mr Bains' room where Mr Mustafa Bedzet, union representative, was also present. Mr Bains said to him that Mr Bedzet had put a lot of effort in getting his, that is, the claimant's DR14 upgrade and increase in salary and that he owed Mr Bedzet

something in cash. When the claimant asked what Mr Bedzet was expecting, Mr Bains was not clear but insisted that he should pay him something. Mr Bedzet then left the room and Mr Bains carried on insisting that the claimant should pay Mr Bedzet some money. The claimant said that he was due to receive an increase of about £14-£15 a week, not a large sum of money to pay Mr Bedzet anything. Further, that he was due for the increase anyway and he simply asked the union for assistance. He made reference to something that Mr Bedzet had done for him the previous week and when he thanked Mr Bedzet, Mr Bedzet allegedly replied by saying that thank you was not enough.

21. The claimant continued in the Occurrence Report by stating that a few minutes after leaving the room Mr Bedzet returned and asked to show him his payslip. At that point the claimant said he did not have the payslip on him but later handed it over to Mr Bedzet and walked out. He was followed by Mr Bedzet who began to swear at him. He was angry and threatened to finish the claimant even if it cost him his employment. He then kicked the claimant's payslip that was on the floor and continued to use foul language. He followed the claimant out of the building and was shouting at him, calling him names. There was another employee who had witnessed the incident outside. Mr Bedzet then threatened to finish the claimant and his family. Mr Bains and someone by the nickname of Lens, were present at the time. The claimant stated that he said to Mr Bedzet that he appreciated his help but would not accept the way he was behaving. Mr Bedzet then returned to the office. Half an hour later Mr Bains approached the claimant as the claimant was writing his Occurrence Report and said that the report was not going to help him. The claimant felt threatened and was worried for his and his family's safety. He further stated that he feared being attacked on his way to and from work. He asked that the respondent should investigate the matter urgently and that the CCTV footage covering the inside and outside of the building to be viewed. (50-51)
22. Although the claimant said that he and his family were threatened by Mr Bedzet, he allowed a member of his family to deliver his Occurrence Report to Mr Rodolfo Brusa, operations manager. The reference to the person nicknamed Lens was to Mr N Mylvaganam.
23. The claimant was on sick leave from 26 February 2016 because of stress.
24. There were further Occurrence Reports submitted by a number of employees in relation to the incident. Mr Mylvaganam, or Lens, wrote on 29 February 2016, the following:

“After I parked the ferry car at about 12.40, I came out of the car and I saw the driver, Gindha Surjit, in front of the reception door. At that time Mustafa came out of the reception door and he shouted at Surjit with foul language and tried to attack him. I was not involved in the incident. I only saw it.” (47)
25. Mr Bakri Kurabi, supervisor, in his report also dated 29 February, stated that on the day in question he had witnessed a heated conversation between Mr

Bedzet and the claimant. It initially took place in the union room where he heard Mr Bedzet shouting, very loudly and aggressively, using abusive language at the claimant. The claimant was talking gently and trying to explain something to Mr Bedzet but every time he tried to speak Mr Bedzet became more violent and aggressive in his language and kept saying to the claimant he did not understand and that the claimant should listen to him. The claimant then left the union room looking very upset and angry. He then heard Mr Bedzet shouting at the claimant outside the hall entrance. His behaviour was wild and rude. He, Mr Kurabi, left the counter area to investigate and as he looked through the window, he saw Mr Bedzet and the claimant with other drivers surrounding them. The claimant throughout was calm and in control but later reported sick as a result of the conversation he had with Mr Bedzet. (49)

26. Mr Bains, in his report dated 1 March 2016, stated that the claimant came to see him in the union office to say hello. He was the chairman of the union branch. Mr Bedzet was standing next to him at the time. He, Mr Bains, said to the claimant that Mr Bedzet had fought very hard for him to get his correct grade and that he should thank him. Mr Bedzet then instructed the claimant to get his payslip to check that he had received the correct pay. The claimant left and brought back his payslip. Mr Bedzet then told the claimant that he, the claimant, already knew that he was getting the correct money but had hidden that fact from him. At that point the claimant reacted and held out his payslip towards Mr Bedzet, placing it inside Mr Bedzet's jacket. Both men were angry and Mr Bains had to separate them. After 10 minutes, he saw the claimant sit in the office writing out a report. He spoke to him about settling the issue with Mr Bedzet. He then spoke to Mr Bedzet and everyone agreed that they should return to the office to settle their differences. Mr Bedzet then hugged the claimant saying that he had already forgotten everything. They were all happy and the claimant went out on his bus driving duties. Mr Bains stated that sometime later he was shocked when the police came and interviewed Mr Bedzet. (52-53)
27. Mr E Saipour, in his Occurrence Report dated 1 March 2016, did not see much of what went on the day in question. He wrote:

“I came for sign on. I just saw the two talking in the output area and then they went outside. Then I saw driver at Hayes bypass and asked what happened. He said I tell you next time. I didn't hear anything that was said in the depot.” (54-55)
28. Neither Mr Kurabi nor Mr Mylvaganam referred to any threats to kill either the claimant or members of his family.
29. The claimant was interviewed on 1 March 2016, by Mr Brusa, operations manager, who investigated the incident. He said:

“At approximately 12.20 hours I signed my module and went to the duty allocator to ask about my lieu days, then I left the room and was going outside and Mr Bains called me in his office and Mustafa was also there. Mr Bains spoke to me in Punjabi and said that Mustafa put a lot of effort in getting my DR14 and I should pay him cash. In the meantime Mr Mustafa asked me to show him my payslip which I had in my pocket but

I was not comfortable to show it to him in front of other people. Mr Mustafa then went out and I asked Mr Bains how much it would be acceptable for me to pay. I explained I only get £10-£14 extra per week. How would I be supposed to pay any amount that is expected for me to pay? Then one of the guys called Nasser came in the room and I left. Mr Mustafa came in and I pretended I went to the box to collect the payslip as before, when I was asked, I lied to him and told him I have no payslip with me. At this point the ferry driver asked for the drivers that were meant to ride in his car and Mr Mustafa called me in the office again. He asked again for the payslip. I gave it to him and he replied that I already had it with me the first time I was asked and he asked why I told him I did not have it. I put the payslip in his jacket and told him to take it and do what he wanted. Finally, I walked out. Mustafa then followed me and started shouting in an angry tone, he called me names and used foul language. He went on saying I will thrash you I will kill you and your family; you don't know who I am and so on. Also, after I gave him the payslip he kicked it on the floor. I thought he was not in a good mood, I told him I respected him as a human being, but not when he showed this behaviour and then I walked off. There were a lot of people around. Mr Saipour, a GAS at the counter and also Mr Bains who pushed him back in the room. I went outside waiting and he came again with a more aggressive angrily mood and facing me pretending to hit me. He kept using the same language he used in the middle of the room like I will kill you, I will kill your family, you don't know who I am. Mr Bains came outside and told Mustafa not to do this and tried to move him away and Mustafa said "Don't touch me I will kill him today."

30. The claimant then said that he went about his duties as a bus driver but feared for his and his family's safety as he lived close to the depot. After completing his duties, he took the ferry back to the garage and was writing up his Occurrence Report when he was approached by Mr Bains who told him that he should not submit a report as nothing would happen; he would lose his job and that he, Mr Bains, was a powerful man. The claimant asked Mr Bains to leave him alone. At that point Mr Bains left, went back to his office and five minutes later he returned and, in Punjabi, tried to dissuade the claimant against submitting his report. The report he was writing was not submitted. The claimant said that he was finding it difficult to sleep that evening and called in the following morning, at 11 o'clock, to say that he was sick due to stress. He had a discussion with his daughter who, at the time, was aged 7 years and his son about the incident on 25 February and they advised him that the matter should be reported to the police. He then reported the incident to the police on Saturday 27 February 2016, at Uxbridge police station. He said to Mr Brusa that his son and his wife went to the Output office and submitted his report on 26 February between 4 o'clock and 5 o'clock in the afternoon. He said that it was the first time he had been asked to pay for union help. He acknowledged that he did not mention in his report that he had shook hands with Mr Bedzet on the day before resuming his duties. Reference to money, he insisted, was not a joke. The first time Mr Bedzet threatened to kill him and his family was inside the union office and he took it seriously. He said that he went outside to wait for the ferry driver but at no time did Mr Bedzet touch him. It was Mr Bains who called him back to the office by saying that nothing would happen to him and that all he had to do was shake Mr Bedzet's hand. He believed what Mr Bains told him and went back to the office and shook Mr Bedzet's hand. He maintained to Mr Brusa that he was still afraid of Mr Bedzet, more so when he was made aware that Mr Bedzet had been reported to the police

and to management. He went on to say that he did not return to work the following day because of Mr Bedzet being present who had his brother and other friends working at the depot. He said he was not comfortable dealing with any union leader and repeated that Mr Bedzet threatened to kill him and his family.

31. At the conclusion of the meeting Mr Brusa informed the claimant that the allegations were very serious and he would need to investigate them fully. If they were deemed to be unfounded it may lead to disciplinary proceedings against him. He told the claimant that he did not believe the environment would be safe for him and stood him down from duty until the position was clarified. In the meantime, as a temporary measure, he would be transferred to a different garage. Once a decision was reached the transfer may then be permanent or the claimant would be returned to working at the Hayes garage. (56-63)
32. Mr Kurabi was also interviewed. He said that he was at the counter on the middle shift when he saw the claimant open the union office door and was talking to Mr Bedzet on the doorstep. Mr Bedzet suddenly became very loud. The claimant was very calm and tried to continue the conversation but Mr Bedzet kept interrupting him and told him, "You do not fucking understand what I'm saying. Listen to me..." The claimant then walked out and after 10 minutes Mr Kurabi heard them shouting again from outside and could see some drivers through the window whereupon he decided to investigate. When another employee opened the main door, the shouting stopped and those outside dispersed leaving the claimant and Mr Bedzet with Mr Bedzet shouting using the word "fuck" quite profusely. Mr Kurabi went back to the counter and after a few minutes the claimant came from behind the counter reporting sick on duty. Mr Bains then conversed with the claimant for about three minutes and they walked out together. It was the last Mr Kurabi saw of them.
33. Mr Kurabi said in answer to questions put to him by Mr Brusa that he did not hear any threats made by anyone involved. All he heard was shouting but not what was said except for the word "fuck" being used but nothing more. If he had heard threats being made, as the person in charge, he would have suspended those involved and diffused the situation. He was quite sure that Mr Bains had greeted the claimant in his own language but could not be certain about the rest of the conversation. (64-65)
34. Mr Bains was interviewed by Mr Brusa and he confirmed that he would normally speak to the claimant in Punjabi. He gave an account consistent with what he had written in his report. On being questioned by Mr Brusa he denied having a discussion about the claimant paying Mr Bedzet. All he did was to suggest to the claimant that he should thank Mr Bedzet for the increase in his pay grade. Mr Bedzet asked to see the claimant's payslip simply to make sure that he was getting the correct adjustments to his pay. He did not hear Mr Bedzet make any threats to kill the claimant and his family. The claimant did not use any foul language towards Mr Bedzet but was angry at the beginning. Once they were outside, he was calm and did

not threaten Mr Bedzet. Mr Bains said that he was not aware of any money being paid to Mr Bedzet or to any union officer for help. He denied forcing the claimant into the union office to speak to Mr Bedzet. He acknowledged that the claimant was upset and he tapped him on the shoulder as a friend. He denied saying to the claimant that he would lose his job if he did not settle his differences with Mr Bedzet. All he did was to offer a compromise, "I just said to him why we have to go through all the reports and paperwork and we cannot compromise." He did not say that Mr Bedzet was a powerful person and that he should make up as nothing would happen to him. The claimant voluntarily followed him back to the office and, thereafter, resumed his duties. Mr Bains said that he did not have an issue with the claimant but hoped that the matter be resolved quickly. He said that Mr N Mylvaganam or Lens and Anwar also witnessed the incident. (66-68)

35. Mr N Mylvaganam was interviewed also on 1 March 2016, by Mr Brusa and said:

"I parked my ferry car and the guys were standing by the door. I asked why you sad, but he did not say anything. Suddenly Mustafa came out and opened the door and start staying to him you motherfucker, what do you think you are doing, I'm going to mash your face, I'm going to lose the job but I don't care and he kept going on. Then Bains came out and got in the middle and pushed Mustafa back and Mustafa said you don't know me I want to put in a report. Who cares about the report and he told Bains not to push him. He told him again he wanted to mash his face and went in, I followed and told Mustafa to control his temper, but I had to go out and went inside to call for ferry car."

36. Mr Mylvaganam had no idea why Mr Bedzet was upset with the claimant. He was asked whether he heard any threats to kill having been made by Mr Bedzet to the claimant to which he replied that he did not. He said that the claimant did not use any foul language towards Mr Bedzet nor did he threaten Mr Bedzet. He could not recall anyone else who had witnessed the incident. He was also not aware of any money being paid to a union officer for help. (69-70)
37. Mr E Saipour was interviewed on 2 March 2016 and confirmed that he did not notice anything unusual or untoward occurring in the Output office except for the fact that the claimant and Mr Bedzet were involved in some sort of argument. (72)

#### Mr Bedzet's grievance

38. During the course of the investigation Mr Bedzet lodged a formal grievance on 2 March 2016 referring to the work done on behalf of the claimant in relation to his pay grade. Mr Bedzet stated that the respondent had decided that the claimant was not entitled to an upgrade and the matter came to him to provide assistance. He wrote that during the process of trying to secure an upgrade, the claimant accused the union of being useless and did not do anything for their members. Mr Bedzet described the claimant's manner as aggressive and he tried to calm him down. The claimant also spoke to a number of drivers telling them that the company was stealing money from



him. In relation to the incident on 25 February, when he arrived at his office, Mr Bains and the claimant were already there. He instructed the claimant to get his payslip so he could determine whether or not the upgrade achieved on the claimant's behalf, was reflected in his payslip. The claimant went away and got his payslip and very aggressively, shoved it at Mr Bedzet making physical contact with him. He then turned and walked away. Mr Bedzet then threw the payslip towards the door after him but did not make any contact. He denied making any threats to the claimant or to his family. He said that the claimant had been prompted by someone to make allegations against him and that they were false, made for the sole purpose of getting him charged with gross misconduct with a possibility of him being dismissed. (73-74)

39. The claimant also complained to Unite union on 28 February 2016. In a response dated 2 March 2016, from Mr Vince Passfield, deputy regional secretary, he stated that the matter would be investigated. (75)
40. In a letter dated 22 April 2016, sent by Mr Passfield to Mr Bedzet, he stated that having conducted an investigation into the allegations there was no case to answer. (118-119)

#### Investigation meeting with Mr Bedzet

41. Mr Brusa wrote to Mr Bedzet on 3 March 2016, inviting him to attend an investigation meeting concerning alleged misconduct, in particular, foul and abusive language; threatening behaviour; and bribery. The investigation meeting was scheduled to take place on 3 March 2016. (76)
42. During the meeting on 3 March, Mr Bedzet gave an account consistent with what he had written in his grievance. He was then questioned by Mr Brusa. He made reference to an earlier incident when the claimant approached him and gave him his payslips, his letter of employment and said that his pay grade had not been changed and asked whether Mr Bedzet could help him. He, Mr Bedzet, gave the documents to Mr Brusa. Two or three days later the allocation office approached him and said that it was all sorted and that the claimant should check his payslip on the following Friday and that the claimant should show his payslip to Mr Bedzet to check to see whether it was all correct. A few days later, Mr Bedzet was in the canteen and found the claimant talking to a group of drivers. He was saying that his grade had not changed; that the company was stealing his money and the union was not doing anything about it. Mr Bedzet informed him that he had acted on his instructions but could not explain why his pay grade was not adjusted. He promised to look into it. From his enquiries, he was told by Mr Stavros Heracleous, garage general manager, that the claimant's pay grade had been adjusted.
43. In relation to the incident on 25 February 2016, Mr Bedzet said the following:

“I walked out of your office and when I entered my office I found Mr Bains, Mr Gindha and as I said, another driver was also there. On seeing him I remembered the issue discussed in the past and asked him to go and get his payslip. He reached for his bag

and offered me a Red Bull. I asked him why he was offering me the Red Bull when Mr Bains intervened and explained to him I could not drink Red Bulls as I had a heart condition and I refused it. When I refused he went outside and went towards the payslip box. I was looking at him and I could clearly see him pretending to take the payslip while, instead, he removed it from his internal pocket. He then turned and came toward me and shoved it in my pocket hitting me. I took the payslip and kicked it out. He went out and I went outside and I was upset, Bains took me inside the office and told me what he did to me is not fair to me. This contributed to make me even more upset. However, I left the office.

I went outside and he was there. I explained to him that by what he did earlier he could have been reported to the manager and then face disciplinary action. Of course I had no intention to do it as I believe that as Union representative I should advise the member on the correct thing to do, but not jeopardise their job. I repeatedly asked him if I ever did anything wrong to him. I was upset and Bains who was with me tried to move away. I asked Bains to leave me alone and pushed him away telling him to let me explain the situation to Gindha. I never made any threat to him.”

44. Mr Bedzet then went on to say that the initial conversation between Mr Bains and the claimant were in their own language and that he did not understand what was being said. He believed that the reason why the claimant refused to disclose his payslip to him was that it would prove that the company was not stealing his money and that the union did exactly what he had instructed it to do. Even at the time of the investigation meeting, he, Mr Bedzet, still did not know whether the claimant's pay grade had been adjusted. He denied telling the claimant outside of the building that he was going to kill him and his family as he did not make any threats to him. He admitted that the conversation was heated and that he may have used foul language but could not remember. He denied pretending to hit the claimant. He confirmed that he was arrested by the police on Monday 29 February and was released the following day on bail but had not, at that time, been charged with an offence.
45. Mr Brusa informed Mr Bedzet that based on the evidence in his possession and the assurances Mr Bedzet had given him that a similar incident would not occur, he was not going to suspend him from duty. The meeting was adjourned to 8 March 2016.
46. At the reconvened meeting Mr Bedzet said that he was not aware of any money or gifts changing hands between members of staff and union officers. He had never asked for money or gifts for representing anyone nor did he receive payment for doing so. He said that he had represented the claimant previously and had never had any issues with him. He believed that the claimant had raised concerns about him because he had been manipulated by someone. He confirmed that the claimant shook hands after the incident with him. He also went on the road of his own free will. He denied trying to attack the claimant at any time. He said that the conversation between Mr Bains and the claimant was entirely in Punjabi, not in English. He did not think that Mr Bains was trying to obtain money or other form of payment from the claimant either on Mr Bedzet's behalf or for Mr Bains' own benefit. He also did not believe that Mr Bains put the claimant under undue pressure to resolve the matter amicably and for him to resume his duties.

47. Mr Brusa informed Mr Bedzet and his union representative, Mr B Swann, that it was his intention to view the CCTV footage of the incident before reaching his conclusion. He then later informed them that having reviewed the CCTV footage, which did not record sound, the angle of the camera did not allow for a full view of the incident. They were also informed that Mr Brusa did not believe that there was a case to answer in respect of the corruption and threatening behaviour allegations but would refer the matter to a garage disciplinary hearing in relation to Mr Bedzet's use of foul and abusive language towards a fellow colleague on 25 February 2016. Mr Bedzet was advised that the hearing would take place on 9 March 2016. (78-88)
48. The disciplinary hearing conducted by Mr Heracleous, garage manager, who issued Mr Bedzet with a written warning for using foul and abusive language, to last 12 months. (89,94-98)
49. On or around 8 March 2016, the claimant complained in writing about what was said during the incident on 25 February, namely that there was an attempt to bribe him and that he was threatened with violence. Mr Bedzet having said, "Nobody can touch me because I'm Kosovo lion". The claimant stated that it was disturbing and upsetting that Mr Bedzet, who had openly claimed on company premises that he would kill another co-worker, was still being employed by the company and that this conduct would have been recorded by the internal CCTV camera. (91)
50. Mr Mohammed Anwar, wrote an Occurrence Report on 8 March 2016 in which he stated the following:

"I finished work at 12.30pm on February, I signed off and went outside the main door with my headphones on and playing music from my phone. When I went outside I started to smoke a cigarette. Outside already including me there was two other people first one Lens, ferry driver. Second one was a driver with a cap and glasses. I had my music on listening through my headphones. Then Mustafa and Mr Bains came out. They were speaking to the other drivers and I was there for a total of five minutes and I left. I did not hear anything cause I had my headphones on also listening to my music." (92-93)

#### Mr Brusa's investigation outcome

51. Mr Brusa was not satisfied that the claimant's allegations of threats to kill and bribery or corruption, could be substantiated. On 16 March 2016, he invited the claimant to an investigation meeting to take place on 23 March 2016. The allegation being, "malicious grievance dated 26 February 2016 against two fellow members of staff at Hayes garage." (100-101)
52. The claimant was unable to attend the meeting on the scheduled date and it was rescheduled for 30 March 2016. Unfortunately, he was in hospital on 29 March. He was eventually interviewed by Mr Brusa on 22 April 2016 in the company of his union representative, Mr J Davenport. During the meeting Mr Brusa had the Occurrence Reports and notes of his meetings

with the witnesses as well as the CCTV footage. He put to the claimant that he had named Mr Mylvaganam, or Lens, as his witness but that person stated that he did not hear any threats to kill. The claimant confirmed that there were no issues between him and Mr Mylvaganam. The claimant further confirmed that his son, aged 13 years and daughter aged 7, had advised him to go to the police. He, however, acknowledged that Mr Bedzet dealt with pay issues for all of Hayes' garage drivers. At the conclusion of the meeting Mr Brusa informed him that there was a case to answer and the matter would be referred to a garage disciplinary hearing, the allegation being the same. (110-117)

#### The disciplinary hearing

53. Mr Brusa wrote to the claimant on 28 April 2016 inviting him to attend a disciplinary hearing on Monday 9 May at Uxbridge garage to be conducted by Mr Leonard Farhall, operations manager. The allegation being repeated. He was advised of his right to be accompanied by a workplace colleague or trade union representative and that if he wished to have any witnesses present to give evidence he should inform Mr Brusa. He was also informed that one possible outcome of the meeting may result in a finding of gross misconduct with the possibility that his employment may be terminated. (120-121)
54. During the disciplinary hearing Mr Farhall heard evidence from Mr Anwar, Mr Saipour, Mr Bedzet, Mr Bains and the claimant. It would appear, as would become apparent later, that he interviewed Mr Myvaganam. The witnesses gave accounts consistent with their earlier accounts as in their reports and their investigation meetings. In an exchange between Mr Farhall and Mr Bedzet, the following is recorded:
- “LF: You know he’s in here as we are deeming this as malicious grievance. In other words he’s up for gross misconduct charge. Now the outcome of that could be anything from dismissal downwards. But if you think he’s only a puppet, that somebody is playing him, does he really believe that you’re going to get dismissed or does he think this is just a way for it getting recorded?”
- MB: No, because he created things which we never discussed. He said in his report that I want to kill him and his family. That’s too much. And this is a false statement, a serious one. He involved the police. All of this was created after three or four days. The initial report didn’t even mention that I said I wanted to kill him and his family nor did he say that he came to see me in the office and made peace with me. A lot of things weren’t in that report.”
55. It was put to Mr Farhall that the above statement meant that his mind had been made up and that he intended all along to dismiss the claimant. This was denied by him who responded by saying that he was simply explaining possible outcomes at the conclusion of the disciplinary process.
56. The claimant gave an account consistent with his account given during his investigation meeting. It was put to him that the accounts given referred to shouting and using bad language but no threats to kill. The claimant

responded by saying that he had been working for the company for four years and would not make a malicious grievance against Mr Bedzet. He repeated that Mr Bedzet had threatened to kill him and his family. He was asked why would Mr Bedzet, who did not understand what the claimant was saying to Mr Bains, come out after him in a rage. The claimant said he did not know why but it could be “because I didn’t show him my payslip.” He said that when he was filling out the form it was said to him that nothing would happen to the union representative. It was Mr Bains who invited him to shake Mr Bedzet’s hands.

57. The claimant objected to having been transferred to another garage while Mr Bedzet remained at the Hayes garage. He said that that decision was not fair as he was the victim. At that point Mr Davenport interceded and said that the company wanted to take him out of the situation as it was dangerous for him. Whether they should have transferred both of them or just the claimant he did not know but that the company was exercising its duty of care towards him.
58. The hearing was reconvened the following day, 10 May 2016, when Mr Farhall stated that he had found the allegation to have been proved and had taken into consideration the seriousness of the offence; the claimant’s length of service, being four years; his previous good disciplinary record and extenuating circumstances. In mitigation, Mr Davenport said the following:

“Mr Gindha found himself in a situation that was difficult and unusual to him and even though voices were raised it is possible that conversations took place that weren’t as loud or as obvious. There were witnesses there but did not hear all the conversations. This doesn’t conclude the fact these things were not said. Mr Gindha was afraid and didn’t know how to handle this situation. You said he could have gone to see the managers when certain things had happened. I don’t know why he didn’t, only Mr Gindha can answer that. Yes, in hindsight he could have, but hindsight is a very powerful tool. While he has said certain things, what is clear is that he was worried and was scared, couldn’t go to the union for the obvious situation. He went home concerned and worried and then the chain of actions that followed. Mr Gindha didn’t know how to handle the situation, there was no malicious intent I don’t think his thoughts went beyond.”

59. There was a brief adjournment after which Mr Farhall gave his reasons for concluding that the allegation of malicious grievance was proven. He said,

“It is obvious from the evidences being presented that you have been involved in an incident whereby, you have claimed that Mr Mustafa has threatened you with killing you and your family. Make no mistake that I treat this extremely seriously. As I am faced with the fact that you have been unable to produce any witnesses to substantiate your claim that he had said he would kill you and your family.

You have also claimed that Mr Bains has asked you for money. He flatly denies this and states that he only asked you to say thank you for the effort they are putting in with the manager on getting your grade changed.

You want me to believe that you are asked to go into the office by Mr Bains and have a talk with him even though you are not friends and the issue of your pay had been sorted out. You claim that this is where he asked you for money. When I asked you if Mr Bains had asked you for a figure in regards to the money for you to pay you are unable to answer. You also claim that you are talking Punjabi to Mr Bains and Mr Mustafa who walked into the room and does not speak Punjabi and was unable to understand what you are talking about asked for your payslip. This would seem reasonable for him to do this as he would want to check that the work he had done was complete.

It is at this point I find it difficult to understand your version. You claim that Mr Mustafa lost his tempers over you handing him the payslip which is what he wanted in the first place. However, Mr Bains and Mr Mustafa claim that you got angry and tried to put the payslip into the pocket of Mr Mustafa. At that point you walked away making a comment of “do what you want”. I find it hard to believe why any person would get upset or anybody else for no reason whatsoever. Then you account of what happened next mirrors in a fashion the version of Mr Bains and Mr Mustafa, that Mr Mustafa got upset with you and started to swear and curse and became verbally abusing. This was seen by all and witnessed at this point. This was observed by Gas Kurabi, and he made a report which its contents tells me that he heard what was being said. At no point does he state that he heard what you claim. The commotion was also heard by a manager, Lukasz, who came out to see what the problem was.

On the issue of whether this has been escalated by you on the grounds of malicious intent I have asked how you see this could have been resolved. You have been unable to provide me with an answer. Instead stating that the decision is for me to make. However, you also have established that you knew that this particular issue would be a gross misconduct is and therefore as a consequence was that if proven Mr Mustafa could have lost his job and been dismissed. As to whether you put in this grievance for malicious reasons I would have to conclude that the answer would be yes. You knew that the issue would have been classed gross misconduct when you put the report. In addition to this I find that you have not been altogether truthful. A breach of trust now exists between you and the company. I find myself in a position where I have no choice but to dismiss you today from service. This is purely down to the fact that you have tried in my opinion to cost another colleague their employment and have not been truthful. You have the right to appeal my decision. You must do within 7 days in writing.” (123-148)

60. Mr Farhall’s decision was later confirmed in writing in a letter signed by him and dated 12 May 2016. (149-150)

#### The appeal

61. On 12 May 2016, the claimant appealed against his dismissal on the ground that it was too harsh. (151)
62. He was invited on 24 May 2016, by Mr Bernie McWeeney, deputy operations director, to an appeal hearing scheduled to take place on 7 June 2016 at 10 o’clock at the Alperton bus garage. (153)
63. The hearing was conducted by Mr McWeeney and Mr Dan Power, Alperton garage manager, in the presence of the claimant and his work colleague, Mr S Bunger. The claimant submitted a statement setting out his detailed grounds which he handed to Mr McWeeney at the start of the hearing. He

asserted, in his statement that Lens, Mr Mylvaganam, was not interviewed at the disciplinary hearing by Mr Farhall and he, the claimant, believed that Lens' evidence was credible and wanted to know why he was not called to be questioned. He also asserted that Mr Bakri Kurabi's accounts showed that there was verbal abuse by Mr Bedzet directed at him, the claimant. He stated that the Occurrence Report given by Mr Mohammed Anwar was incomplete and misleading. What he said during the hearing lacked crucial details. He also asserted that the accounts given by Mr Bains and Mr Bedzet contradicted the other. He challenged Mr Farhall's assessment of the evidence and findings and stated that he was the victim and had acted in good faith. He believed that Mr Bains, Mr Bedzet and the management at Hayes garage, conspired against him leading to the termination of his employment. He repeated that Mr Bedzet did threaten him and his family and urged upon Mr McWeeney to study the evidence carefully which he attached to the statement. (154-160)

64. From the statement produced by the claimant of Mr Mylvaganam, upon reading it, it was apparent to Mr McWeeney that Mr Mylvaganam had not stated that Mr Bedzet had threatened to kill the claimant and his family, only that he would "mash" the claimant's face. This was put to the claimant but the claimant stated that Mr Bedzet had said that he would "kill finish me". It was pointed out by Mr McWeeney that there was no reference to kill in Mr Mylvaganam's account. The claimant acknowledged that there were no witnesses to the alleged bribery comments allegedly made by Mr Bains to him in Punjabi. However, he insisted that Mr Bains had demanded money.
65. He said that the witnesses called at the disciplinary hearing were lying. He believed that although Mr Anwar had headphones on, he heard and saw everything. He was then asked about the court case against Mr Bedzet to which he said it was listed for hearing on 12 July 2016. When he was further questioned by Mr McWeeney in relation to the court case, the claimant said that Mr Bedzet had told Mr Mylvaganam not to attend court and that Mr Mylvaganam had called him on 1 June 2016 and told him about the conversation. When asked what he did done with the information, the claimant replied nothing. He was asked whether he had informed the police, to which he said he had not. Mr McWeeney informed the claimant that he had a duty to report the matter to the police as it was illegal for someone to prevent a witness from attending court. The claimant replied that he would go to the police to inform them about what had happened.
66. The hearing was adjourned for a few weeks during which Mr Mylvaganam was interviewed by Mr McWeeney on 23 June 2016. He confirmed that Mr Bedzet had said that he would "mash" the claimant's face and did not hear him say "kill". He also did not hear Mr Bedzet say that he would kill the claimant's family. At the time Mr Bedzet was rolling up his sleeves and said that he would "fucking smash his face" and that he did not care if he lost his job. He further stated that he did not record the incident on his mobile phone. He denied telling the claimant that someone had told him not to go to court. He said that Mr Bedzet would never say that and that he did not tell him not to go to court but to go instead on sick leave. He denied that there was

pressure being put on him by anyone to change his story. He was not fearful of anyone. He said that he gave the police exactly the same account he had given. (175-178)

67. Mr Power was also satisfied that Mr Mylvaganam was interviewed by Mr Farhall as part of the disciplinary hearing and a copy of the minutes of that interview together with the interview on 23 June 2016, were sent to the claimant together with an invitation letter dated 13 July 2016, to attend the reconvened appeal hearing. (179)
68. The reconvened hearing was held on 18 July 2016, attended by the claimant and his work companion, Mr Bungler. Mr McWeeney conducted the hearing. Mr Power took notes. During the previous appeal hearing the claimant said that the incident had been recorded and that the recording was with the police. He was asked about the recording and said that it revealed that Mr Bedzet had said that he would put him in hospital if it cost him his job. He did not know who had recorded the incident but it was not recorded that Mr Bedzet had said to him that he will kill him. The claimant, however, maintained that he heard Mr Bedzet say it twice. He acknowledged that contrary to the advice given by Mr McWeeney, he had not reported to the police what Mr Mr Mylvaganam had been told, allegedly, by Mr Bedzet, namely not to attend court. It was put to the claimant that the only reason why he made a reference to hospital was that it was in Mr Mylvaganam's statement and that he had referred to hospital for the first time during the appeal hearing. This was denied by the claimant.
69. At the conclusion of the hearing Mr McWeeney informed the claimant that his appeal was dismissed and that his decision would be sent to him in writing. (181-186)
70. The decision to reject the claimant's appeal was taken by Mr McWeeney and Mr Power. In the outcome letter dated 25 July 2016, sent by Mr McWeeney, he wrote the following:

“... However, having considered your appeal very carefully and taken into account your representations, it has been decided to uphold the decision of Len Farhall and you will remain summarily dismissed. This decision has been taken because you submitted a malicious grievance on 26 February 2016 against two fellow members of staff at Hayes garage. There was no evidence to support your allegations that you were asked to make a payment to another driver or that the other driver threatened to kill you and your family.

We accept that an altercation took place between you and another driver, evidence showed that you and the other party were angry and that the other driver was abusive towards you. The other driver was the subject of disciplinary action and that matter is now closed. You advised the panel that there was a tape recording of the incident, but you also indicated that it does not contain any evidence that would support your allegations that there were threats to kill you and your family. Your allegations and the inconsistency of your evidence gave us real cause for concern and as they were not supported by those present it now means that there is a question of trust between you and your employer.



I trust you will understand it is vital that we can trust our bus drivers, who work mainly unsupervised delivering a service to the public. We must trust that you work conscientiously and (for example) report accurately on incidents and accidents that occur whilst you are on duty, since your reports may be used in legal proceedings. We also have to rely on your honesty when dealing with young and vulnerable passengers. Having full confidence in you at all times is an essential part of the relationship and this incident demonstrates that you present a significant risk due to the allegation that you have made on this occasion.

During our meeting your advised us that you had made contact with a colleague who was a witness to the incident, during which it was alleged that he advised you that he had been summoned to attend court and that the defendant had approached him and suggested he report sick on the day of the hearing in order to avoid attending. We advise you to report this contact to the police, but it was now clear that you had failed to contact the police and we have interviewed the witness who admits there was contact between both of you, but denies that he was ever asked not to attend court by the defendant.

We have concluded that all of your actions as described have resulted in an irreparable breakdown of trust and confidence between you and your employer, and such behaviour cannot be tolerated. We are now satisfied that the sanction of summary dismissal was a reasonable response as this constitutes gross misconduct.

Please ensure that any company property is returned to your garage as this will allow us to release any monies outstanding.” (189-190)

71. The relationship between the union representatives and the garage managers can at times be testing and strained and that Mr Bedzet was not always viewed in a favourable light. I was, however, prepared to accept that that was to be expected given that the union representatives would be challenging decisions taken by the respondent.

#### A director's review

72. There is a procedure called a Director's Review which allows a full-time recognised trade union officer to refer a decision to dismiss to the appropriate director or the chief operating officer where it is believed that there has been a serious breach of the disciplinary procedure. A request for a review must be made in writing and received within 14 days of the final decision being conveyed to the employee concerned. The director or chief operating officer, would consider the matter and provide a written response but will not normally conduct a meeting with the appellant, paragraph 3.17. (28)
73. The Director's Review procedure was not invoked on the claimant's behalf by the union.

#### **Submissions**

74. I have taken into account the detailed written and oral submissions by Mr Sykes, advocate on behalf of the claimant and by Ms Norris, solicitor on behalf of the respondent. I do not propose to repeat those submissions herein having regard to Rule 62(5) Employment Tribunals (Constitution and

Rules of Procedure) Regulations 2013, as amended. I have also taken into account the cases referred to me.

### The law

75. Section 98(1) Employment Rights Act 1996 ("ERA"), provides that it is for the employer to show what was the reason for dismissing the employee. Dismissal on grounds of conduct is a potentially fair reason, s.98(2)(b). Whether the dismissal is fair or unfair having regard to the reason shown by the employer, the tribunal must have regard to the provisions of s.98(4) which provides:

"Where the employer has fulfilled the requirements of subsection (1), and 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 employees 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."

76. In the case of British Homes Stores v Burchell [1980] ICR 303, the EAT's judgment was approved in the Court of Appeal case of Weddel & Co Ltd v Tepper [1980] ICR 286. The following has to be established:

76.1 First, whether the respondent had a genuine belief that the misconduct that each employee was alleged to have committed had occurred and had been perpetrated by that employee,

76.2 Second whether that genuine belief was based on reasonable grounds,

76.3 Third, whether a reasonable investigation had been carried out,

77. Finally, in the event that the above are established, was the decision to dismiss reasonable in all the circumstances of the case. Was the decision to dismiss within the band of reasonable responses?

78. The charge against the employee must be precisely framed Strouthos v London Underground [2004] IRLR 636.

79. Even if gross misconduct is found, summary dismissal does not automatically follow. The employer must consider the question of what is a reasonable sanction in the circumstances Brito-Babapulle v Ealing Hospital NHS Trust [2013] IRLR 854.

80. The Tribunal must consider whether the employer had acted in a manner a reasonable employer might have acted, Iceland Frozen Foods Ltd v Jones

[1982] IRLR 439 EAT. The assessment of reasonableness under section 98(4) is thus a matter in respect of which there is no formal burden of proof. It is a matter of assessment for the Tribunal.

81. It is not the role of the Tribunal to put itself in the position of the reasonable employer, Sheffield Health and Social Care NHS Trust v Crabtree UKEAT/0331/09/ZT, and London Ambulance Service NHS Trust v Small 2009 EWCA Civ 220. In the Crabtree case, His Honour Judge Peter Clark, held that the question "Did the employer have a genuine belief in the misconduct alleged?" goes to the reason for the dismissal and that the burden of showing a potentially fair reason rests with the employer. Reasonable grounds for the belief based on a reasonable investigation, go to the question of reasonableness under s.98(4) ERA 1996. See also Secretary of State v Lown [2016] IRLR 22, a judgment of the EAT.
82. The range of reasonable responses test applies to the investigation as it does to the decision to dismiss for misconduct, Sainsbury's supermarket Ltd v Hitt [2003] ICR 111 CA.
83. In the case of Taylor v OCS Group Ltd [2006] ICR 1602 CA, it was held that what matters is not whether the appeal was by way of a rehearing or review but whether the disciplinary process was overall fair.
84. The seriousness of the conduct is a matter for the employer, Tayeh v Barchester Healthcare Ltd [2013] IRLR 387 CA.
85. The Court of Appeal acknowledged that employment tribunals are entitled to find whether dismissal was outside the range of reasonable responses without being accused of placing itself in the position of being the reasonable employer. In Bowater-v-Northwest London Hospitals NHS Trust [2011] IRLR 331, a case where the claimant, a senior staff nurse who assisted in restraining a patient who was in an epileptic seizure by sitting astride him to enable the doctor to administer an injection, had said, "It's been a few months since I have been in this position with a man underneath me" was the subject of disciplinary proceedings six weeks later. She was dismissed for, firstly, using an inappropriate and unacceptable method or restraint and, secondly, the comment made. The employment tribunal found by a majority that her dismissal was unfair. The EAT disagreed. The Court of Appeal, overturned the EAT judgment, see the judgment of Stanley Burnton LJ, paragraph 13. See also Newbound v Thames Water Utilities Ltd [2015] EWCA Civ 677. In Newbound, it was held that in considering the fairness of a dismissal, it is important not to overlook section 98(4) ERA 1996 and that it is for the tribunal to decide the issue in "accordance with equity and the substantial merits of the case."
86. The level of inquiry the employer is required to conduct into the employee's alleged misconduct will depend on the particular circumstances including the nature and gravity of the case, the state of the evidence and the potential consequences of an adverse finding to the employee. "At the one extreme there will be cases where the employee is virtually caught in the act and at the other there will be situations where the issue is one of pure inference. As the scale moves

towards the latter end, so the amount of inquiry and investigation which may be required, including the questioning of the employee, is likely to increase.”, Wood J, President of the EAT, ILEA v Gravett [1988] IRLR 497.

## **Conclusions**

87. Having regard to the list of issues, the first question is what was the reason for the claimant’s dismissal? With regard to the evidence given by Mr Farhall and by Mr McWeeney and taking into account the dismissal and appeal outcome letters, I am satisfied that the respondent has shown that the reason why the claimant was dismissed was that he had made a malicious grievance on 26 February 2016 against two fellow members of staff at the Hayes garage. The malicious grievance comprised of the allegations of extortion of money by Mr Bains and of threats to kill the claimant and his family. I am further satisfied that reference to malicious grievance is to conduct and potentially fair, s.98(2)(b), Employment Rights Act 1996.
88. Mr Farhall went on to state, at the conclusion of the disciplinary hearing on 10 May 2016, that after concluding that the claimant had put in his report for malicious reasons, he further found that he had not been altogether been truthful and that there was a breach of trust between him and the respondent. The breach of trust, I find, follows on from the claimant’s conduct in putting in a malicious grievance. Trust and confidence was neither the main nor the principal reason for the claimant’s dismissal as asserted by Mr Sykes on behalf of the claimant.
89. Had the respondent conducted a reasonable investigation? Mr Brusa carried out the investigation and interviewed those who were believed to have witnessed part or all of the incident on 25 February 2016. This included the claimant. He then submitted his report which was one of the documents considered at the disciplinary hearing. I also bear in mind that at the claimant’s investigation hearing held on 22 April 2016, documents were available, namely Occurrence Reports and interview notes as well as CCTV footage and invitation letters.
90. At the disciplinary hearing witnesses were called including, I am satisfied, Mr Mylvaganam but whose notes were later forwarded to the claimant as part of the appeal process.
91. During the appeal the claimant invited Mr McWeeney to interview Mr Mylvaganam and this was done. The claimant was given the opportunity to put forward his case during the investigation, disciplinary and appeal processes. I am, therefore, satisfied that the respondent had engaged in a reasonable investigation. It was reasonable for Mr Brusa to have been involved in the claimant’s investigation as well as conducting the disciplinary hearing in relation to Mr Bedzet. He was in a good position, having conducted his enquiries, to determine where the truth lay and was not involved in the decisions at the disciplinary and appeal hearings relating to the claimant.

92. Did the respondent have a genuine belief in the claimant's misconduct? Having questioned the witnesses during the course of the disciplinary process, Mr Farhall was satisfied that none of them, including the witnesses the claimant believed had witnessed the incident, gave evidence that Mr Bedzet had made threats to kill the claimant and his family. The claimant even went further and alleged that Mr Bedzet had told Mr Mylvaganam not to attend the magistrates' court hearing. When that matter was investigated by Mr McWeeney, Mr Mylvaganam denied that that was the case. The claimant's credibility was in issue.
93. The claimant asserted that Mr Bains had attempted to extort money from him but there was no evidence that money had exchanged hands. No evidence that Mr Bedzet was aware of the exchange taking place in the conversation between Mr Bains and the claimant as that was conducted in Punjabi. According to Mr Bedzet, the claimant was spreading rumours about the union cheating him out of his money and being useless which provided the motive for him, on the day in question, to ask the claimant to show him his payslip to see whether had been paid the agreed increase. Mr Bedzet had spent some time trying to resolve the matter and wanted confirmation by looking at the payslip. The adjustment in the claimant's payslip would have confirmed in Mr Bedzet's mind that he had been successful in his discussions with the garage manager to upgrade the claimant. The claimant did not want that to happen and behaved in an aggressive manner by pushing the payslip inside Mr Bedzet's pocket.
94. From the evidence given by the witnesses, it showed that Mr Bedzet did use foul language but did not threaten to kill the claimant and his family.
95. Although the claimant made reference to there being a recording of the incident, when he heard the recording in the presence of the police officers, there was no statement by Mr Bedzet of wanting to kill the claimant and/or his family.
96. Taking the above matters into account, it was, therefore, reasonable for Mr Farhall, Mr McWeeney and Mr Power, to conclude that the claimant had engaged in submitting a malicious grievance and in persisting with it. Their belief in the claimant's guilt was genuine, not influenced by any external factors, such as, Mr Bedzet's union position. As a union representative, he was not always on good terms with the respondent's managers who would have seen this as an ideal opportunity to terminate his employment but did not do so as the evidence was not there to support such a course of action.
97. Was the dismissal within the band of reasonable responses? In the list of examples of gross misconduct malicious grievance is not listed. There is also no definition of what is malicious. The claimant, however, knew the allegation he had to meet and was aware of dismissal being a potential outcome. Mr Farhall took into consideration the seriousness of the offence; the length of the claimant's service being four years; his previous good disciplinary record and any extenuating circumstances. This was done prior

to coming to his decision on 10 May to terminate the claimant's employment. Having taken those matters into account he explained to the claimant that he treated his conduct extremely seriously having found that the grievance was put in for malicious reasons. He went further to find that the claimant knew that it would be classed as gross misconduct and that having found that he had not been altogether truthful, it amounted to a breach of trust between him and the respondent. He, therefore, had no choice but to dismiss the claimant summarily. He further found that the claimant had tried, by being untruthful, to get another employee dismissed from his employment.

98. Applying the judgment in Newbound, a reasonable employer possessed of all of the evidence and findings of Mr Farhall, Mr McWeeney and Mr Power, would have treated the claimant's conduct as being extremely serious amounting to gross misconduct affecting its trust in him. The inevitable outcome would have been dismissal.
99. Accordingly, I have come to the conclusion that the claimant's unfair dismissal claim is not well-founded and is dismissed.
100. The listing of this case for a provisional remedy hearing on 1 August 2017, is hereby vacated.

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Employment Judge Bedeau

Date: .....24 May 2017.

Sent to the parties on: ..24 May 2017

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For the Tribunal Office