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EMPLOYMENT TRIBUNALS

Claimant: Mr Kwame Ashley Kufuor
Respondent: Royal Mail Group Plc
Heard at: East London Hearing Centre **On:** 1 February 2019
Before: Employment Judge Ferguson

Representation

Claimant: Mr V Uhumwangho (Solicitor)
Respondent: Miss S Hobson (Solicitor)

JUDGMENT

The judgment of the Tribunal is that the Claimant's claims of unfair dismissal and wrongful dismissal are dismissed.

REASONS

INTRODUCTION

1. The Claimant worked for the Respondent from 28 November 2005 until his dismissal on 22 February 2018. By a claim form presented on 23 May 2018, following a period of early conciliation from 25 – 26 April 2018, the Claimant brought complaints of unfair dismissal and wrongful dismissal. The Respondent defended the claim.
2. The issues to be determined are:

Unfair Dismissal

- 2.1. Has the Respondent shown that the reason for the Claimant's dismissal was a potentially fair reason within Section 98(2) of the Employment Rights Act 1996? The Respondent says the reason related to the

Claimant's conduct.

- 2.2. Did the Respondent have a genuine belief on reasonable grounds and following a reasonable investigation in the Claimant's guilt?
- 2.3. Did the Respondent follow a fair procedure?
- 2.4. Was dismissal a reasonable sanction?
- 2.5. If the Claimant's dismissal was procedurally unfair should any compensatory award be reduced on the basis that he might have been dismissed in any event?
- 2.6. Should any basic or compensatory awards be reduced on account of the Claimant's conduct?

Wrongful Dismissal

- 2.7. Was the Respondent entitled to dismiss the Claimant without notice?

3. On behalf of the Respondent I heard evidence from Eugene Mahon and Julie Forde. I also heard evidence from the Claimant.

THE FACTS

4. The Claimant commenced employment with the Respondent as a post delivery person on 28 November 2005. He was based at the Walthamstow Delivery Office. The Claimant's original contract of employment, which was said to be a fixed term contract ending in 2007, states that the Claimant may be dismissed without notice for gross misconduct. It also states that the Claimant will be expected to comply with the standards of behaviour set out in the Code of Business Standards and it refers to the Conduct Code.

5. The Conduct Code lists "abusive behaviour to customers or colleagues" as an example of gross misconduct. The Code of Business Standard states, as regards personal behaviour, that Royal Mail expects all employees to conduct themselves appropriately, not bring Royal Mail Group brands into disrepute, act as an Ambassador for the company and operate within the law.

6. On 3 January 2018 the Claimant was undertaking a delivery round which as it happens was additional to his usual round, having agreed to work some overtime. An altercation took place between the Claimant and a member of the public who had three dogs with him. The Claimant telephoned his line manager, Tonton Kwanga, to say that he had been bitten by a dog. There is a dispute about precisely what was said during this conversation but the upshot was that the Claimant completed his round. After finishing his round, he called Mr Kwanga again to say that he had gone to the GP and had been signed off for two weeks.

7. On the same afternoon the Claimant sent a video by WhatsApp to his union representative, Terry Whitbread, and to another colleague. I watched the video during the hearing. It is a video taken by the Claimant of him approaching and then walking

alongside an elderly man who had three dogs on leads for 1 minute and 20 seconds. The dogs are of small to medium size and display no aggression at any time. At the start of the footage the Claimant shouts at the man that his dog has bitten him and says, "you fucking done it". The man clearly does not want to speak to the Claimant or engage with him and continues walking. The Claimant says repeatedly with a raised voice throughout and displaying considerable anger that he is going to report the man. The man says "do what you wish" and twice says that the Claimant is being very aggressive.

8. On the same day or the day after the Respondent's Customer Services telephone line received a complaint from another member of the public, Ms A, which is recorded as follows:

"customer was walking down Queen Elizabeth Road LONDON E17 6ES and there was a OPG [Operational Postal Grade] arguing with an old man saying that his dog had bitten him and saying that he was going to punch him in the face so the customer and a friend moved him away from the man then he got in the RM vehicle and then drove down the road to catch with the man to argue some more."

9. The management team in the Walthamstow Delivery Office became aware of both the complaint and the WhatsApp video, as a result of which Mr Kwanga's line manager, Marcus James, carried out a fact-finding investigation.

10. Mr James did not give evidence to the Tribunal but the understanding of Mr Mahon, the dismissing officer, was that Mr James went to visit Ms A to take a statement from her. The statement that appears in the bundle is dated 9 January and is not signed. It may be summarised as follows. Ms A and a friend were in the area when they saw a postman and an elderly man with dogs. As they passed each other, one of the "small but friendly" dogs jumped up on the postman's leg. It did not look as though the dog was being vicious, just friendly. The postman "completely lost his cool" and....started to scream and shout at the elderly man in a very aggressive and threatening manner... The postman squared up face to face in front of the elderly man screaming at the top of his voice 'I'm going to punch you in the face'." The shouting went on, she said, for about 10 minutes and at one point the postman had a clenched fist. Ms A and her friend stepped in and pulled the postman back. At this point four neighbours from surrounding houses came out. The elderly man walked away but the postman carried on shouting and swearing. Ms A and her friend carried on walking and then saw a Royal Mail van "fly past us". The postman jumped out of his van and ran across the road and started to abuse the elderly man again. He had his phone out and looked like he was filming. Ms A said she had utmost respect for the two postmen who delivered to her road and that she did not feel safe knowing that this man was working in Walthamstow as a postman.

11. Mr Kwanga and another Manager, Bernard Nuza, produced a joint statement on 10 January which in fact appears to have been written by Mr Kwanga alone. It states that Mr Kwanga was out on a delivery with Mr Nuza at around midday when the Claimant called him saying that he had been bitten by a dog. "I asked him if it is serious to come back to the office. He replied to me that he is ok, he will carry on with his delivery and finish". Mr Kwanga said he called the Claimant twice after this to check if he was okay and offered to come to him. The Claimant said he was fine. After the

Claimant finished his shift he called Mr Kwanga to say that he was in the pharmacy and they asked him to go to the hospital. He called again later saying he was at the GP and got a tetanus jab. The GP told him to stay away for two weeks.

12. The Claimant submitted a fit note from his GP signing him off because of a dog bite until 13 January.

13. On 10 January Mr James wrote to the Claimant to notify him of a complaint of aggressive and abusive behaviour towards a member of the public on 4 January (sic) and to invite the Claimant to a formal fact-finding interview.

14. The interview took place on 13 January. The Claimant was accompanied by Mr Whitbread. The minutes record that at the start of the meeting Mr James asked the Claimant how he was and the Claimant said, "I am ok thanks" but then said he was feeling very stressed out due to the incident on 3 January. Mr James asked if he still wanted the meeting to take place and the Claimant said he was happy to continue. The Claimant disputes the minutes and says that he actually said he was very stressed and traumatised, but since they made him come all this way he would manage.

15. The Claimant gave his account of the incident as follows:

15.1. He said that while he was walking down the road he saw the man with dogs in a distance. The dogs were barking and being vicious so he asked the man three times to control the dogs. The man carried on walking towards him and extended the lead so the dogs were running towards him. The three dogs surrounded him and one bit his leg. At this point in the interview the Claimant said again that he was feeling stressed and Mr James asked Mr Whitbread if he wanted time to speak to the Claimant and stop the interview. Both the Claimant and Mr Whitbread agreed to carry on.

15.2. The Claimant said blood was running down his leg and he was in "so much pain". Then two members of the public came out of their houses. The Claimant challenged the dog owner saying look what your dogs have done to me and the owner responded, "it's only a small dog bite get on with it this is nothing". The Claimant asked the man where he lived and he said West Ham and then walked off in a hurry, clearly not wanting to give his details. One of the people who had come out of their houses advised the Claimant to go to the chemist around the corner. The Claimant called Mr Kwanga to ask for advice on what he should do. The Claimant could not remember what was said in that conversation.

15.3. After this, a member of the public advised the Claimant that if he wanted to take it further he would need to have photo evidence of the man. The Claimant also did not want the man walking around the streets allowing his dogs to bite anyone else, so he limped over to the van and drove around looking for him. He found him, got out of the van and approached him, starting to record him. He swore at the man because of the pain he was in and the stress he was under. The man kept denying the incident had happened. After stopping the recording, the Claimant called Mr Kwanga again who offered to help the Claimant and said if he could not carry on he should just leave it and come back to the office.

15.4. The Claimant denied threatening to punch the dog owner. He said he sent the video to Mr Whitbread and another colleague who he hoped would be able to identify the dog owner.

16. By letter dated 26 January, Mr James notified the Claimant that he had decided to refer the case to Eugene Mahon, Operational Manager, because he considered the potential penalty to be outside his level of authority.

17. Mr Mahon's evidence is that he considered all the evidence given to him by Mr James and concluded that there was a case to answer. He wrote to the Claimant on 26 January saying he was now charged with gross misconduct in that he was "abusive and showed threatening behaviour towards a customer". The Claimant was invited to a formal conduct meeting and warned that if the charges were proved the outcome could be dismissal. He was provided with copies of all the evidence.

18. Mr Mahon said that on 30 January Mr James carried out further investigation by knocking on doors near to where the incident took place. He found a man, J, who had witnessed the incident and took a statement from him. The statement in the bundle is not signed. It is not clear when or how it was given to the Claimant but I assume it was because the Claimant did not make any complaint about it except to say that it was not signed. The statement may be summarised as follows. J came out of his house because he heard a lot of noise and commotion outside. When he opened the door there was a postman arguing with a man who had three dogs. There were also two women present. J could see that the postman's trouser leg was ripped and he helped to clean the cut. J suggested the postman should go to the chemist. He also advised the postman to go and get a picture of the dog owner. J said "I can fully understand why the postman has reacted in the way he did and was upset anyone would be after being bitten by a dog how do you expect someone to react if they had been bitten the postman was really upset".

19. The conduct meeting took place on 2 February 2018. The Claimant was represented again by Mr Whitbread. By this stage the Claimant was still off work and had submitted a sick note dated 24 January saying that he was suffering from mixed anxiety and depressive disorder. Mr Mahon's evidence, which was not disputed, was that he had asked the Claimant if he was fit to attend the meeting and the Claimant said he was. That exchange is not recorded in the minutes.

20. The Claimant alleged in the meeting that Mr Kwanga told him that there was no-one else available to do the round, so he felt he had to complete it. As for the video footage, the Claimant denied that his behaviour was threatening. The Claimant also noted that Mr Kwanga had claimed that the Claimant called him to report the dog bite at 12 noon when in fact it was after 2pm. He suggested that Mr Kwanga might have lied about this because of previous disputes between them. The Claimant also claimed that he had put in a grievance previously about Mr James bullying him. He believed that the managers wanted to get rid of him because of this.

21. Mr Mahon's evidence was that he did not believe any previous issues between the Claimant and Mr James were relevant, but he checked with HR whether they had any records of a grievance or bullying complaint and there was none. Mr Mahon decided there was no need for him to carry out his own investigation because the

evidence before him, including the video evidence, was clear. He concluded that the Claimant was guilty of gross misconduct. He accepted that the initial altercation involving the dog bite and the owner denying responsibility would have been upsetting but he did not consider the Claimant's subsequent actions to be acceptable. He believed Ms A to be a credible witness. The behaviour shown on the mobile phone footage was clearly threatening and the customer was in fear. Mr Mahon noted that J's opinion about the Claimant's conduct was his own perception of appropriate behaviour and he was not aware of the Royal Mail Code of Business Standards. He also noted that the Claimant had called his line manager but avoided telling him the true extent of the altercation with the customer. Even if Mr Kwanga's evidence about the time and content of the telephone call was wrong, it would not change the penalty. In his oral evidence Mr Mahon said that he believed that the Claimant had threatened to punch the dog owner during the first altercation.

22. As to sanction, Mr Mahon concluded that dismissal without notice was the only option due to the severity of the Claimant's behaviour. He took account of the Claimant's twelve-year service and clean disciplinary record. He noted the Code of Business Standards and considered that the Claimant's behaviour was not befitting of the standards expected of a Royal Mail employee.

23. Mr Mahon invited the Claimant to a meeting to notify him of the outcome but the Claimant said he was not well enough to attend. The Claimant was notified of the outcome in writing on 22 February 2018.

24. The Claimant appealed the decision. Among other things he objected to Mr Mahon saying in the letter that the Claimant "allegedly" sustained a dog bite. The doctor had treated him for a dog bite and signed him off for two weeks for that reason. He also maintained that Ms A's witness statement was false.

25. An appeal hearing took place on 19 March 2018, conducted by Julie Forde, a senior member of Human Resources whose job title was "Independent Casework Manager". The Claimant was represented by a union representative, Mark Saxon. The appeal was conducted as a re-hearing. In the course of the appeal hearing, the Claimant alleged that Mr Kwanga had told him he had to complete the round otherwise it would have been treated as "wilful delay". Mr Saxon noted that Ms A's statement had not been signed and it was not clear how it had been taken. Towards the end of the meeting the Claimant apologised "for what I did and the word that came out of my mouth".

26. After the meeting Ms Forde conducted her own investigation, sending various questions to Mr Nuza, Mr Kwanga, Mr Whitbread and Mr James. Mr James said that the two statements from J and Ms A were taken face to face. He said he stood with Ms A for about forty-five minutes discussing what had happened. He said he had typed up Ms A's statement and returned to her address to read it over and sign it, which she did. He did not get J's statement signed.

27. Ms Forde wrote to both J and Ms A asking to discuss the matter with them further. Her evidence was that J did not respond but Ms A responded saying that she was happy to discuss the matter. They spoke over the telephone and Ms Forde made notes of the discussion. Ms A went through what had happened. She repeated that she had thought the postman was going to hit the dog owner and said that her friend's

daughter pulled the postman away. She initially said that there were two dogs but when asked if it could have been three she said, "it could have been". She said the injury on the postman's leg looked like a scratch. At the end of the call she said the dogs were calm and were not jumping or barking at the postman. They seemed to be "the most passive dogs you would ever want to meet".

28. All of the new evidence was sent to the Claimant for comment. He returned his comments on 14 April. On 17 April Ms Forde wrote to the Claimant to notify him that his appeal was rejected. In her decision report she said the following:

"I can understand that Mr Kufuor's initial reaction would have been of shock and I can accept that he may have become angry at the man with the dogs after he had been bitten. There is no evidence to say that the man apologized for what happened. And if Mr Kufuor had just shouted at the man I think I would have accepted that although the behaviour was unacceptable I think the dog bite and the shock would mitigate what Mr Kufuor had done. However, this was not the end of the matter. Mr Kufuor's behaviour went beyond the verbal rant towards the man and he threatened him and appeared as if he was going to use physical violence towards the man. When the man walked off, Mr Kufuor then decided to go after the man to get a photograph of him. I know that one of the customers who came out of his house advised Mr Kufuor to go after the man to get a photo to provide to the police however it was Mr Kufuor who decided to swear and then rant at the man for a couple of minutes. He also threatened the man on more than one occasion by saying 'I am going to get you done for this'. You can see on the video that the man felt intimidated by Mr Kufuor's behaviour towards him and told Mr Kufuor at least once that he was being very aggressive towards him. Mr Kufuor continued to film the elderly gentleman far longer than was necessary, he had a good picture of what the man looked like from when he first started filming so there was no need to carry on filming the man or to rant at the man in the way that he did. I think there is no excuse for this whole incident and Mr Kufuor's behaviour was completely unacceptable despite what had happened to him".

29. She found Ms A to be a credible witness, having spoken to her. She accepted that the Claimant had been bitten but thought that his account was exaggerated and it was more likely to be as Ms A had described, that one of the dogs jumped up at the Claimant as he walked by. She found it odd that the Claimant claimed he saw the vicious dogs coming towards him but did not get out of their way.

30. Ms Forde said that a manager should have gone to the Claimant to assess the injury, but she did not believe this altered the decision. Similarly, the time of the incident was not essential. She noted that no ERICA (Accident Report) had been completed and she recommended that one be completed.

31. When considering the sanction Ms Forde considered that the Claimant's behaviour was intimidating, threatening and abusive. It also damaged the reputation of Royal Mail to the customers who witnessed it. She noted there had been no full acceptance by the Claimant that his behaviour was wrong in doing what he did, Royal Mail had lost trust in the Claimant to carry out any role. Despite his length of service and previous good character, his actions were so serious that the decision to dismiss was reasonable.

32. In his oral evidence, the Claimant explained the calm demeanour of the dogs in the video footage by the fact that they had reacted to his red postal bag on the first occasion and he was not wearing the bag when he took the video.

33. In the Tribunal the Claimant sought to rely on a statement by Lorna Hinchey, who he claimed was the other woman who was with Ms A. Ms Hinchey did not attend the Tribunal. The Claimant said he recognised her at the time and knew the street where she lived so his solicitors went to speak to her. The statement is extremely brief, simply saying that she knows “this postman” and would not describe him as aggressive. The statement then says, “At no point during the incident did I see the postman making any attempts to punch or kick the man with the dog. At no point did I have to come between the postman and the dog to pull them apart The post man had a bite on his leg which was bleeding”. There is no mention of Ms A in the statement.

THE LAW

34. Section 98 of the Employment Rights Act 1996 provides that it is for the employer to show the reason for the dismissal and that it is a potentially fair reason. A reason relating to the conduct of an employee is a fair reason. According to Section 98(4) the determination of the question whether the dismissal is fair or unfair:

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

35. In misconduct cases the Tribunal should apply a three-stage test, first set out in British Home Stores Ltd v Burchell [1980] ICR 303, to the question of reasonableness. An employer will have acted reasonably in this context if:

- 35.1. it had a genuine belief in the employee’s guilt
- 35.2. based on reasonable grounds
- 35.3. and following a reasonable investigation.

36. The Tribunal must then consider whether it was reasonable for the employer to treat the misconduct as a sufficient reason for dismissal. In respect of each aspect of the employer’s conduct the Tribunal must not substitute its view for that of the employer. It must instead ask itself whether the employer’s actions fell within a range of reasonable responses (Iceland Frozen Foods Ltd v Jones [1982] IRLR 439).

CONCLUSIONS

Has the respondent shown that the reason for the Claimant’s dismissal was a potentially fair reason?

37. I am satisfied that the Claimant's conduct was the real reason for his dismissal. The Claimant argued that the decision was premeditated by Mr James and that the incident provided an opportunity. He said that Mr Mahon and Ms Forde's involvement was simply a rubber-stamping process of a decision already made by Mr James. The evidence does not support such an allegation and indeed is contrary to it. The Claimant has produced a grievance letter making complaints about Mr James but it is undated and there is no evidence that it was ever sent. The Respondent denies having any record of a grievance having been submitted. In the absence of any further evidence I am not satisfied that it was. In any event, Mr James' only involvement was at the fact-finding stage. There is no indication of any bias or unfairness on his part. He took two statements, one of which was entirely supportive of the Claimant. Further, Mr Mahon's reasoning in his decision letter is thorough and logical and it is wholly unfair to describe it as a rubber-stamping exercise. This is all the more true for Ms Forde, who followed up every point raised by the Claimant in her reinvestigation.

Did the Respondent have a genuine belief on reasonable grounds and following a reasonable investigation in the Claimant's guilt?

38. I accept that Mr Mahon and Ms Forde had a genuine belief in the Claimant's guilt. Both found that the Claimant had threatened to punch the dog owner and that the Claimant behaved in an unjustified, aggressive and abusive manner as shown in the video footage. For the reasons given above there is no reason to suspect any ulterior motive in their findings. They made clear and logical findings that the Claimant had behaved contrary to the Code of Contract and Business Standards.

39. As to whether there were reasonable grounds for the belief, the dispute of fact was ultimately very limited. There was video evidence of the second part of the incident, so no dispute about what happened in that exchange between the Claimant and the dog owner. As for the first part of the incident, the only real dispute was whether the Claimant had threatened to punch the owner. Ms A had said this in her original complaint and in the statement. It was arguably not reasonable, faced with this important factual dispute, for Mr Mahon to rely on the unsigned statement without speaking to Ms A himself but even if that was unreasonable, any error in this respect was corrected on appeal because Ms Forde spoke to Ms A and she gave a materially identical account. I do not accept that it was necessary, as the Claimant argued, for Ms Forde to take the additional step of getting Ms A to sign the notes of the telephone conversation. Subject to that issue, it was not unreasonable for Mr Mahon or Ms Forde to prefer Ms A's evidence to the Claimant's on the issue of the threat to punch the owner. Ms A was an independent witness and had been consistent on the issue. There is a slight oddity in that she described the dogs as being friendly and calm which appears to be inconsistent with the fact that one of them bit the Claimant but her description is entirely consistent with how the dogs appear in the video so this does not cast any significant doubt on her evidence. Mr Mahon and Ms Forde both concluded that one of the dogs must have jumped up in play and nipped the Claimant. Whatever the precise circumstances were of the biting incident there was no reason for the Respondent to doubt what Ms A had said about the threat to punch. The Claimant, however, had demonstrated at the very least a lack of awareness about his behaviour, for example denying that his conduct in the video footage was threatening. He had also not been consistent about the content of his conversations with Mr Kwanga. In all the circumstances I consider that there were reasonable grounds for both Mr Mahon

and Ms Forde to conclude that the Claimant had threatened to punch the dog owner. J's statement that the Claimant's behaviour was justified was not relevant to this issue because it is clear that he came out of his house only after the initial altercation.

40. The Claimant claimed in his evidence that he had never seen the Conduct Code or the Code on Business Standards, and it was argued during submissions that his original contract no longer applied because it was stated to expire in 2007. Even if those matters are accepted in their entirety they do not affect the reasonableness of the Respondent's finding of gross misconduct. It is obvious that aggressive and/or abusive behaviour in a public place towards a member of the public would constitute gross misconduct and might lead to dismissal. Both Mr Mahon and Ms Forde accepted that the Claimant would have been shocked and/or stressed by the dog bite but they considered this did not excuse his behaviour. In particular, chasing after the man and following him down the street whilst shouting at him and filming him was completely unacceptable. If the Claimant's only intention had been to identify the man, that could have been done by taking a still photograph or a very short video. It was certainly not unreasonable to conclude that the behaviour constituted gross misconduct.

41. The Claimant also claimed for the first time on the first day of the hearing that he had had no training whatsoever after his initial induction when he started working for the Respondent in 2005 and in particular no training on confrontations with members of the public or dogs. The Respondent disputed this and given the lateness of the Claimant's evidence and its inherent lack of plausibility I am not prepared to accept that he had received no training at all in twelve years of employment.

42. I am satisfied that the Respondent conducted a reasonable investigation in the circumstances. The Claimant argued that the Respondent should have sought to interview the other woman who was with Ms A. Mr Mahon's oral evidence was that Mr James had tried to do this but she did not want to provide any evidence. Whether or not that is correct I do not consider that the Respondent was required to obtain statements from every witness. It interviewed the original complainant and later interviewed another witness who was supportive of the Claimant. Given the existence of the video evidence and the limited factual dispute, that was a proportionate investigation.

Did the Respondent follow a fair procedure?

43. The Claimant argued that it was unfair to require him to attend disciplinary meetings while he was off sick. While of course an employer must act carefully and sympathetically where an employee is off sick I do not accept that there was any unfairness in this case. Mr James asked the Claimant on a number of occasions if he was happy to continue and he said that he was. The Claimant has not produced any medical evidence to suggest that he was unfit to attend the meetings as opposed to attending work. Ms Forde found that there had been a failing by management in not going to assess the Claimant's injury on the day of the incident, but the Claimant has not established any more general lack of care for his welfare, and that limited failing is not relevant to the fairness of the disciplinary process.

44. The Claimant also relies on Article 6 of the European Convention but it was not clear on what basis, and in any event disciplinary proceedings do not ordinarily engage Article 6 (See, e.g. Mattu v University Hospitals of Coventry and Warwickshire NHS Trust [2012] IRLR 661).

Was dismissal a reasonable sanction?

45. As to the sanction I am satisfied that summary dismissal fell within the band of reasonable responses. Despite the mitigating feature of the initial dog bite, the Claimant had gone way beyond what might be a reasonable reaction, threatening physical violence and then following the man and shouting at him for a prolonged period. Ms A's statement was evidence that this had as a matter of fact brought Royal Mail into disrepute. It also put the public at risk. It may have been entirely out of character, and it is not in dispute that it was the Claimant's first disciplinary offence, but especially given the Claimant's lack of self-awareness as to the effect of his conduct, dismissal was a reasonable penalty.

Wrongful dismissal

46. Here I must consider whether the Claimant did in fact commit an act of gross misconduct entitling the Respondent to dismiss him without notice. The evidence before me is materially identical to that before Ms Forde, other than the witness statement of Ms Hitchen. I give no weight whatsoever to that statement. I have no direct evidence as to how it was obtained. She did not attend the Tribunal and there was no indication that she would not have been able to do so. It is also lacking in any detail. I agree entirely with the reasoning of Ms Forde in her thorough and careful report and conclude on the balance of probabilities that the Claimant's behaviour amounted to gross misconduct justifying summary dismissal. There is no doubt that being bitten by the dog would have been frightening and upsetting but the Claimant's reaction went way beyond what could be considered justified.

47. Both the unfair dismissal and wrongful dismissal complaints fail and are therefore dismissed.

Employment Judge Ferguson

26 February 2019