Reserved judgment

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
	AND
Mr A Nur	Webasto Roof Systems Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham **ON** 21st February 2019

EMPLOYMENT JUDGE Richardson

Representation
For the Claimant: M Nur, lay representative
For the Respondent: Mr I Hartley, Solicitor

JUDGMENT

The judgment of the Tribunal is that

1. **The claimant's claim of unfair dismissal is not well founded.**

2. **The claim is dismissed.**

REASONS

Background and Issues

1. The claimant was employed by the respondent, a manufacturer of vehicle sun roofs. The claimant had been employed for about 10 ½ years before he was dismissed for conduct on 9th November 2017. The claimant alleges that his dismissal was unfair because his line manager did not like him and wanted to get rid of him; he was inadequately trained; not adequately supervised; other peOple had made the same mistake as the claimant and were not disciplined; during the disciplinary proceedings he was not provided with an interpreter; and, having made one mistake in an otherwise impeccable disciplinary record during 10 years of service, the disciplinary sanction was unreasonably harsh.

2. At the commencement of the Hearing the tribunal and the parties defined the issues. It was agreed that the tribunal would have to determine the case having regard to the guidelines in the well known authorities:

a. British Home Stores —v- Burchell [1978] IRLR 379
b. Iceland Frozen Foods Ltd --v- Jones [1982] IRLR 439
c. Sainsbury's Supermarkets Ltd —v- Hitt [2003] IRLR 23

3. In short, the test in Burchell was agreed as follows:
a. For our purposes, the dismissing officer of the respondent was Mr Thornhill. Did he hold a genuine belief in the facts found?
b. Was such belief held on reasonable grounds?
c. Did this follow a reasonable investigation?

4. Then, from Iceland, was dismissal within the range of reasonable responses Open to a reasonable employer in all the circumstances of the case?

5. The tribunal would have to consider the ACAS Code of Practice on disciplinary and grievance procedures. There is an initial burden of proof upon the respondent to show a potentially fair reason. The respondent in this case asserted that it was on account of the claimant's conduct. The burden of proof on the respondent is the *balance of probabilities*, to establish that conduct is the reason pursuant to section 98(1) and (2) of the Employment Rights Act 1996 (the Act).

6. Subject to that, and applying the test set out above, was the decision to dismiss overall fair pursuant to section 98(4) of the Act? This test is neutral. The tribunal would have to consider the ACAS Code of Practice on disciplinary and grievance procedures.

Evidence

7. The proceedings were conducted with the assistance of an interpreter of Somali. I was provided with an agreed bundle of documents. The claimant's representative, his brother Mr M Nur, provided an additional document being the transcript of a covertly recorded conversation between the claimant, his TU representative Mr Peacock and Mr M Nur immediately before the appeal hearing. I accepted the document into evidence because it had some probative value.

8. I read statements and heard evidence from the following witnesses:
the claimant;
Mr Tsehaye Michael
Mr P Thornhill, Business Unit Leader;
Mr J Simpson, Operations Manager;

I was also provided with a witness statement by Mr Hassan Ali who did not attend the hearing.

Findings of Fact

9. I make my findings of fact on the basis of the material before me taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. I have resolved such conflicts of evidence as arose on balance of probabilities. I have taken into account my assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts and documents. I had no credibility issues with any of the respondent's witnesses each of whom were straight forward and appeared to be doing their individual best to assist the tribunal. The claimant was less credible as at times he was evasive; he deflected some questions put to him in cross examination and declined to answer which affected his credibility. Mr Michael was a straightforward witness although his evidence was of limited value relating, as it did, to a period of time when he was in the respondent's employment more than 10 years ago.

10. My findings of fact relevant to the issues which have been determined are as follows:

10.1 The claimant commenced his employment on about 4th May 2007 with the respondent company, a manufacturer of sun roofs supplying vehicle manufacturers such as JLR and Nissan employment about 360 staff.

10.2 At the time of his dismissal the clamant was working on the Op 66 line preparing glass for sun roofs of about 4 ft x 6 ft in dimension. He worked with a colleague, Andrew Graham, on the Opposite side of the production line; it was not necessary for both men to be working symmetrically.

10.3 The respondent requires some flexibility in its workforce so although most employees work on one line, they can be allocated to a different line. Previously the claimant had worked on the Op 40 line which involved substantially the same process but applied to the a metal sun roof frame rather than to the sheet a glass which fits into the metal sun roof frame.

10.4 The claimant and Mr Graham processed between 100 and 150 sun roofs through a shift. The claimant worked a rolling shift pattern of 6am – 2pm, 2pm – 10pm and 10pm – 6am. The respondent considered the claimant to be a highly competent Operator; his only disciplinary record related to a previous issue on attendance.

10.5 Safety and quality of the respondent's product was extremely important because of the very nature and function of the product. The failure of a sun

roof could have potentially fatal consequences if it were to occur and become detached from a vehicle at speed on a highway or motorway.

10.6 Each stage of the manufacturing process was subject to specific and detailed work instructions setting out step by step the procedures to be followed. Before undertaking any role or task an employee is trained and not allowed to work until the trainer has signed him off as competent. The work instructions were signed by the Operator and were kept on the Operator's work station and a skills matrix completed.

10.7 The competencies of employees are identified on the skills matrix and signed off by Mr Dyke. The claimant and Mr Graham were shown on the skills matrix updated at 16/10/2017 as allocated to Op 66. The skills matrix also illustrated what tasks required training and on which tasks the employee was capable to training others. The claimant and Mr Graham were identified with equal competencies apart from one which is not pertinent to the issues in this matter.

10.8 On 1st November the claimant was working on Op 66 preparing sun roofs which then move on to Op 40 to be adhered to the metal sun roof frame. At his work station, as with other operatives, there is a 'primer box'. The purpose of the primer box is to ensure that no stage in the manufacturing process is accidentally omitted. The operator has sequentially to press a button on the primer box to confirm that he has completed each stage of the process. The operator cannot move from one stage in the process to the next unless he presses the button and a green light is activated.

10.9 The operator must first press a button to release a bottle of activator fluid to be applied in a way prescribed in the work instructions to the glass on his side of the line, to clean the glass of contaminants. His colleague on the other side of the line does the same although not necessarily at the same time; they can only see each other's arms and hands because of an extractor unit suspended above the glass, unless they bend down to speak to each other under the extractor unit.

10.10 The operator must then wipe off the activator fluid, wiping the glass clean; he must replace the bottle in the primer box and press the primer box button to release the next bottle of fluid, this time the fluid is a 'primer' to fill in any pitting on the surface of the glass to prepare it for the final stage of bonding. A robot puts a bead of adhesive to the edge of the glass and the sun roof is then moved on to be fitted into the metal frame on Op 40. The process on Op 66 takes 237 seconds.

10.11 The claimant was moved to the Op 66 line from Op 40 on about 25th September 2017 by Mr Dyke for Operational reasons. The only difference between the processes on Op 40 and Op 66 was that Op 40 required

adhesive pads to be fixed instead of a bead of adhesive. Both lines used the primer box system for “activate, wipe, prime”.

10.12 There is a dispute whether the claimant received training on how to process the glass sun roof. It is not disputed that the claimant was shown what to do by Mr Graham and the claimant has also said that he had observed another experienced operative, Jacek, working with the glass.

10.13 Once an operator had been trained on a new task, he is asked to sign the work instruction to confirm that he understood the process. The work instruction is kept at the operatives work bench. There is a dispute as to whether the claimant signed the work instruction.

10.14 The respondent engages independent professional auditors, a company named IAFT, to conduct an audit of the respondent’s manufacturing processes. During a process audit on 18th and 19th October 2017 by IAFT, the claimant was observed completing the process adequately on Op 66. The claimant’s work instructions at his work bench are picked up by the auditors and they check that he is following his work instructions. If the claimant had not signed off work instructions, that fact would be picked up by the audit and Op 66 would have failed the audit with a minor – major non-conformance depending on the severity of the omission. On this occasion 18th /19th October Op 66 passed.

10.15 It is not clear whether on 1st November 2017 the claimant was working an afternoon or an evening shift, however, late in the evening shift on 1st November 2017, further down the production line, a problem arose with glue on a sunroof the claimant and Mr Graham had processed. It was brought to the attention of the Business Unit Leader, Mr Flynn, who immediately inspected the sun roof in question. It was discovered that the claimant’s side of the glass had not had activator applied. The claimant’s line manager, Mr Dyke was not involved in the discovery of the alleged problem with the claimant’s work.

10.16 Mr Flynn immediately commenced an investigation and interviewed the claimant, Mr Dyke, and Mr Graham. Mr Flynn looked at about 20 minutes of CCTV film which showed no activator being applied by the claimant at the relevant time. The CCTV showed that the claimant finished one sun roof in 30 seconds and then stood waiting for the next, when it is a 237 second process.

10.17 During the investigation meeting the claimant made the following assertions:

- that he understood the process of activate, wipe, prime. He was clear on that;

- that he knew the process and had signed off;

- that he sometimes filled in the chemical sheet in a rush;

- that sometimes he didn't complete the activator because he was rushing;

- that he knew how safety critical the correct procedure was;

- that he did not always activate when he was rushing and he doesn't have enough time because the team leader was pushing and that it happened before;

- that sometimes mistakes happen and he apologised;

- that he had watched Jacek to learn the process.

10.18 The investigating officer recommended the matter proceed to a disciplinary hearing because the CCTV footage clearly showed a failure to adhere to process. The investigating officer commented that the claimant did not give straightforward answers but eventually admitted that he "sometimes" did not apply activator; that he had shown no remorse and a lack of understanding of the potential severity of the situation.

10.19 Mr Graham was also recommended for disciplinary action because although he consistently applied activator, he did so failing to use the respondent's prescribed method. Mr Graham's practice of applying activator was not considered to be life threatening.

10.20 The claimant attended a disciplinary meeting on 7th November 2017 which was conducted by Mr Thornhill. He was accompanied by a trade union representative, Mr Keenan, a shop steward. At the disciplinary hearing, the claimant's first words after the opening introductions were *"I don't understand the process. I was never trained fully. I didn't know I had to activate, I wasn't properly trained."* He added that it was his first time priming; he started only three weeks ago. He was on Op 40 first.

10.21 Despite this initial denial of knowledge, understanding and process, the claimant then confirmed to Mr Thornhill during the disciplinary hearing in response to Mr Thornhill's questions, that he knew that the process was "activator, prime, scotch".

10.22 Mr Thornhill probed the claimant's understanding and the answers he had given in the investigation meeting. The claimant said that he never left the activator out on purpose but sometimes he forgot, he was after all a human being. The claimant stated that the problem is his language. He didn't mean that

he did it sometimes but that sometimes he didn't do it. He meant that sometimes he forgot to activate; he is a human being. He admitted that he knew 100% he had to activate all the glass. He also stated that he had signed a piece of paper handed to him by Mr Dyke, but he did not know what it was for.

10.23 Mr Thornhill summarised his understanding of the claimant's case as the claimant didn't remember forgetting to apply activator, but if he did not apply it, it is because he rushed. Both the claimant and the TU shop steward confirmed that was the case.

10.24 Before adjourning the disciplinary hearing, Mr Thornhill asked the claimant whether he had been audited. The claimant replied that he saw some visitors but no one was watching him.

10.25 Mr Thornhill interviewed Mr Graham who confirmed that he had trained the claimant on Op 66. He had shown him what to do and had then monitored him. He said that the claimant was always in a rush and that he had had to pull him up on a few occasions. Whenever he had been monitoring the claimant, Mr Graham said the claimant had been ok. Mr Graham also confirmed that he and the claimant had been audited. Mr Graham had answered a few questions from the auditors and had seen the auditors observe the claimant.

10.26 Mr Thornhill also interviewed Mr Dyke who also confirmed that the claimant had been trained on Op 66. Once the claimant was confident he had been asked to sign the work instruction. Mr Dyke denied that the claimant wasn't trained properly and asserted that the claimant knew how to prime. He had done so on Op 40. The IAFT audit on Op 66 and Op 40 had passed with flying colours.

10.27 The disciplinary meeting with the claimant was reconvened on 9th November 2018.

10.28 Mr Thornhill probed the claimant again on his assertions that he had not been trained, and had not been audited. The claimant's answers were evasive and he repeatedly returned to not having been trained for the job. He blamed Mr Dyke for filling out the work instructions and getting the claimant to sign them. He said that Mr Dyke did not like him. He was not fully trained and they should have shown him the job. Mr Thornhill found the claimant's evidence inconsistent.

10.29 Mr Thornhill pointed out to the claimant that he first had said in the investigation meeting that he knew the process and in the disciplinary meeting was asserting that he did not and hadn't been trained and hadn't been monitored. Mr Thornhill asked the claimant how he could say he did not know the process when he had been audited and passed the audit? The claimant had also stated that he had a family problem at the time and that perhaps his mind had been

"somewhere else". He had also said that didn't remember exactly what he had done.

10.30 Mr Thornhill reached his conclusion. He did not believe that the claimant had not been trained on Op 66. He did not believe the claimant's explanations which had varied – he had said the reason for not activating the glass had been lack of training, family issues, that he was copying what Mr Graham had been doing, that he was rushing. Mr Thornhill did not believe that the claimant had made a genuine mistake. He said that it was a safety critical process and that the claimant's story had been different to each person, that he had kept changing his story.

10.31 Mr Thornhill dismissed the claimant for gross misconduct which he confirmed by a letter dated 14th November 2017. Mr Thornhill informed the claimant that because he had changed his story on numerous occasions throughout the investigative and disciplinary hearing, this had led Mr Thornhill to believe that the claimant had received adequate training, had previously followed the process fully but on the date in question, that he had chosen to omit a safety critical part of the priming process. He confirmed accordingly that he had dismissed the claimant summarily for gross misconduct.

10.32 The claimant appealed on 17th November 2017 without stating the grounds of appeal. Due to the availability of the claimant's Unite representative, Mr Peacock, Regional Organiser, the appeal hearing did not commence until 30th November 2017. Mr Simpson was the appeal hearing officer.

10.33 Before the commencement of the hearing a discussion was held between Mr Peacock, the claimant and the claimant's brother Mr Mustafa Nur on the claimant's grounds of appeal and what Mr Peacock was going to say on the claimant's behalf in the appeal hearing.

10.34 Mr M Nur had accompanied the claimant to the appeal hearing because he wanted to act as interpreter in the appeal hearing. There was then a discussion with Mr Simpson about that. Mr Peacock stated that Mr M Nur's participation was neither permitted or required by company policy. In the opinion of both Mr Simpson and Mr Peacock, the claimant, who had never needed an interpreter before, did not require an interpreter now. Mr Peacock stated he was there to represent the claimant. Mr Simpson took the decision that Mr M Nur was not permitted to attend the appeal hearing. Mr Simpson also did not permit the claimant to record the proceedings.

10.35 At the commencement of the hearing Mr Peacock explained what the grounds of appeal were; first, that the claimant had had problems with his line manager, Trevor Dyke.

10.36 Second, the claimant had given lots of answers to the questions in the investigation and disciplinary hearings but the incident had been caused by pressure from work and pressure from the Team Leader, Mr Dyke. Mr Peacock referred to a witness, Mr P Craven, who had said that not enough training had been given when swapping between jobs. The claimant had not been comfortable with Op 66. The claimant added that Mr Graham could not train him from the opposite side of the glass, he had to be trained from the same side of the glass.

10.37 Third Mr Peacock submitted that there had been an alternative to summary dismissal as the respondent had invested a lot of time, money and effort into training the claimant and obviously something had gone wrong. The company could have considered action short of dismissal such as final written warning, a suspension and/or retraining. He asked for another chance for the claimant.

10.38 The claimant made his own plea to Mr Simpson; he said " *I have been here ten years with not one problem, no mistakes. It was human error, I didn't leave the plant, no one is dead or injured. It is unfair after ten years. End of job I not end of life but I was waiting for a Final written warning for human error. Mistakes can happen so why dismiss me?"*

10.39 Mr Simpson established with the claimant that he understood the process for both Op 40 and Op 66. The claimant was able to explain the slight difference which is the scotch mounts, but otherwise the process is fundamentally the same. The claimant acknowledged that the primer box makes the Operator follow the process sequentially and he claimed that he was using the box correctly and all was well if you are calm, but not if you panic. The claimant said he was busy and that was how he missed the process. He also explained that he knew how important the process was from a safety critical point.

10.40 The claimant expressed concern at the end of the appeal hearing as he sometimes has a communication problem and sometimes after a misunderstanding you have to change what you say. Mr Simpson reassured the claimant that he had understood and that the claimant had been represented by Mr Peacock and that they would get a full copy of the minutes.

10.41 During the adjournment Mr Simpson interviewed Mr Thornhill. He wanted to know the reason why Mr Thornhill had dismissed the claimant. He asked Mr Thornhill whether the claimant's communication in English had been clear enough? Mr Thornhill said he had considered the claimant's ability to communicate but for every question the claimant had an initial response which made sense. It was only when he was challenged that he changed his response. Mr Thornhill confirmed he knew what the claimant was saying.

10.42 Mr Thornhill provided examples of the claimant contradicting himself in his answers from not being trained and not being audited, to accepting that he had been audited but he had followed the correct process before the auditors only because he was following Mr Graham. Mr Thornhill pointed out that he could not have copied Mr Graham to get the process right as the process was not symmetrical. He found that the claimant had gone from not being trained, to be part-trained to copying Mr Graham.

10.43 Mr Thornhill confirmed to Mr Simpson that the claimant had not been rushing the process because he had a lot of waiting time which was visible from the CCTV. Mr Thornhill confirmed that he had reached the conclusion that the claimant had been lying – the claimant's final explanation had been that he had a family issue and that his mind may have been on something else. Mr Thornhill told Mr Simpson that if he had thought that there had been a genuine lack of training or that the claimant had forgotten the process, he may have taken a different approach. The claimant's approach and attitude was such that it warranted dismissal because by-passing parts of a safety critical process with no genuine reason meant that the claimant was a risk to the business.

10.44 Mr Simpson also interviewed Mr P Craven by telephone. Mr Craven stated that he was not 100% sure that the claimant had been trained. He could only say that there was a change from Op 40 to Op 65 [sic] but the Ops are very similar.

10.45 On 21st December Mr Simpson delivered his decision in writing with full reasons. With regard to the allegation that Mr Dyke had put undue pressure on the claimant, Mr Simpson rejected that contention. The incident when the claimant had been sent home by Mr Dyke had occurred a number of months ago, the issue was resolved on the same day and the claimant had suffered no detriment either financially or disciplinarily. The issue for which the claimant was dismissed was a different issue and completely unrelated to the incident with Mr Dyke.

10.46 Mr Simpson acknowledged that sometimes work as an Operator could be pressured and busy but on critical processes it was imperative that Operators remained calm and followed process to the letter. The claimant had had no problem on Op 40 and Mr Thornhill had established that there was no urgency in production on the shift in question and normal conditions were in place. There was no evidence that the claimant was either excessively busy or pressured. Mr Simpson did not believe that the claimant had failed to follow process maliciously. He concluded that it had been a shortcut.

10.47 Mr Simpson confirmed that Mr Craven had been unable to provide any evidence confirming or denying that the claimant had been apprOpriately trained. Mr Simpson confirmed that the claimant had very clearly talked him through the primer process for Op 40 and Op 66 which were similar processes and that the

claimant knew the process step by step and the claimant understood the purpose of the primer box. Mr Simpson did not accept the claimant's explanation that he had been panicking through lack of training. The claimant had a wealth of experience priming on Op 40 and the transition to Op 66 should not have been problematic. The claimant had passed an IATF16949 audit following process to the letter. Mr Simpson did not accept that the claimant had managed to do this because he had cOpied Mr Graham; this was because the glass was not processed symmetrically by Mr Graham and the claimant on Opposite sides of the production line.

10.48 Mr Simpson's final paragraphs were:

> *"Paul Thornhill informed me that he believed your statements to be unreliable based on the number of times you changed your accounts of events when challenged. He found that you had plenty of waiting time and that you were not under pressure that day. For these reasons and the additional evidence provided on your knowledge of priming I concur with Paul Thornhill that you were simply bypassing process which on a safety critical process is absolutely inexcusable.*
>
> *We spend a lot of time and effort in ensuring that safety critical processes are clearly understood and that our Operators carry out their processes to exact and high standards. For a breach of procedure that was accidental we could potentially consider a lower sanction but for bypassing procedure with no genuine reason, when correctly trained and experienced I find that the risk to the business is too great to consider mitigation.*
>
> *For these reasons I uphold the decision to summarily dismiss you and hereby confirm in writing that your appeal was unsuccessful…."*

10.49 For completeness of the facts, Mr Graham had also been disciplined for not applying activator to the glass in the correct prescribed method. He had used a cloth for applying activator instead of from the bottle. He was not dismissed because this was not safety critical and was an accepted method of applying activator although it was not the respondent's preferred and stipulated method.

Submissions

11. I heard submissions from both parties of which I took a full note which is retained on the tribunal file. I have set out a summary of the claimant's submissions above at paragraph 1. I have taken into account the submissions in reaching my conclusions below.

Law

12. As previously indicated, the law in this case is to be found in sections 98(1), (2) and (4) of the Act, which state:

> "(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show —
>
> (a) the reason (or, if more than one, the principal reason) for the dismissal; and
>
> (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it —
>
> (b) relates to the conduct of the employee...
>
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case"

13. The tribunal is given judicial guidance in the cases previously mentioned as to how to apply the statutory provisions. I do not repeat them again. I have also had regard to the ACAS Code of Practice on disciplinary and grievance procedures when coming to my judgment.

Conclusions

14. Applying the test in Burchell, first, did Mr Thornhill genuinely believe in the facts found? The principal fact was not disputed – that activator had not been applied to a glass sun roof by the claimant. The claimant had given various reasons for not applying the sun roof, from not being trained adequately , to being in a rush and panicking, to having a family issue on his mind at the time. Mr Thornhill considered all of these explanations, none of which he considered true.

15. I found Mr Thornhill to be a credible and genuine witness who had taken his role as disciplinary officer seriously and had approached the task with an

Open mind. On the question of training, Mr Thornhill had readily accepted shortcomings in the evidence for example he did not see the work sheet that the claimant is alleged to have signed. It was not in the bundle. He had accepted the word of Mr Dyke, the supervisor. He had also interviewed Mr Graham. He knew from his own knowledge that a competent Operator, such as the claimant with 10 years experience, should have been competent on Op 66 within 2 – 3 days. The processes on Op 40 and Op 66 were similar. Mr Thornhill was also clear in his belief that the claimant had been subject to an independent audit three weeks into the five weeks he was on Op 66 and had passed the audit. That could not have happened if the claimant had not been following process. Mr Graham confirmed that he had seen the auditors watching the claimant. The claimant himself admitted that he saw visitors but denied he been audited.

16. With regard to the allegation that the claimant should have had an interpreter at the disciplinary hearing, It was only in cross examination at the tribunal hearing that the claimant said that when he realized the magnitude of what was happening (in the disciplinary hearing), he got confused and that "they" could see that and should have offered him an interpreter.

17. Mr Thornhill had not experienced any difficulty with the claimant's ability to express himself in English. Mr Thornhill found that the claimant had also experienced no difficulty in giving his various explanations for his conduct. He said in cross examination: *"the reasons [the claimant] gave to me for not following the process was, for me, not discrepancies between language and expressing how to do that process. He went from I was trained, I wasn't trained, I was rushing and … he finished off with a family problem at home which affected his concentration. If there had been a language concern he would have struggled to communicate all the different reasons. We had no problems at all communicating during the meeting."*

18. The claimant had attended a disciplinary hearing before. He had never asked for an interpreter in Somali on any other occasion and did not do so on this occasion. The claimant was accompanied by a shOp steward at the disciplinary meeting and he never raised an issue about the claimant not understanding English sufficiently.

19. I accept that Mr Thornhill experienced no difficulty in communication between him and the claimant. The claimant nor his TU representative asked for the proceedings to be halted so that an interpreter could be found. In the circumstances I find that there was no procedural unfairness because of the claimant's level of English language. He was able to communicate adequately and there is nothing in the oral evidence or the documents which suggested he was in difficulties understanding Mr Thornhill's questions or that he was struggling to answer the questions.

20. Another issue of unfairness raised at the disciplinary hearing by the claimant was his relationship with Mr Dyke. In February 2018 Mr Dyke had ordered the claimant to undertake a task and when he did not do so, sent the claimant home at approximately an hour before the end of the shift. The claimant had been interviewed by HR the next day and had been paid the hour he had lost the day before. Nothing more was done and the claimant heard nothing more.

21. The claimant said Mr Dyke didn't like him and put him under pressure. Mr Thornhill considered what the claimant had said. It was to be expected that supervisors would observe their team performing their tasks and making sure that procedures were followed. In the disciplinary the claimant had said that Mr Dyke watched him, not that he was scared of Mr Dyke. The claimant had made no clear allegation against Mr Dyke and therefore Mr Thornhill had focused on investigating the incident. If the claimant had raised a concern, Mr Thornhill said in cross examination, then a separate procedure would have been followed involving HR and a decision made whether to join the two processes but no allegation had been made.

22. Mr Dyke was not involved in the discovery of the sun roof on which no activator had been applied or how that discovery was handled subsequently. His role in the proceedings had been only to confirm that the claimant had been trained. That had been corroborated by Mr Graham who had been responsible for training the claimant. Mr Dyke's evidence had been accepted by Mr Flynn and Mr Thornhill. The claimant had also stated that he had watched Jacek who had been responsible for training Mr Graham.

23. I also accept Mr Thornhill's evidence that the claimant's worksheets must have been signed by him for the auditors to have passed the process he followed when they audited him on 18th/19th October. Mr Thornhill had had sight of the audit results in the disciplinary hearing. He was satisfied that the claimant knew the process. Mr Thornhill had the benefit of speaking to Mr Dyke and Mr Graham personally who confirmed the claimant had been trained. He believed them.

24. Whilst the claimant alleges that Mr Dyke wanted "to get rid" of him, even if that were true, there was no evidence Mr Dyke had any involvement in the decision to commence disciplinary proceedings or in the final decision made by Mr Thornhill. There is no evidence, apart from the claimant's assertion, that Mr Dyke influenced the claimant's conduct on the occasion that he failed to apply activator. The claimant was obviously not being observed by Mr Dyke at that time he did not apply the activator to the glass sun roof in question; the CCTV shows that the claimant took 30 seconds to process the sunroof and then stood waiting in a 237 second process.

25. There was nothing more that Mr Thornhill considered that he needed to do about the claimant's vague allegations about Mr Dyke. He considered them a smokescreen and I find that was not an unreasonable response in the

circumstances.

26. Throughout the disciplinary proceedings and the hearing before me, the claimant did not give any specific incident involving Mr Dyke except the reference to Mr Dyke sending him home in February 2017 and taking the decision to move him onto Op 66 in late September 2017. The claimant did not at any time raise a grievance against Mr Dyke or his treatment of him, either before or during the disciplinary process. The claimant's vague allegations of bullying and harassment by Mr Dyke does not remotely amount to evidence of unfairness in the decision making process of Mr Thornhill.

27. Stepping back and looking at the evidence of content and conduct of the disciplinary process, I find that Mr Thornhill did genuinely believe in the facts found and that he had grounds to so believe. I also find that the respondent did conduct sufficient investigation. There was no criticism by the claimant or his TU representatives of the disciplinary process apart from an alleged failure for the disciplinary officer to investigate the incident with Mr Dyke in February 2017 which HR had already dealt with.

28. I then consider whether Mr Thornhill's decision to dismiss fell within the band of reasonable responses Open to a reasonable employer in similar circumstances and I find that it did. Mr Thornhill addressed the question of mitigating factors and found that there were none. The claimant had not persuaded Mr Thornhill on the balance of probabilities that he had made a genuine mistake, had needed re-training and that a sanction short of dismissal was appropriate. I find that the dismissal was fair.

29. It is therefore not necessary to consider the appeal hearing process, but for completeness I have considered it. I found Mr Simpson also to be a credible and reliable witness. He too had approached his role as appeal hearing officer with diligence and in a measured manner, giving me a clear impression he wanted to do justice to the claimant.

30. The subject matter of an interpreter was raised again with Mr Simpson at the commencement of the appeal hearing. On this occasion we had further evidence provided. Mr M Nur had accompanied the claimant to the appeal hearing venue. He covertly recorded the conversation between himself, the claimant, Mr Peacock, the Regional Organiser, and Mr Keenan the TU shop steward. I have read the transcript. The transcript commences with Mr Peacock explaining the grounds of appeal he proposed to make in the appeal hearing, with the claimant concurring and explaining that they had been to see a solicitor and that this was the first time he had made a mistake as a human being. He had only been on the particular work station for three weeks and had ten years working ok.

31. The transcript show that there was a general discussion (covering about three sides of type written transcript) with the claimant fully participating in the

discussion, giving his version of events and agreeing to Mr Peacock's proposals on submissions to the appeal hearing. The claimant did not ask Mr Peacock to request that his brother interpret for him during the appeal hearing.

32. Prior to the commencement of the appeal hearing Mr Simpson the claimant, Mr M Nur and Mr Peacock had a conversation. In cross examination Mr Simpson said that Mr Peacock had confirmed that his discussions with the claimant had been understood and that he would represent the claimant. Mr Peacock felt that no interpreter was required. Mr Simpson took the view that the claimant had worked in the company for ten years, never required an interpreter in previous disciplinary proceedings, had never required an interpreter through any of the training he had been through and the trade union representative had said that an interpreter was not required. Mr Simpson therefore took the decision that Mr M Nur would not be permitted to participate as interpreter in the appeal hearing. In the circumstances that was not an unreasonable decision to reach.

33. The claimant also raised with Mr Simpson the concerns he had about Mr Dyke bullying and harassing him. Mr Simpson followed up the concern with HR and was informed that the incident had been resolved. He had therefore not investigated the incident further with the claimant. It had happened earlier in 2017. Mr Simpson noted that Mr Dyke had no involvement in the issue before him – he had not reported the incident, and had not had an involvement in conducting the investigation, disciplinary or appeal processes. The first time that the claimant had raised an issue with Mr Dyke was at the disciplinary meeting. Mr Simpson was satisfied that Mr Dyke played no role in the claimant's failure to apply activator to the sun roof in question. In the absence of any clear explanation or any examples of Mr Dykes' alleged bullying of the claimant, and due to the timing of the claimant raising a general allegation about Mr Dyke, Mr Simpson was entitled to reach a conclusion that there was no merit to the claimant's comment about Mr Dyke as part of his defence to the allegation of gross misconduct.

34. Mr Simpson further questioned the claimant on his conduct and reasons for his conduct on the day in question when he failed to apply activator to the sun roof. Following this Mr Simpson reached the conclusion that Mr Thornhill's decision to dismiss had been justified. He gave his reasoning in the appeal hearing outcome letter of 21st December 2017 which I have set out above at paragraph 10.48. I find that he was, on the evidence, entitled to reach his conclusion that the dismissal should be upheld.

35. I find that both the disciplinary and appeal hearings were conducted fairly and in a reasonable manner. There was no error in the disciplinary process that required "curing" by the appeal hearing.

36. The claimant raised at the hearing before me an allegation of inconsistency in the treatment of the claimant and the treatment of other

employees who had made mistakes on the production line but had not been dismissed, or even disciplined. The evidence of Mr Hussain (who did not attend) and Mr Michael, was, in essence, that there was a separate department which corrected errors made on the production line in manufacture and process. When a fault was found, it went into that department for repair and the item then rejoined the production line. There were no dismissals for making a mistake.

37. This evidence related to a period of time some ten – 12 years earlier. It related to a different type of sun roof and there was no evidence it involved the current safety processes such as the primer box and independent audits that are now in place within the respondent's business. I found that the evidence was of little weight and in any event had not been put to either Mr Thornhill or Mr Simpson in the disciplinary and appeal hearings to investigate and consider. The tribunal hearing is not a second level of appeal. It is an assessment of whether the claimant's dismissal was for a fair reason and whether a fair procedure had been followed. The evidence of Mr Michael and Mr Hussain does not undermine my conclusion that the answer to both questions is yes. The respondent has satisfied the burden of proof, the balance of probabilities, that the dismissal was for conduct and that the decision to dismiss fell within the reasonable band of responses.

38. The claim of unfair dismissal is not well founded and is dismissed.

Employment Judge Richardson
Signed on: 3rd April 2019