Case Number: 2400997/17

EMPLOYMENT TRIBUNALS

Claimant: Mr K Podskalny

Respondent: G4S Secure Solutions (UK) Ltd

HELD AT: Manchester **ON:** 30 May 2017 and 13 July 2017

BEFORE: Employment Judge Porter

REPRESENTATION:

Claimant: Mrs A J Alexander-Stoker, friend of claimant

Respondent: Ms J Owusu-Akyaw, counsel

Interpreter: Day 1: Mr M Niemczyk
Day 2: Ms E Stadnik

JUDGMENT

1. The claim of unfair dismissal is not well-founded and is hereby dismissed.

2. The claim of breach of contract is not well-founded and is hereby dismissed.

3. The claim of failure to pay accrued holiday pay on the termination of employment is not well-founded and is hereby dismissed.

4. The claimant of unlawful deduction from wages is not well-founded and is hereby dismissed.

REASONS

1. Written reasons are provided pursuant to the request from the claimant's representative at the hearing.

Orders

2. The start of the hearing was delayed as an interpreter was required by the claimant, whose first language is Polish. This had not been organised in advance of the hearing.

3. A number of orders were made for the conduct and good management of the proceedings during the course of the Hearing. In making the orders the tribunal considered the overriding objective and the Employment Tribunals Rules of Procedure 2013. Orders included the following.

4. On the first day it was noted that the claimant's lay representative had produced a document headed "Notice of a claim" which, for the first time, raised a claim of discrimination and victimisation under the Equality Act 2010. The grounds of any such complaint were not clear from that document.

5. The respondent asserted that these were new causes of action, raised for the first time today, the respondent has had no notice of these claims and objected to them being introduced as the respondent had not had the opportunity to respond to them.

6. The claimant asserted that:

    6.1 he received proof of race discrimination on 24 April 2017 when he received the Incident Report in relation to the incident on 16 September 2016;

    6.2 the report showed that the two Incident Response Officers had treated the minor in the same way as the claimant had earlier in the day. However they remained in employment whereas the claimant was summarily dismissed

7. The respondent asserted that:

    7.1 the Incident response officers had been involved in a different incident;

    7.2 there were 2 incidents on 16 September 2016;

7.2.1 the first incident in which only the claimant was involved and which led to the decision to dismiss;

7.2.2 the second incident in which the claimant and the two incident response officers were involved

7.3 the second incident was irrelevant to the dismissal of the claimant, who was dismissed because of his conduct in the first incident;

7.4 the claimant was well aware of the involvement of the incident response officers in the second incident before 24 April 2017. The claimant was involved in both incidents.

8. It was explained to the claimant that:

8.1 A claim of race discrimination was not contained within the claim form;

8.2 if the claimant wished to pursue such a complaint he needed to make a formal application for leave to amend the claim, setting out the grounds upon which the proposed complaint would be pursued;

8.3 the claimant needed to identify the type of discrimination alleged, for example, whether it was direct discrimination under s13 Equality Act 2010 or, as stated in the Notice of Claim, victimisation under s27 Equality Act 2010;

8.4 if such formal application for leave was made and granted the claim could not be heard today, as the respondent must be given the opportunity to respond to such a claim. Witness statements would be required in relation to the new claim;

8.5 this would lead to an adjournment of the hearing, which may have costs implications for both parties and the tribunal would have to consider the question of costs.

9. The claimant was given:

9.1 some time to consider this possibility and to gain legal advice;

9.2 an explanation of the meaning of direct discrimination and victimisation;

9.3 a copy of s13 and s27 Equality Act 2010.

10. On return the claimant's representative did not appear to understand the point. EJ Porter explained again that the claims of unfair dismissal, breach of contract and unlawful deductions from wages could proceed today. However, any claim of race discrimination could not proceed today as this claim been raised for the first time at this hearing. EJ Porter again explained the procedure for making an application for leave to amend the claim, if the claimant wished to pursue the claim of race discrimination. The claimant and his representative were given more time to consider whether he pursued the application.

11. On return the claimant indicated that he would proceed with the claims of unfair dismissal, breach of contract and unlawful deductions from wages today but would delay pursuing the application for leave to amend until after this hearing.

12. EJ Porter advised the claimant that the time for making any such application for leave to amend was now, before the tribunal started to hear the claim, and that it was highly improbable that any application for leave to amend would be granted after determination of the claim. The claimant said he understood that and decided to pursue just the claims of unfair dismissal, breach of contract and unlawful deductions from wages. The claim of discrimination was not pursued.

13. On the first day of the hearing the respondent's witnesses completed giving their evidence. The case was adjourned part-heard, in the middle of the cross-examination of the claimant. It had not been possible to complete his evidence.

14. On the second day of the hearing EJ Porter noted that the claimant had sent to the tribunal a letter dated 29 June 2017, received on 7 July 2017, in which the claimant's representative thanked EJ Porter for "allowing the claimant to provide a separate document referring to remaining issues of the above case presented in the enclosed documents." Enclosed with the letter was :

    14.1 a proposed amended Claim Form, which:

        14.1.1 at paragraph 8 purported to add the following types of claims to the paragraph 8 of the existing claim form:

- discrimination on the grounds of disability
- discrimination
- victimisation
- discrimination, falling provide date
- breach of the implied trust terms of trust and confidence

14.1.2 At paragraph 8.2 repeated the contents of the original paragraph 8.2 of the existing claim form and added;
"Including 29 June 2017 case no 2400997/2017 Notice of Adjournment of Hearing -- Employment Tribunal Rules Procedure 2013 on Thursday, 13 July 2017 at 10.00am"

14.1.3 At paragraph 9.2 repeated the contents of the original paragraph 9.2 of the existing claim form but changed the compensation sought to read as follows:

i) Loss of earnings from unfair dismissal on 6 October 2016 until the tribunal hearing namely £11,000 at the time of writing.
ii) Maximum financial compensation required by law.
iii) All my costs relating to my application of this unfair dismissal case

14.1.4 At paragraph 12.1 the claimant notified the tribunals that the claimant has a disability, identifying it as follows:

"English language disability. Please note, I am Polish and English language is not my mother tongue and I am unable to communicate in English efficiently."

14.2 a document headed "Notice of additional Claim referring to Manchester tribunal hearing on 30 May 2017 at 10.00am and Notice of adjournment of hearing -- Employment Tribunal Rules of Procedure 2013 on Thursday 13th of July 2017 at 10 am" (hereinafter referred to as "Notice of Additional Claim") which document:

14.2.1 made reference to direct discrimination, victimisation, numerous statutes including Disability Discrimination Act Equality Act 2010, failure to make reasonable adjustments;

14.2.2 did not clearly identify the nature of the claims;

14.2.3 did not assert that the claimant was a disabled person within the meaning of the Equality Act 2010;

14.2.4 did not, in the grounds of complaint, identify a protected characteristic within the meaning of the Equality Act 2010;

14.2.5 referred to the witness statements and oral evidence considered on the first day of the hearing;

15. EJ Porter sought clarity from the claimant's representative as to the purpose of the letter dated 29 June 2017 and its contents.

16. The claimant asserted that the letter and attachments comprised an amendment to the claim to include a claim of race discrimination, as discussed and agreed at the previous hearing.

17. EJ Porter advised that she had not given any consent to the claimant to introduce any additional documents, had not granted leave to amend the claim to introduce a claim of race discrimination. EJ Porter recalled the events at the previous hearing in relation to the application for leave to amend the claim, as referred to at paragraphs 4 to 12 above. Counsel for the respondent confirmed that this description matched her recollection of the events at the earlier hearing day.

18. The claimant pursued the application for leave to amend the claim, to include a claim of race discrimination, as set out in the proposed amended claim form.

19. EJ Porter asked the claimant to confirm:

    19.1 on what grounds the claimant now sought to make that application, having given a clear indication at the earlier hearing that such application was not pursued; and

    19.2 in particular, whether the claimant had obtained any new evidence which had prompted the new application.

20. The claimant asserted that:

    20.1 the application was pursued on the understanding that the judge had given consent to such a claim being pursued at this hearing;

    20.2 new evidence had been obtained, namely the respondent's witnesses lying under oath at the previous hearing.

21 The tribunal considered the application for leave to amend the claim in light of guidance given in **Selkent Bus Co v Moore[1996] IRLR 661**, which states that judicial discretion is to be exercised 'in a manner which satisfies the requirements of relevance, reason, justice and fairness inherent in all judicial discretions'. In exercising its discretion, the tribunal must take account of all the circumstances, and balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The circumstances to be taken into account may vary according to each case, but particular note should be made of the nature

of the application itself, i.e. whether it is minor or substantial, the relevant time limits for any new cause of action, the timing and manner of the application. Although delay in itself should not be the sole reason for refusing an application, the tribunal should nevertheless consider why it was not made earlier and why it is now being made.

22 Having considered all the circumstances EJ Porter refused the application for leave to amend the claim to include a claim of discrimination under the Equality Act because:

22.1 of the timing and manner of the application. Considerable time was spent on the first day of the hearing giving the claimant full opportunity to make application for leave to amend the claim to include a claim of race discrimination;

22.2 The claimant had declined that opportunity;

22.3 No new evidence has arisen since the last hearing to support this application today. The claimant was fully aware of the evidence the respondent intended to give at the previous hearing as witness statements had been exchanged in advance. A conflict of evidence relating to facts relevant to the claim of unfair dismissal, an assertion by the claimant that the respondent's witnesses have lied under oath, does not, by itself, give rise to a claim of race discrimination;

22.4 No new evidence came to light in the conduct of the first day of the hearing which would support a claim of race discrimination;

22.5 The claimant had all the necessary information on the first day of the hearing to formulate and prepare his application for leave to amend. He declined that opportunity, preferring to proceed that day. The fact that, because of the lack of time, the hearing could not be finished in that day does not justify an application for leave to be made at this hearing;

22.6 The claimant has failed to properly identify a claim of race discrimination in the proposed amended claim form;

22.7 The claimant has not identified how or when he committed a protected act within the meaning of s27 Equality Act 2010;

22.8 The only potential claim of race discrimination which relates to the facts of the unfair dismissal claim is a claim that the claimant was treated less favourably than the two incident response officers. However, the claimant has been unable to identify the facts upon

which he asserts that the two incident response officers are appropriate actual comparators. Like must be compared with like. The claimant does not challenge the evidence of the respondent's witnesses that the two incident response officers did not push the minor, that there was no complaint from the school about the conduct of the incident response officers in relation to the second incident;

22.9 In any event, the claimant has raised no evidence to support a finding of fact from which the tribunal could infer that any difference in treatment was on the grounds of race;

22.10 The claimant makes a complaint of failure to provide him with appropriate training. However, the claimant has failed to identify:

22.10.1 any failure to provide any training he required to assist him in the performance of his duties;

22.10.2 any actual or hypothetical comparator;

22.10.3 any evidence to support a finding of fact from which the tribunal could infer that any difference in treatment was on the grounds of race;

22.11 the complaint relating to failure to provide the claimant with training to renew his door supervisor's licence relates to an incident in March/April 2016 and is out of time;

22.12 the proposed claim of race discrimination has little, if any, reasonable prospect of success;

22.13 the prejudice to the respondent in allowing the claim of race discrimination to proceed outweighs the prejudice to the claimant in allowing the amendment.

23 On the first day the claimant sought to rely on an affidavit, with various exhibits, as his evidence, rather than the witness statement which he had sent to the respondent in compliance with the Case Management Orders. The respondent objected. Having heard submissions the tribunal allowed the claimant to rely on the affidavit, with various attachments, as his witness statement because:

23.1 as the respondent had asserted, this affidavit was, in effect, the claimant's original evidence together with his response to the respondent's witness statements;

23.2 the respondent had had the opportunity to take instructions on the affidavit. It was appropriate that the respondent's representative raise any matters arising from the additional evidence raised in the affidavit via supplemental questions to each of the respondent's witnesses;

23.3 the tribunal was satisfied that the respondent's right to a fair hearing was not prejudiced by this.

24 On the second day of the hearing the parties agreed to introduce in to the documentary evidence the copy e-mails marked EKP 26A , EKP 26B, EKP 26E and EKP 26F.

Issues to be determined

25 On the first day the issues were identified as:

25.1 whether the claimant was unfairly dismissed and in particular:

(a) what was the reason for dismissal;

(b) was the dismissal fair bearing in mind the claimant's long service without any previous disciplinary action;

(c) was there any inconsistency in treatment of the claimant, bearing in mind the incident later the same day which had not resulted in any disciplinary action for anyone involved in that incident.

25.2 whether the respondent acted in breach of contract by terminating the claimant's employment without notice: the issue was whether the claimant was guilty of gross misconduct justifying summary dismissal;

25.3 whether the respondent had failed to pay the correct amount of accrued holiday pay on the termination of employment;

25.4 whether the respondent had made an unlawful deduction from wages in relation to:-

(a) deduction of £100 for the claimant's uniform;

(b) deduction of £177.22 for licence fee;

(c) pension contributions

Submissions

26 The representative for the claimant relied upon written submissions contained in the Notice of Additional Claim, in so far as the submissions related to the claims to be determined. The tribunal has considered those submissions with care but does not repeat them here. In addition, the claimant and his representative asserted that:

26.1 the law states that an employer is obliged to inform the employee of the automatic enrolment. The respondent did not do that. A third party, Friends Life, did. The respondent was not therefore authorised to deduct pension contributions;

26.2 the claimant's letter dated 9 March 2017 shows that he wanted to return his uniform, and therefore the respondent was not authorised to make the deduction. The respondent could not expect the claimant to return the uniform without a receipt;

26.3 the claimant did not consent to the deductions from wages;

26.4 the respondent was wrong to consider the events on 16 September 2016 as two separate incidents. Both incidents should have been considered together;

26.5 the claimant had not been proved to do anything wrong. He did not hurt or push the minor;

26.6 the claimant was abused by the minor and nothing was done to support him;

26.7 the contract of employment clearly states that the claimant was not permitted to allow unauthorised persons to enter the customer's premises. The claimant was merely carrying out his duties;

26.8 the claimant had been inadequately trained: he was trained in how to deal with conflict with adults, not minors;

26.9 the claimant did not accept that all allegations against him were true;

26.10 the claimant needed professional help to support him in both the disciplinary hearing and the hearing before the tribunal.

27 Counsel for the claimant made a number of detailed written and oral submissions which the tribunal has considered with care but does not repeat them here. In essence it was orally asserted that:-

27.1 the evidence supports the decision to dismiss;

27.2 the claimant accepted that the allegations against him were true, that he had committed the conduct complained of, accepted that the conduct was gross misconduct justifying summary dismissal;

27.3 the claimant did not attend the Appeal Hearing. Any award of compensation should be reduced accordingly

Evidence

28 The claimant gave evidence. He called no witnesses.

29 The respondent relied upon the evidence of:-

29.1 Mr Christopher Holt, Senior supervisor,

29.2 Mr Alan Brierley, Contract Manager;

29.3 Mr John Johnson, Contract Manager

30 The witnesses provided their evidence from written witness statements. They were subject to cross-examination, questioning by the tribunal and, where appropriate, re-examination.

31 An agreed bundle documents was presented. Additional documents were presented during the course of the Hearing, either in accordance with the Orders outlined above or with consent. References to page numbers in these Reasons are references to the page numbers in the agreed Bundle or to the additional documents produced by the claimant, which are indicated by the suffix “EKP”.

32 Neither party asked the tribunal to consider the relevant CCTV footage.

Facts

33 Having considered all the evidence the tribunal has made the following findings of fact. Where a conflict of evidence arose the tribunal has resolved the same, on the balance of probabilities, in accordance with the following findings.

34 The respondent operates a business of providing security officers to provide security/surveillance services to a variety of clients' premises on a nationwide and global basis. One of its clients is the East Manchester Academy.

35 The claimant is a Polish citizen, holding a Polish university degree in management and marketing. Before starting work for the respondent he held a Security industry authority (SIA) door supervisor license, having completed training on various matters including avoiding conflict, resolving conflict

36 The claimant commenced employment with the respondent in 2010 as a security officer. He was provided with a letter of appointment- Statement of the Main Terms and Conditions (41) and an Employment Schedule (48).

37 On 25 October 2010 the claimant signed his acceptance of the terms and conditions of employment as detailed within the letter of appointment and Employment Schedule.

38 The Employment Schedule includes the following:

38.1 "This Schedule, together with your letter of appointment and other named documents contained herein, together forms your contract of employment with G4S Secure Solutions UK Ltd";

38.2 reference to the disciplinary procedure, contained within the Recognition Agreement and Handbook, including the right to suspend in cases of serious misconduct and examples of actions which are normally regarded as gross misconduct, including assault on another person;

38.3 16.0 Holiday entitlement

16.3 Holiday year will run from the 1st January to 31st December
16.4 Holiday entitlement is calculated on the basis of the employee's weekly contract hours..
16.5 one days holiday pay is calculated at one fifth of weekly contracted hours;
16.6 holiday pay is calculated using the employee's hourly assignment rate of pay
16.12 when an employee leaves the company's employment…. an adjustment will be made according to the proportion of annual leave taken during the course of the leave here at the termination date. For this purpose, the entitlement to paid annual leave will be deemed to accrue on a daily basis throughout the year.

38.4 38. Unauthorised persons/access

> You are not permitted to allow unauthorised persons to enter company or customer's premises or to travel in company vehicles.

38.5 41.7 "On leaving the company's employment all items of uniform and equipment… must be returned to the company….. Final payment of salary will not be made until your manager has confirmed that all such articles have been returned. A charge may be levied in respect of any items not ultimately returned, where collection has to be arranged by the company.

38.6 44. Assignment instructions and handbook for security and patrol officers.

> In the performance of your duty at any assignment, you are expected to comply with the Assignment Instructions at that site. You should also study 'the Handbook'. These documents form part of your terms and conditions of employment.

39 The claimant was aware of the disciplinary procedure (33) which provides a non-exhaustive list of examples of gross misconduct including assault on another person. The claimant understood that assault on a person was gross misconduct and may lead to summary dismissal.

[This was the claimant's evidence in cross-examination.]

40 At the commencement of his employment the claimant opted out of the pension scheme. The respondent has a duty to re- enrol all eligible workers every three years even if the employee previously chose to opt out. By letter dated 5 May 2016 (90A), which was headed "Friends life and G4S" the claimant was informed of this duty and was also informed that he was being enrolled into the G4S personal pension plan. The effect of that enrolment was explained. The claimant was advised of his right to opt out of the scheme. He did not opt out of the scheme. As a result the claimant joined the scheme and pension contributions were taken from his wages. The contributions to the pension scheme were 1% from the employer and 1% from the employee. This was effected by way of a salary exchange agreement between the respondent and the claimant, under which part of the claimant's salary was given up and the claimant did not pay tax or national insurance on the amount sacrificed. As such the pension contribution, paid on behalf of the claimant to the pension provider, was not taxable as earnings from employment

41 It was a requirement of the claimant's role that the security officer hold an SIA licence. It was not a requirement to hold a SIA door supervisor license. The SIA door supervisor license satisfied the respondent's requirements, and the statutory obligation, for licensing of security guards performing this

role. However, a SIA door supervisor license was not necessary for the satisfactory performance of the duties of the security officer.

42 When on duty the security guards are expected to follow the site's specific assignment instructions. The respondent's assignment instructions are on the site and document all customer and G4S procedures, expectations and duties. The assignment instructions contain the escalation process and information regarding who to contact for support.

43 The claimant had been assigned to work as a security guard at the East Manchester Academy site for some five years. At the relevant time he commenced his duties at noon. He would maintain position at the main internal doors to the Academy, which are controlled by the use of an access card. Only members of staff have access cards. Until the end of the school curricular day the claimant maintained his position at the main internal doors and restricted access /egress to unauthorised persons. From 16:00 hours, once the main reception staff had completed their shift, the claimant would be located at the main reception desk. He would be expected to meet and greet any visitors and contact facilities, via a two-way radio, to advise them of certain parties arriving. The claimant would be informed whether there were any after-school activities, for example sporting events. On many occasions he dealt with school pupils and if he had a problem with them he called teachers for assistance.

44 If an incident occurred the security guard was required to:

44.1 contact others for assistance, depending on the nature of the incident. Either:

44.1.1 members of staff at the school;

44.1.2 the respondent's incident response unit;

44.1.3 the National Communications Centre (NCC);

44.1.4 the police or other emergency services.

44.2 prepare an incident report on the day of the incident

45 The Assignment Instructions for East Manchester Academy (57) include the following:

45.1 the telephone numbers for the Incident response officer;

45.2 the requirement to report any incident to the National Communications Centre (NCC) and the procedure to be followed;

45.3 the requirement to complete an incident report;

45.4 The use of unauthorised electrical equipment is prohibited (ie Television, portable gaming consoles, mobile phones;

45.5 Officers should not bring any electrical equipment to site for use during work time"

46 Each security guard is required to complete a daily security officer report when on duty. The claimant completed and signed such a Security Officer Report on 16 January 2016 (91) which contains the following:

> "I confirm that I have read and understood my assignment instructions and all current temporary instructions."

47 The claimant's door supervisor's licence was due to expire on 16 April 2016. He needed further training for its renewal. He asked the respondent for that training one month before the expiry date. The respondent was unable to provide that training before the licence expired. It suggested that the claimant obtain his own training externally or reduce to a SIA licence to enable him to continue working. The claimant did not require any further training for that. There is no satisfactory evidence to support the claimant's assertion that he was declined leave to enable him to undertake the necessary external training. The claimant agreed to the respondent's proposal. His SIA licence was issued in March 2016. The claimant raised no objection to that prior to the incident in September 2016, raised no further requests for training. His duties and rate of pay did not change as a result of the change in his licence. The claimant did not require the further training for the renewal of his door supervisor's licence to enable him to continue to perform his duties at a satisfactory level

[On this the tribunal accepts the evidence of the respondent's witnesses, as supported by the documentary evidence.The tribunal refers in particular to EKP26A, an email in which the claimant specifically requests that his licence be downgraded from SIA Door Supervisor licence to Security Guard to allow him to continue his work for G4S.]

48 The respondent pays the SIA license fee on behalf of all employees. The license lasts for three years. If employment was terminated the employee retains the SIA license for his or her own personal use. The respondent operates a claw back policy whereby on termination of employment within the three-year period the respondent deducts from the employee's wages a proportion of the licence fee previously paid, representing the unexpired portion of the licence fee. The employees are required to sign their agreement to this claw back and deduction from their wages.

49 The respondent paid the renewal SIA licence fee of £220.00 on behalf of the claimant in February 2016. On 10 February 2016 the claimant signed a declaration agreeing to this claw back arrangement and to the deduction from wages (88).

50 During the holiday year commencing on 1 January 2016 the claimant took 19 days paid holiday. (141)

51 On 22 September 2016 the East Manchester Academy made a complaint about the conduct of the claimant on 16 September 2016.

52 Mr Christopher Holt, senior supervisor, was asked to investigate the complaint.

53 Mr Holt contacted the East Manchester Academy on the same day and was asked to attend the site to view some CCTV footage which the client said supported its complaint that the claimant had on 16 September 2016:-

53.1 used unreasonable force against a minor;

53.2 used unauthorised equipment on site that same day.

54 Mr Holt attended on site and reviewed the CCTV footage.

55 On 22 September 2016 the claimant was suspended pending an investigation of the complaint.

56 The suspension was confirmed in writing by letter dated 23 September 2016 (92), which set out the allegations being investigated, namely:

- Following a customer complaint with regard to your conduct towards a female pupil whilst on duty at East Manchester Academy on Friday, 16 September 2016
- allegedly use of unreasonable force against a minor
- alleged use of unauthorised equipment on site
- alleged conduct unbefitting a G4S officer
- if proven, potentially bringing G4S into disrepute

57 The claimant was invited to an investigation meeting on 26 September 2016.

58 The claimant attended the investigation meeting. He declined the opportunity of representation at that meeting. Mr Holt was in attendance and made notes. The claimant signed those notes confirming them as a true record of

the meeting held (102). The claimant did not say that he did not understand the notes because they were written in English. During the investigation meeting:

58.1 The claimant confirmed that he was aware of the company policy regarding use of a lap top. He said he had the consent of the East Manchester Academy staff for the use of the laptop. He confirmed that he did not get permission from the respondent to use a laptop;

58.2 the CCTV footage was reviewed with the claimant, who was given the opportunity to explain his actions;

58.3 the claimant admitted the allegations;

58.4 The claimant stated that he had provided an incident report at a later date following a request from a teacher and provided a copy of that incident report (104);

58.5 The claimant did not refer to the incident report prepared by response officer Morrison for the later incident which occurred on the same day (171);

58.6 The claimant did not assert that he did not have the proper training to enable him to conduct his duties as required.

59 An investigation report was prepared (106) which includes the following:

59.1 Alleged use of unauthorised equipment on site.

> After a full investigation and viewing CCTV footage… with Officer Podskalny which shows him using the computer on site… the officer admitted taking his own computer on site and admitted to using on site on the day in question he states he thought he was given permission but could not provide a name from the school… he also admitted he knew that it was against G4S policy

59.2 allegedly use of unreasonable force against a minor

> (the claimant) admitted to using force to push a young female out of the building he stated that she was trying to break in but on the CCTV shows the female tapping on the door shouting I want my coat….
> He states she was breaking in to the school but the school was not fully closed teachers and FM staff on site I asked him if he thought she was forcing he[r] way into the school why did he not phone the police contact FM staff by radio provided or call G4S control and follow G4S procedures in assignment instructions for

> assistan[ce] which he admitted he did not take this action open to him
> he decided to walk towards the door which automatically opened when he approached the female which we now know to be a female pupil of the school grab her with no provocation of violence towards him and push out of the entrance of the school with some force all captured on CCTV… which was shown to the officer on the investigation
> he states he did not record the incident.. or contact G4S control or management and did not make anybody aware of the incident at the time in fact this only was identified when the school were looking at a later incident involving the pupil and her family at the school which involved the police and teaching staff and G4S incident response staff and if this incident would have been recorded it would have led to a different outcome

60 The claimant was provided with a copy of the investigation report in advance of the disciplinary hearing. The claimant was not provided with a copy of the Incident report (171) prepared by D Morrison in relation to the second incident on 16 September 2016.

61 By letter dated 30 September 2016 the claimant was invited to a disciplinary hearing to consider the following allegations:

- Following a customer complaint with regard to your conduct towards a female pupil whilst on duty at East Manchester Academy on Friday, 16 September 2016 in which you allegedly used unreasonable force against a minor on Friday 16 September 2016 at 18:37 hours

- alleged use of unauthorised equipment on site on Friday 16 September 2016 at 18:36 hours

The claimant was advised that these incidents could potentially be categorised as gross misconduct and if proven could result in the immediate termination of employment. The claimant was advised of his right to be accompanied by a fellow employee or trade union official.

62 The disciplinary hearing took place on 6 October 2016. The claimant declined the opportunity of representation at that hearing. Mr Brierley conducted the hearing on behalf the respondent. Notes were taken (117). The claimant signed those notes confirming them as a true record of the hearing (124). The claimant did not say that he did not understand the notes because they were written in English.

63 During the disciplinary hearing:

63.1 The claimant asserted that he had pushed the minor in self defence because she had punched him. The dismissing officer went through the CCTV footage with the claimant, asking the claimant to identify when the minor had threatened or assaulted him. The claimant was unable to identify when the alleged assault took place;

63.2 The claimant said he had consent to use his lap top computer when on duty from a member of staff at the East Manchester Academy but was unable to provide evidence substantiating that assertion;

63.3 The CCTV footage was reviewed a number of times during the hearing;

63.4 The claimant requested a copy of the CCTV footage but this request was declined. Mr Brierley explained that he was unable to release the CCTV footage because of data protection;

63.5 The claimant asserted that this was part of a whole incident, referring to the later incident referred to in the investigation report, when one of the minors returned and the police and incident response officers were called by the claimant. Mr Brierley confirmed that he was only dealing with this first incident not the later second incident;

63.6 The claimant did not assert that he did not have the proper training to enable him conduct his duties as required

63.7 The claimant did not say that he did not understand the disciplinary procedure, did not say he did not understand the questions being put to him, did not ask for an interpreter;

64 The hearing was adjourned to enable Mr Brierley to consider his decision. Having reviewed the CCTV footage, the documentation including the investigation report, and the claimant's response to the allegations, Mr Brierley formed the honest and genuine belief that:

64.1 on 16 September 2016 a young female student attended the East Manchester Academy and stated on arrival that she had returned to collect her coat;

64.2 the claimant ignored the young female student antagonising the situation;

64.3 the young student tapped on the window to get the claimant's attention;

64.4 the claimant continued to ignore the student barely lifting his head from his laptop, shouting “we are closed”;

64.5 the young student kicked and banged the door;

64.6 the claimant got up from his chair and proceeded to the main door;

64.7 the student did not have anything in her hand she did not have any iron bar or a piece of metal, she did not threaten the claimant;

64.8 as the claimant walked up to the door it opened automatically and the claimant stood in front of the young student, told her to get out, and then placed both of his hands on her upper body and forcefully pushed the young student back;

64.9 the external camera showed that the young student had been pushed by the claimant with some force as she moved some distance back away from the doors;

64.10 the actions of the claimant directly led to a further incident later the same day when the sister of the female young student attended the Academy to confront the claimant, who then called the Incident Response team and police to the site;

64.11 the claimant had used his personal laptop without permission

65 Mr Brierley concluded that the claimant was guilty of the conduct alleged. In considering the appropriate penalty Mr Brierley considered the claimant's length of service, his clean disciplinary record, the training the claimant had received. Mr Brierley considered whether the conduct was a mistake due to a lack of understanding of the procedures. Having taken this into account Mr Brierley believed that there was no insufficiency in training and that the claimant knew the procedures. Mr Brierley considered alternatives to dismissal but decided that there was an unacceptable loss of trust and confidence in the claimant particularly because the claimant did not appear to recognise or accept the severity of what he had done. In all circumstances Mr Brierley concluded that by reason of the claimant's conduct on 16 September 2016 the appropriate penalty was dismissal. Mr Brierley did not, in reaching the decision to dismiss, take into account the actions of the

claimant or the minors involved in the second incident on 16 September 2016. He took the view that the later incident did not justify the actions of the claimant in the first incident.

66 Mr Brierley reconvened the disciplinary hearing and informed the claimant of his decision and the right of appeal. The claimant was advised that he was dismissed with immediate effect.

67 Mr Brierley confirmed his decision in writing by letter dated 6 October 2016 (125). The claimant was again advised of his right of appeal.

68 The claimant appealed the decision by letters dated the 7 and 8 October 2016 (127 and 128).

69 Mr Johnson, contracts manager, was appointed to consider the appeal. By letter dated 20 October 2016 (135) he invited the claimant to an appeal hearing on 28 October 2016 and advised him of his right of representation at that hearing .The claimant was asked to confirm his attendance and details of his representative in advance of the hearing.

70 The claimant did not attend that appeal hearing and did not provide any explanation for his non-attendance. He did not contact the respondent as requested to do so in the letter dated 20 October 2016.

71 By letter dated 28 October 2016 (137) Mr Johnson advised the claimant of the rescheduled appeal hearing to be held on 3 November 2016. Again the claimant was asked to confirm his attendance and details of his representative. The letter concluded:

> "If you fail to contact me to confirm your attendance or do not attend we will assume that you no longer wish to appeal against the disciplinary hearing and the matter will be closed."

72 The claimant did not attend the reconvened hearing on 3 November 2016 and did not contact the respondent to provide an explanation for his non-attendance, did not ask for a postponement of the hearing.

73 By letter dated 4 November 2016 (140) Mr Johnson advised the claimant that in view of his failure to attend, and failure to provide any reason of non-attendance, the respondent assumed that the claimant no longer wished to pursue his appeal and considered the matter closed.

74 The claimant did not ask for his appeal to be considered in his absence.

75 Following termination of his employment the claimant did not return his uniform.

76 On 15 November 2016 the respondent:

76.1 paid to the claimant accrued holiday pay of two days in the sum of £148.18;

76.2 made a deduction from the claimant's wages in the sum of £100 being the cost of the uniform which the claimant did not return;

76.3 made a deduction from the claimant's wages in the sum of £177.22 in respect of the amount due from the claimant under the claw back provisions for the payment of the SIA licence fees

77 In March 2017 the respondent told the claimant that it would reimburse the £100 for the uniform if the claimant returned the uniform to the Gate house at a depot in Manchester. The claimant did not return his uniform as suggested.

78 After the first incident on 16 September 2016 the two minors left the school premises. One of them, the young student who had been pushed by the claimant, returned some 30 minutes later with members of her family. The claimant followed the assignment instructions. He reported the incident to the police and the respondent. As a result the respondent's Incident Response team was called and two members of staff, who had been trained to deal with such situations, namely the removal of unauthorised persons from the premises, followed the company's standard operating procedure by removing a minor from the premises. There is no satisfactory evidence that the two response officers assaulted the minor during the course of the second incident. The only satisfactory evidence is that the two guards followed the procedure to evict the minor by each taking one arm and leading her from the premises. That is reflected in the Incident Report (171), prepared by Officer Morrison, one of the Incident response officers. Extracts from that report read as follows:

> Myself and M123 attended at premises. Report from G4S guard 3x girls had forced entry to School and were refusing to leave and were becoming abusive. On our arrival we entered through main door where the G4S guard along with 2x female teachers & caretaker were. The 3x girls were just inside sat on a sofa. One of the girls had left a jacket in a locker inside School…..M123 approached the girls and told them they had to leave. 1x girl started to get verbal. 1 x moved towards door and the other whose jacket it was got up knocked some posters over and went towards doors. The other girl sat on the sofa refused to move myself and M123 took an arm each and lifted her and escorted out through the doors. On telling her go she launched an attack at us both. Our glasses were knock off. But no injuries. We retreated inside the school and closed the doors and locked them. The same girl attacked the doors kicking out at them..

Additional Facts relating to Breach of contract claim

79 On 16 September 2016 the claimant, in the performance of his duties as a security guard, pushed a minor through the door at East Manchester Academy with some force.

[On balance the tribunal accepts the evidence of the respondent's witnesses that the CCTV footage shows the claimant pushing the minor, and that the claimant admitted to that conduct during the course of the disciplinary proceedings. The claimant's evidence before the tribunal has been inconsistent, at times admitting the assault, at times denying it. Neither party has asked the tribunal to review the CCTV footage, to make its own finding of fact on the observation of the CCTV footage]

80 The claimant pushed the minor without justification and contrary to training and assignment instructions. There is no satisfactory evidence that the claimant was acting in self defence. There is no satisfactory evidence that the two school pupils involved in the incident were intruders. The claimant's evidence on this is inconsistent. However, he accepts that the two school girls were unable to access the building, and that he allowed one of the girls access by approaching the doors, as a result of which the second door into the building automatically opened. Having allowed the schoolgirl into the building the claimant then forcefully pushed the schoolgirl back through the doors. The claimant has failed to provide any justification for his actions during the course of the tribunal hearing.

The Law

81 An employer must show the reason for dismissal, or if more than one, the principal reason, and that the reason fell within one of the categories of a potentially fair reason set out in Section 98(1) and (2) Employment Rights Act 1996 ("ERA 1996"). It is for the employer to show the reason for dismissal and that it was a potentially fair one, that is, that it was capable of justifying the dismissal. The employer does not have to prove that it did justify the dismissal because that is a matter for the tribunal to assess when considering the question of reasonableness.

82 Misconduct is a potentially fair reason for dismissal. **British Home Stores Ltd v Burchell [1980] ICR 303** provides useful guidelines in determining this question. It sets out a three-fold test stating that the employer must show that:

- he genuinely believed that the conduct complained of had taken place;
- he had in mind reasonable grounds upon which to sustain that belief; and

- At the stage at which he formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.

The Tribunal notes and takes regard of the fact that the guidelines set out in **Burchell** are guidelines only and that the burden of proof on the question of reasonableness does not fall upon the employer under this head, and is a question for the Tribunal to decide, when appropriate, in determining the question of reasonableness under Section 98(4) ERA 1996, under which the burden of proof is neutral. **Boys and Girls Welfare Society v McDonald [1997] ICR 693**. as confirmed in **West London Mental Health Trust v Sarkar [2009] IRLR 512,** which was not disturbed on this point by the Court of Appeal. As HHJ Peter Clark and the Employment Appeal Tribunal in **Sheffield Health & Social Care NHS Foundation Trust v Crabtree** UKEAT/0331/09 observed in paragraph 13, **British Home Stores Ltd v Burchell** was decided before the alteration of the burden of proof effected by section 6 of the **Employment Act 1980**. At paragraph 14 the Employment Appeal Tribunal held:

"The first question raised by Arnold J: did the employer have a genuine belief in the misconduct alleged" goes to the reason for dismissal. The burden of showing a potentially fair reason rests with the employer."

At paragraph 15 the EAT held:

"However, the second and third questions, reasonable grounds for the belief based on a reasonable investigation, go to the question of reasonableness under section 98(4) Employment Rights Act 1996 and there the burden is neutral."

83 Once the employer has shown a potentially fair reason for dismissing, the Tribunal must decide whether that employer acted reasonably or unreasonably in dismissing for that reason. The burden of proof is neutral. It is for the Tribunal to decide. Section 98(4) ERA 1996 states:-

"The determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend upon 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 that question shall be determined in accordance with equity and the substantial merits of the case".

The test of whether or not the employer acted reasonably is an objective one, that is, Tribunals must as industrial juries determine the way in which a reasonable employer in those circumstances in that line of business

would have behaved. There is a band of reasonable responses. The Tribunal must determine whether the employer's action fell within a band of reasonable responses. **Iceland Frozen Foods Limited v Jones [1983] ICR 17**. (Approved by the Court of Appeal in **Post Office v Foley**, **HSBC Bank plc (formerly Midland Bank plc) v Madden [2000] IRLR 827**. The range of reasonable responses test (the need for the tribunal to apply the objective standards of the reasonable employer) must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed**. Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23.** The tribunal bears that in mind and applies that test in considering all questions concerning the fairness of the dismissal. In determining the reasonableness of an employer's decision to dismiss, the tribunal may only take account of those facts (or beliefs) which were known to the employer at the time of the dismissal.

84 In deciding whether the dismissal is fair the Tribunal must consider whether summary dismissal falls within the band of reasonable responses, taking into account all the surrounding circumstances, the employer's practice, the contract of employment and any definitions of gross misconduct contained therein, the knowledge of the employee, the seriousness of the offence. What conduct amounts to gross misconduct will depend on the facts of the individual case. Generally gross misconduct is conduct which fundamentally undermines the employment contract, is a deliberate and wilful contradiction of the contractual terms or amounts to gross negligence.

85 The tribunal has considered the current ACAS Code of Practice and the six steps which an employer should normally follow when handling disciplinary issues, namely:

- Establish the facts of each case;
- Inform the employee of the problem;
- Hold a meeting with the employee to discuss the problem;
- Allow the employee to be accompanied at the meeting
- Decide on appropriate action
- Provide employees with an opportunity to appeal.

The tribunal notes that the Code states that it is important to deal with issues fairly including dealing with issues promptly and without unreasonable delay, acting consistently carrying out any necessary investigations, and giving the employee the opportunity to state their case before any decisions are made.

86 Section 98 (4) Employment Rights Act 1996 requires Tribunals to determine the reasonableness of the dismissal in accordance with equity. Inconsistency of punishment for misconduct may give rise to a finding of unfair dismissal. Guidance was given in a Court of Appeal case of **Post Office v Fennell [1981] IRLR 221** where Brandon L J said:-

> "It seems to me that the expression "equity" as so used comprehends the concept that employees who misbehave in much the same way should have meted out to them much the same punishment, and it seems to me that an Industrial Tribunal is entitled to say that, where that is not done, and one man is penalised much more heavily than others who have committed similar offences in the past, the employer has not acted reasonably in treating whatever the offence is as a sufficient reason for dismissal".

87 In **Hadjioannou v Coral Casinos Ltd 1981 IRLR 352** the EAT deprecated the idea of a "tariff" approach to misconduct cases, observing that s98(4) requires the tribunal to consider the individual circumstances of each case. The EAT held that a complaint of unreasonableness based on inconsistency of treatment would only be relevant where:

87.1 employees have been led by an employer to believe that certain conduct will not lead to dismissal;

87.2 evidence of other cases being dealt with more leniently supports a complaint that the reason for dismissal stated by the employer was not the real reason;

87.3 decisions made by an employer in truly parallel circumstances indicate that it was not reasonable for the employer to dismiss.

88 Section 13 Employment Rights Act 1996 (ERA 1996) provides:

> (1) An employer shall not make a deduction from wages of a worker employed by him unless –
>
> a. the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
>
> b. the worker has previously signified in writing his agreement or consent to the making of the deduction.
>
> (2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised –

a. in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

b. in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

89 S27 ERA 1996 defines wages. Payments listed in s 27(2) ERA 1996 are excluded from the definition of wages. It includes:

(c) any payment by way of a pension, allowance or gratuity in connection with the worker's retirement or as compensation for loss of office

90 **Somerset County Council v Chambers [2013] EAT 0417/12** held that wages means any sums payable to the worker in connection with his employment; it does not mean contributions paid to a pension provider on his behalf.

91 The employer may include an express term in the contract of employment requiring an employee to repay certain costs and expenses (for example in relation to training the employee) in the event that the employee leaves during training or for a period thereafter, and in circumstances where such costs are clearly not a penalty, they may prove recoverable in effect as liquidated damages. The amount claimed must be a genuine pre-estimate of loss or it may be a penalty and unenforceable.

92 The tribunal has jurisdiction to consider a claim of breach of contract, alleged failure to give proper notice of termination of employment. Aa employer is not obliged to give notice of termination where an employee has committed an act of gross misconduct. The tribunal must consider the evidence to decide, on the balance of probabilities, whether the claimant has committed an act of gross misconduct justifying summary dismissal.

93 Under Regulations 14(1) and (2) Working Time Regulations 1998 a worker is entitled to a payment in lieu of annual leave where:

93.1 his or her employment is terminated during the course of the leave year, and

93.2 on the termination date, the proportion of statutory annual leave he or she has taken under Regulations s 13 and 13A is less than the proportion of the leave year that has expired.

94 The tribunal has considered and where appropriate applied the authorities referred to in submissions.

Determination of the Issues
(including, where appropriate, any additional findings of fact not expressly contained within the findings above but made in the same manner after considering all the evidence)

Unfair dismissal

95 The claimant was dismissed and the effective date of termination was 6 October 2016.

96 The tribunal has considered the reason for dismissal. The claimant does not accept that the reason for dismissal was his conduct on 16 September 2016. He challenges the reason given for dismissal on the grounds that:

96.1 there was no first and second incident on 16 September 2016, the respondent can only discipline looking at the claimant's conduct as a whole with the two minors on that particular day. The respondent was wrong in seeking to discipline the claimant for only the first incident on 16 September 2016;

96.2 no misconduct was proven;

96.3 he was treated differently from the other employees who forcibly removed a minor from the school later the same day but were not disciplined;

96.4 he was made redundant and entitled to a redundancy payment;

97 It is clear from the investigation and the disciplinary procedure that the allegations of misconduct related only to the first incident on 16 September 2016, when the minor first approached the school reception to gain access to the school to collect her coat. The claimant did not call for assistance. He was the only G4S employee present at the first incident. Following the complaint from the school the respondent conducted an investigation of the first incident and reviewed CCTV footage. Neither party has asked that this tribunal consider that CCTV footage. However, the CCTV footage was reviewed with the claimant at both investigation and disciplinary hearings when the claimant was given full opportunity to comment on it. During the disciplinary procedure the claimant admitted that the CCTV footage showed that he had ignored the 2 school girls at the door, concentrating instead on his laptop computer, and that he had eventually gone to the door, causing it to open, whereupon he pushed the minor out of the door. It is difficult to understand, in these circumstances,

how the claimant asserts that the conduct is not proven. The claimant has not sought to challenge the veracity of the CCTV footage in this tribunal, has not sought to challenge the accuracy of the investigation and disciplinary hearing notes, which were signed by him as being an accurate record of what was said at the meeting. The claimant has not asserted that he was forced to sign the notes, that he did not understand them or the questions being put at the hearings because they were not written or put in Polish, because there was no translator available. In any event, the question for the tribunal at this stage is not whether the claimant committed the act; the question is whether the respondent held the honest and genuine belief that the claimant had committed the act of misconduct as alleged. The claimant has not suggested that the respondent's witnesses were lying about what they observed on the CCTV footage.

98 This first incident led to the second incident, as, some 30 minutes later, the minor who had been pushed by the claimant returned to the school with other members of her family. On this second occasion the claimant followed procedure and, clearly sensing trouble with the abusive behaviour of the minors, reported the incident to the police and the respondent. As a result the respondent's Incident Response team was called and two members of staff, who had been trained to deal with these incidents of this nature, followed the company's standard operating procedure by removing the minor from the premises. There is no satisfactory evidence that the two response officers assaulted the minor during the course of the second incident. The only satisfactory evidence is that the two guards followed the procedure to evict the minor by each taking one arm and leading her from the premises. This is not the same as the conduct of the claimant: he had admitted to have pushed the minor with some force. The circumstances of the first and second incidents are materially different, they are not truly parallel. The evidence shows that the two incident response officers were faced with 3 minors already inside the school, who refused to leave when asked to do so. The claimant was disciplined for his conduct in relation to the first incident, not the second.

99 There is no satisfactory evidence to support the assertion that the alleged misconduct of the claimant in the first incident on 16 September 2016 is not the real reason for dismissal, that the real reason for dismissal was redundancy or another unfair reason.

100 Having considered all the evidence the tribunal accepts the evidence of the dismissing officer and finds that the reason for the dismissal was conduct in that the respondent held the honest and genuine belief that the claimant had:

100.1 used unwarranted and unreasonable force against a minor by restraining the minor and pushing her with force through the doors

of East Manchester Academy;

100.2 failed to follow standard operating procedures by not reporting or documenting the serious incident;

100.3 used an unauthorised lap top while at work

Conduct is a potentially fair reason for dismissal within s98 (1) and (2) Employment Rights Act 1996.

101 The tribunal has considered all the circumstances of this case, including those matters referred to in s98(4) Employment Rights Act 1996, to determine whether, in all those circumstances, the dismissal of the claimant for the reason stated was fair or unfair. In deciding whether the decision to dismiss was fair or unfair the tribunal reminds itself that it is not for the tribunal to substitute its view for that of the employer. The question is did the respondent act fairly within the band of reasonable responses of a reasonable employer in concluding that this employee was guilty of gross misconduct and dismissing him.

102 Having considered whether the respondent carried out a reasonable investigation of the alleged misconduct ,the tribunal notes in particular that:

102.1 the respondent relied upon the CCTV footage;

102.2 the claimant was taken through the CCTV footage during the investigation and given full opportunity to comment on it and to explain his actions;

102.3 the claimant did not challenge the veracity of the CCTV footage;

102.4 the respondent did not interview the two minors, the only other witnesses to the incident. That was reasonable;

102.5 the claimant admitted the allegations during the course of the investigation hearing;

102.6 the respondent did not investigate the second incident. That was reasonable bearing in mind that:

102.6.1 the respondent had received a complaint about the first incident on 16 September when the two pupils first approached the school;

102.6.2 no complaint was made about the second incident, when the pupils returned;

102.6.3 no allegation of misconduct was made against the claimant in relation to the second incident

103 In all the circumstances the tribunal finds that the respondent did conduct a reasonable investigation of the alleged misconduct.

104 Having considered whether, having conducted that investigation, the respondent had reasonable grounds to support its belief, the tribunal notes in particular that at the investigation hearing, having reviewed the CCTV footage, the claimant admitted to the conduct complained of. The respondent did have reasonable grounds to support its belief.

105 Having considered the procedure adopted by the respondent the tribunal notes and finds that:

105.1 the specific allegation of misconduct was put to the claimant, who was given full opportunity to state his case both during the investigation and at the disciplinary hearing;

105.2 the respondent followed a fair disciplinary procedure in that the claimant was given the opportunity for representation at the investigation and disciplinary hearings, he was given full opportunity to state his case, and the matters put forward on behalf of the claimant were considered by the dismissing officer before reaching his decision;

105.3 the claimant did not during the disciplinary hearing call in to question the validity of his training, did not say he was not sufficiently trained to deal with this incident;

105.4 the claimant did assert that he had acted in self-defence, that the minor had punched him. Mr Brierley, the dismissing officer reviewed the CCTV footage with the claimant, asking the claimant to indicate where and when he had been punched. The claimant was unable to identify the alleged punch;

105.5 the claimant was given the opportunity to appeal and initially exercised that right. However, he did not attend the appeal hearings, did not give an explanation for his non-attendance, and was advised that if he did not attend the re-arranged appeal hearing he would be treated as not pursuing his appeal. He did not make a request for the appeal to be considered on the papers in his absence;

105.6 The claimant was given the opportunity to review the CCTV footage as part of the investigation and at the disciplinary hearing. He was provided with the full footage. His request for a copy of the CCTV footage was declined. The claimant was not disadvantaged by that.

In all the circumstances the tribunal finds that, viewed overall, the procedure adopted was fair, following the six steps identified in the ACAS Code of practice.

106 In deciding whether, in reaching the decision to dismiss, the respondent acted within the band of reasonable responses of a reasonable employer faced with similar circumstances the tribunal notes in particular that:

106.1 the act of misconduct did amount to gross misconduct, fell within the definition of gross misconduct contained within the disciplinary procedure;

106.2 the claimant did have the appropriate training for the role. He was given clear instructions as how to perform the role, which he had done for some 5 years before. The assertion that the claimant was trained only in how to deal with aggression from adults, and that this did not give him training for dealing with aggression from minors, is without merit;

106.3 The claimant did not require the further door supervisor training or licence to fulfil his duties to a satisfactory level. He accepted that he understood his duties, the assignment instructions. He did not, prior to the incident, indicate to the respondent that he needed further training to enable him to perform his duties;

106.4 there is no satisfactory evidence to support the assertion that the respondent was aware, before this incident, that the claimant used his lap-top during working hours. The claimant failed to provide any evidence to support his assertion that the school authorised him to use his lap top either during the disciplinary procedure or at this tribunal hearing;

106.5 there was no inconsistency of treatment. The circumstances of the incident response officers in relation to the second incident were materially different, not truly comparable to those of the claimant;

106.6 the dismissing officer considered the claimant's length of service and his clean disciplinary record;

106.7 the dismissing officer considered whether dismissal was the

appropriate penalty and considered alternative sanctions. It was reasonable to dismiss rather than impose a lesser penalty because the dismissing officer was genuinely concerned that the claimant failed to accept how serious his actions were. The respondent was genuine in its view that it had lost trust in the claimant;

106.8 the dismissing officer did not, in reaching the decision to dismiss, take into account the second incident. His view that the later actions of the minors did not justify the conduct of the claimant in the first incident was reasonable. The fact that, in the second incident, the minors did act aggressively, did enter the premises and refuse to leave, and the incident report officers were assaulted by one of the minors, did not justify the actions of the claimant in the first incident.

In all the circumstances the tribunal finds that dismissal did fall within the band of reasonable responses,

107 Taking into account all the circumstances the tribunal finds that the dismissal was fair.

108 The claimant was fairly dismissed.

Breach of contract

109 The question is whether the claimant was guilty of gross misconduct justifying summary dismissal. On balance the tribunal accepts the evidence of the respondent's witnesses and finds that

109.1 the claimant pushed the minor through the door with some force;

109.2 The claimant admitted to that conduct.

The claimant has provided no reasonable explanation for his behaviour. It is clear that he did escalate the problem by ignoring the pupils at the door, refusing to acknowledge their pleas for help. He has not provided a satisfactory explanation as to why he did not call for assistance and why he chose to open the door to allow the pupil's admission to the premises only to push the minor back through the door. It is difficult to understand how any security officer, with the length of service and training of this claimant, would consider that this conduct was not gross misconduct justifying summary dismissal. The claimant was guilty of gross misconduct justifying summary dismissal.

110 The complaint of breach of contract is not well-founded.

Holiday pay

111 It is not clear on what basis the claimant asserts that he was not paid the correct amount of accrued holiday pay on the termination of his employment. The respondent calculated the amount due based on the calculation set out in the employment schedule. The claimant's employment was terminated part way through the holiday year and he was entitled to a proportion of the statutory entitlement, as calculated by the respondent, less any holidays he had taken. The claimant agreed that he had in the holiday year 2016 taken 19 days paid holiday pay. He had an entitlement to be paid in lieu for a further 2 accrued days. The respondent paid the 2 days accrued holiday pay, calculated in accordance with the terms of the contract. The claimant has not, before this tribunal, sought to challenge that calculation, has not provided a satisfactory explanation as to why the amount paid fell short of the amount due. The claimant was paid his full holiday entitlement. The complaint of failure to pay holiday pay is not well-founded.

Unlawful deductions from wages

112 The first question is whether the deductions from wages were authorised by a relevant provision in the claimant's contract or whether the claimant had previously signified in writing his agreement to the deduction.

113 In relation to the uniform, the deduction from wages was authorised by a relevant provision in the claimant's contract (see paragraph 38 above). Although clause 41.7 of the Employment schedule does not make a specific reference to s13 Employment Right Act, or use the words "deduction from pay", the reference to a charge being levied against the final salary, in relation to the failure to return uniform, provides the appropriate authority. The claimant was provided with a copy of the Employment Schedule on his appointment, and he signed his acceptance of those terms.

114 The claimant did not, prior to payment of his final wage, return the uniform. He could have asked for and indeed expected a receipt for the uniform wherever he returned it. The suggestion that he was expected just to drop it off at an unmanned gate without a receipt is disingenuous. The claimant does not provide any satisfactory evidence to challenge the amount deducted. £100 is a reasonable sum, representing the cost of the uniform.

115 In relation to the license fees the claimant consented in writing to the deductions in relation to licence fees (see paragraph 49 above). The proportion of licence fees to be deducted is clearly set out in writing and fairly represents the value of the unexpired period of the licence.

116 There was no unlawful deduction in relation to the payment by the respondent of pension contributions for the reasons set out in the respondent's submissions. The claimant did not opt out of the pension scheme. The letter from Friends Life (90A) is clearly sent on behalf of the respondent: both Friends Life and G4S are on the letter head. The pension contributions paid to the pension provider by the respondent on behalf of the claimant do not fall within the definition of wages.

117 The complaint of unlawful deductions from wages is not well-founded.

Employment Judge Porter

Date: 21 July 2017

JUDGMENT SENT TO THE PARTIES ON

24 July 2017

FOR THE TRIBUNALS