



EMPLOYMENT TRIBUNALS

Claimant: Mr S Mazhar

Respondent: Secretary of State for Justice

Heard at: Nottingham **On:** Monday 8 and Tuesday 9 April 2019

Before: Employment Judge Brewer (sitting alone)

Representatives

Claimant: Ms M Stanley of Counsel

Respondent: Mr M Lyons of Counsel

JUDGMENT

1. The claim for unfair dismissal is dismissed.

REASONS

Introduction

1. This case was heard over 2 days with some of the initial period spent reading the documents and the witness statements. Accordingly the witness statements were taken as read. The Claimant was represented by Ms Stanley and the Respondent by Mr Lynes. I heard evidence from the Claimant and on his behalf one of his union representatives Mr Lafferty. For the Respondent I heard from the dismissing officer Governor A Turner and the appeal officer Mr D Harding, Group Director.

Issues

2. The issues in the case were as follows:-

2.1 What was the reason for the Claimant's dismissal?

2.2 Was the reason a potentially fair reason within the meaning of Section 98(1) or (2) Employment Rights Act 1996.

3. If the reason for dismissal was conduct then the following issues fall to be determined:-

3.1 Did the Respondent have an honest and reasonable belief that the Claimant committed the act of misconduct for which she was dismissed?

3.2 Did the Respondent carry out as much investigation as was reasonable in all the circumstances?

3.3 Was the procedure followed within the range of reasonable responses?

3.4 Was dismissal within the range of reasonable responses?

4. If the reason for dismissal falls within Section 98(1)(b) Employment Rights Act 1996, the question is whether dismissal was reasonable in all the circumstances.

5. In relation to a finding of unfair dismissal the issue would be whether any compensatory award should be reduced on a just and equitable basis if the dismissal to any extent caused or contributed to by any action of the Claimant pursuant to Section 123(6) Employment Rights Act 1996.

6. In relation to any basic award the issue would be whether that should be reduced on a just and equitable basis where the Tribunal considers that any conduct of the Claimant before the dismissal so justifies pursuant to Section 122(2) Employment Rights Act 1996.

7. Finally there should be consideration of whether if the dismissal is procedurally unfair what the chance of a fair dismissal was had the correct procedure been followed and therefore whether there should be a proportionate reduction in any compensation pursuant to the principles in **Polkey**.

The Law

8. Other than the matters raised above in the issues, the question of whether the dismissal was fair or unfair is set out in Section 98 Employment Rights Act 1996 and in particular Sections 98(4) and (5). I remind myself that it is not for me to substitute my view for that of the Respondent in this case.

9. Given that the reason for dismissal is said to have been, at least in part, related to matters which took place outside of work, I have taken into account the following cases:-

- **Singh v London Country Bus Services Limited** [1976] IRLR 176
- **Thomson v Alloa Motor Co Limited** [1983] IRLR 405
- **Lloyds Bank Plc v Bardin** EAT 38/89
- **Moore v C and A Modes** [1981] IRLR 721
- **Gunn v British Waterways Board** EAT 138/81

10. I have also considered paragraph 31 of the ACAS Code of Practice on disciplinaries (along with the code generally).

11. In relation to the label used by the Respondent of 'conduct' for its dismissal an issue was raised by me in the hearing whether that was the correct label and I have dealt with that in the judgment below. I have had regard to a number of cases in this respect including: **Abernethy v Mott, Hay and Anderson** [1974] ICR 323; **Brito-Babapulle v Ealing Hospital NHS Trust** [2014] EWCA Civ 1626; and **Jocic v London Borough of Hammersmith and Fulham and Others** EAT 0194/07.

Facts

12. I make the following findings of fact. The Claimant was employed as a Prison Officer by the Respondent from 18 February 2002 until he was dismissed for gross misconduct on 24 May 2018 which for the purposes of this claim is the effective date of termination.

13. At the date of dismissal the Claimant was employed at HMP Sudbury which is an open prison.

14. The Claimant was subject to professional standards set out in a document headed "The Professional Standards Statement" which appears at pages 79E and 79F of the bundle. Amongst other things this says as follows:

"Prison service staff are expected to meet higher standards of professional and personal conduct in order to deliver the prison service vision. All staff are personally responsible for their conduct. Misconduct will not be tolerated and failure to comply with standards can lead to action which may result in dismissal from this service."

This document therefore identifies and clarifies the key standards of professional and personal conduct expected of all staff. It should be noted that this is not an exhaustive list. Any conduct that could undermine the work of the service is not acceptable.

15. Under the heading "Criminal Activity" this document says as follows:

"Staff must not be involved in any criminal activity. They must inform the Governor or head of group as soon as possible if they are charged with or convicted (including a police caution) of any criminal offence."

16. The Respondent operates a national disciplinary policy created by the National Offender Management Service and this starts at page 311 of the bundle. It is a long document but for our purposes the key sections are as follows. At page 317, under the heading "Disciplinary Investigation", it says at 4.2:

"If a member of staff has been convicted of a criminal offence it may not be necessary to undertake an investigation and the summary dismissal procedure may be used."

17. At page 330 of the bundle, at Section 8.9 of the procedure, it states under the heading "Summary Dismissal" as follows:

"Summary dismissal can be used for a member of staff who has received a criminal conviction."

18. Attached to the procedure is annexe A which is guidance for using the procedure. This deals with a number of matters but for our purposes the following are material. At page 338 of the bundle under the heading "Gross Misconduct" the guidance sets out a number of examples of gross misconduct. This includes:

"Conviction of a criminal offence – or receipt of a Police caution for an offence – such as..."

19. There is then set out a number of criminal offences. It is expressly not an exhaustive list but does indicate that a conviction for a criminal offence can amount to gross misconduct.

20. On page 339, also under the heading of "Gross Misconduct", the guidance states:

"Serious cases of general misconduct may also amount to gross misconduct if they are of a nature that makes any further relationship of trust between NOMS and of the member of staff concerned untenable."

21. At page 341, under the heading "Staff Convicted of Criminal Offences", the guidance states as follows:

"All staff should be aware that if they are convicted of criminal offences they run the risk of dismissal or other disciplinary action. This applies to offences committed off duty, as well as those committed at work. Although there are clear cut cases where individuals, by their actions, clearly disqualify themselves from continued employment in the service, there are others where a fine judgment has to be made. The service will adopt a case by case approach. The key question is the effect that the conviction will have on the individual's employability and any future relationship of trust with NOMS. When dismissal is being considered the following issues will be taken into account..."

22. There then follows a list of a number of matters which essentially relate to the relationship between the employer and the employee concerned.

23. Finally at page 342 of the bundle the guidance states, under the heading "Convictions Resulting in a Prison Sentence", that:

"A member of staff who is convicted of a criminal offence and is awarded a custodial sentence can be dealt with under the summary dismissal procedure."

24. Just dealing with a point raised by Ms Stanley in her submissions in relation to the foregoing, she argued that the summary dismissal procedure is limited to convictions resulting in a custodial sentence and in support of that she referenced page 342 of the bundle which I have quoted above. However as I have also pointed out, in the procedure itself at page 317 of the bundle, the process says:

"If a member of staff has been convicted of a criminal offence it may not be necessary to undertake an investigation and the summary dismissal procedure may be used."

I therefore conclude that the summary dismissal procedure may be used where there is a conviction whether or not there has been a custodial sentence even though the words I have quoted are under the heading "Disciplinary Investigation". It seems to me wrong to read into paragraph 4.2 of the procedure (page 317) the words "and is awarded a custodial sentence" simply because those appear in the guidance set out at page 342 of the bundle. I would also add that in evidence both the Claimant and Mr Lafferty conceded that the summary dismissal procedure was an appropriate procedure to use in the Claimant's case.

They did not take issue with that in any way.

25. the summary dismissal procedure is actually under set out under the heading "Summary Dismissal" which appears at page 330 of the bundle. It states that the procedure is that that the member of staff must be invited to a meeting to discuss the dismissal at which they have the right to be accompanied by a trade union representative or work colleague.

26. On 7 September 2017 the Claimant was involved in what at this stage I will call an altercation. This led to a complaint against the Claimant and on 20 October 2017 he attended a voluntary Police interview. At that interview the Claimant was shown footage from a dashboard camera in a car in which he had allegedly committed an offence. At that meeting the Claimant told the Police that there were a number of CCTV cameras at the location where the incident occurred which they should investigate.

27. On 19 November 2017 the Claimant sent an e-mail to Governor Turner and that appears at page 52 of the bundle. He says:

"I am writing to inform you that an allegation of assault has been made against me. I am currently working with the Police voluntarily and will update you with any information."

28. On 4 December 2017 Governor Turner sent to the Claimant the letter which appears at pages 54 and 55 of the bundle. In this letter the Claimant was told that he was being suspended following the alleged incident and it states:

"I have decided that you should be suspended, rather than place you on alternative duties or detached duty because you are charged with a criminal offence of assault that makes your position untenable until it is investigated and the facts established."

29. On 13 December 2017 (page 52 of the bundle) the Claimant wrote again to Governor Turner in an e-mail stating:

"I am writing to inform you as per my previous e-mail to keep you updated. I have just received a letter through the post from the courts. It is officially informing me that I have been charged with common assault and that I am required to attend court in Nottingham on 14/12/2017."

30. The Claimant did attend court on 14 December 2017. He then wrote again to Governor Turner (page 52 of the bundle) in an e-mail on 15 December 2017 as follows:

"I just wanted to update you as to the proceedings at court on 14 December 2017. The Judge was informed of further evidence in my defence by my legal team, evidence not submitted by the Police. Due to this the Judge has decided to defer any proceedings at this time until he has sufficient time to explore all evidence available to him. A hearing will then take place in February 2018."

31. At this stage the Respondent commenced its ordinary disciplinary proceedings and appointed an investigating officer. However because there was, in the end, a conviction in this case that process, including the investigation, was effectively abandoned and the summary dismissal procedure invoked.

32. The Claimant appealed against his suspension to Neil Richards, Director of the Prison and Probation Service. That appeal was rejected, and Mr Richards' letter to that effect appears at page 66A of the bundle.

33. The Claimant attended for a court hearing on 2 February 2018. At that hearing he pleaded guilty to common assault contrary to Section 39 of the Criminal Justice Act 1988. The Claimant was sent the documents which appear at pages 120, 121 and 122 of the bundle. These documents are dated 2 February 2018. They set out the offence, that the Claimant was given a conditional discharge and that he was ordered to pay compensation to the complainant of £100, a victim surcharge of £20 and court costs of £85, making a total of £205. The Claimant had until 2 March 2018 to make these payments.

34. On 9 February 2018 the Claimant wrote to Governor Turner to update him on the case. He says:

"I pleaded guilty to an element of that day's events, the matter was referred for a Newton Hearing. The outcome of this hearing was a conditional discharge, the Judge accepted that I acted in self-defence. I have not been punished for the offence."

35. On 15 February 2018 Governor Turner wrote the letter which appears at page 77 of the bundle to the Claimant inviting him to a hearing under the Summary Dismissal Procedure to take place on 22 February 2018. The letter says:

"At the meeting your conviction will be discussed, and you will have the opportunity to present any mitigation."

36. In the event that hearing was rearranged for 13 March 2018 (page 78 of the bundle). The disciplinary hearing duly took place on 13 March 2018 and Governor Turner summarily dismissed the Claimant at the end of that hearing. That dismissal was confirmed in a letter dated 16 March 2018 and that appears at page 92 of the bundle.

37. The Claimant appealed against his dismissal by notice on 22 March 2018 (page 93 of the bundle).

38. The Claimant's appeal was heard on 22 May 2017 and the notes of that start at page 189 of the bundle.

39. The Claimant was told at the end of the appeal hearing that "the decision to dismiss you was reasonable and proportionate against the test, and therefore I do not uphold your appeal" (page 205 of the bundle). The outcome of the appeal was confirmed in writing by the Appeal Manager, Mr Dave Harding and that appears from page 209 of the bundle.

40. Those then are the matters largely agreed in this case. There remain a number of matters in dispute and these are discussed further below.

Discussion and Conclusion

41. The Claimant's attack, if I may put it that way, on the Respondent's decision and process is rooted in a number of concerns. I put these as follows:-

41.1 Governor Turner was biased against the Claimant and he therefore prejudged the substance of the disciplinary case against him;

41.2 There was no "formal investigation";

41.3 The Respondent did not carry out a proper balancing exercise in relation to the criminal offence;

41.4 The wrong procedure was used;

41.5 Dismissal was not within the range of reasonable responses.

42. In essence the Claimant attacks all aspects of the form and substance of the decision to dismiss. He says that there was neither an honest nor reasonable belief that he committed an act of gross misconduct based on a failure to investigate, bias and prejudice, and that given all of the facts and circumstances, no employer acting reasonably could have dismissed and thus in every sense the dismissal was unreasonable and therefore unfair.

43. I turn first to the question of Governor Turner's alleged bias. In part it was suggested by the Claimant in his evidence that he had previous issues at HMP Sudbury and that to some degree or other he felt that these were related to his race. In this context I note page 51A of the bundle which is an e-mail to Governor Turner from 29 August 2017, from an individual called Waljinder Sandhu, which states that he had concerns about colleagues:

"Helen Rosey, Shabba Mazhar and David Powell are being treated unfairly by some of your senior management team. For whatever reasons, my colleagues are being treated differently, by highlighting this issue I am hoping not to be treated differently by your management team."

44. It would seem therefore that there were concerns about various individuals being treated differently, although on the face of it there does not look to be any issue of racial or religious commonality between them. Nevertheless, and notwithstanding that at the date of the disciplinary matters this case is concerned with the Claimant had a number of outstanding grievances, the weight of the evidence I heard was that it was not being suggested by the Claimant that Governor Turner was treating the Claimant less favourably because of his race, although I do note that in his evidence, Mr Lafferty referred to the Governor behaving in a manner which he called "sectarian", by which he meant in a way which related to the Claimant's religion. I reject that allegation. Simply put, there was absolutely no evidence of discrimination before me either in the bundle or in anything I heard, and the Claimant's claim is solely for unfair dismissal. It seems to me that had there been a hint of discrimination, whether by reason of race, religion or otherwise, then the Claimant would have brought that matter to the Tribunal. He did not. The issue which arose relating to whether Governor Turner was biased arose because Mr Lafferty's evidence was that Governor Turner made the following statement to him at a meeting:

“I cannot believe you’re representing him, you’re being drawn into his lies.”

45. This allegation was put in a letter to Governor Turner [page 78B]. Governor Turner’s evidence on this was as set out at paragraph 18 of his witness statement. He says he was aware of the allegation as the letter was provided to him a few days before the hearing. He says he met with Mr Lafferty and discussed the content before the hearing, and he says the allegation is unfounded and untrue. I note here that Governor Turner’s unchallenged evidence at paragraph 5 of his witness statement is that he had little contact with the Claimant before the matter arose to which this hearing relates. He had some interaction with the Claimant over a small number of employment concerns and had one formal attendance meeting with him.

46. Mr Lafferty’s evidence about the alleged comment was that at some point, he could not recall when, he recalls that met Governor Turner at the prison gate, they went to the Governor’s office. They had a conversation during which the Governor told Mr Lafferty that the Claimant’s case would be heard under the summary procedure. Mr Lafferty said in evidence that he could not recall if it was at this meeting that the comment was made or whether it was made on another day. He could not recall who called the meeting at which the comment was made, or why, or indeed anything else about it. Mr Lafferty said there was no context for the making of that statement and he then went on to say that the Governor was shouting and lost control. He made no mention of this either in the letter he sent at page 78B or at the hearing (which I shall come to in a moment) or indeed in his witness statement. Mr Lafferty’s reason for not mentioning the Governor shouting and losing control in his letter was “so as to preserve the relationship” between him and the Governor. He said that he did not think that mentioning that would assist him to have the Governor replaced as the person chairing the disciplinary hearing. So in short, Mr Lafferty could not remember how the meeting came about, he cannot remember whether it was on the same day as a disciplinary hearing or beforehand, he cannot remember who called the meeting or why, he does remember the Governor shouting and losing control and he does remember specifically the Governor saying the words I have quoted above.

47. Turning to the notes of the disciplinary hearing, it was asserted by the Claimant that the exchange at the outset of that hearing shows that the concern had been raised and that in effect Governor Turner did not disagree. However, that is not, in my judgment, the correct reading of the notes. The notes start at page 79 of the bundle. Mr Lafferty states at the outset, and clearly for the record, that Governor Turner had seen the letter and thus the allegation. Governor Turner confirms he had. Mr Lafferty then says this:

“I still stand, we still stand by that ...”

48. The clear inference from use of the word “still” is that Mr Lafferty was well aware that Governor Turner had refuted he ever said the words raised in the letter and explains his response – “ok” – at the hearing. He had already made his denial to Mr Lafferty before the hearing. 49. At the hearing Mr Lafferty does not say why the Governor is not suitable, he does not raise the Governor’s alleged demeanour at the prior meeting, he does not refer to the Governor having prejudged the Claimant by saying that he is already a liar in some way and in my judgment an experienced union representative, as Mr Lafferty is, doing their best for their member as he says he did, would have raised the arguments

at the hearing which was being recorded. The Governor's response "ok" is simply an acknowledgement in my judgment of the fact that these issues had been aired previously.

49. I found Governor Turner to be a clear and considered witness. He did not strike me to be someone who would use throwaway language of this sort in front of a Trade Union representative in the manner suggested by Mr Lafferty. Given the fact that Governor Turner had little to do with the Claimant previously, given that Governor Turner had not previously been accused by the Claimant of unfair or unfavourable treatment and given his clear and unequivocal denial, coupled with the extremely vague evidence of Mr Lafferty about the circumstances in which the alleged comment was made, and, particularly given the inflammatory nature of the comment, I should have though the occasion and circumstances of its utterance would be memorable, I prefer the evidence of Governor Turner on this point.

50. Matters related to the Governor's approach to the evidence and the Respondent's alleged failure to conduct an investigation are of course inextricably linked with the given reason for dismissal and its justification. I have chosen therefore to deal with these matters together.

51. First it seems to me that Ms Stanley's submission that there was no formal investigation is misconceived. I put to her at the hearing that the disciplinary hearing itself clearly formed part of the investigation, a point which she conceded. In this case there is no suggestion that the Claimant did not commit common assault, not could there be as he pleaded guilty to the offence. Ms Stanley complains that the Governor's refusal to look behind the conviction is evidence of a lack of investigation, evidence of pre-judgment and therefore shows a flawed procedure to the extent that the Governor cannot show a reasonable belief that the Claimant committed gross misconduct. I note in her submissions that Ms Stanley rolls together the notion of an honest and reasonable belief and thus she asserts that the Governor did not have an honest belief either.

52. So that begs the question: what did the Respondent know at the point of dismissal?

53. The Governor knew that the Claimant had been convicted of common assault. Governor Turner made it clear at the hearing that he was not going to "have a second hearing of the offence" [page 80]. The Governor had a detailed and in essence unchallenged account from the Claimant of how the offence occurred [see for example page 83 *et seq*]. In brief, the Claimant was called over to a car. He says he did not know who was in the car or why he was called over, but nevertheless he got into the car. He accepts that while in the car he committed the assault. The Claimant explained the background and in effect raised a mitigation point, which was that he was provoked [page 83].

54. At the conclusion of the hearing Governor Turner said that:

"assault is an offence that meets the criteria for summary judgment, and constitutes gross misconduct, the judgment from me is whether the offence is serious enough to warrant dismissal under the summary dismissal procedure. You have brought discredit on the service by your conduct off duty, that resulted in a member of the public being assaulted and you getting a criminal conviction for this assault. Whilst I believe the

conviction alone meets the criteria for summary dismissal, I also believe you have compromised the HMPPS value of being open, honest and transparent, you have not provided a clear and transparent account of what happened and what the outcome of the court hearing was [...] I believe a line has been crossed, and makes your continued employment untenable, due to not only your assault conviction, but also you have demonstrated a lack of integrity, key to the values of the organisation”

55. The reason for dismissal was thus clear. The Claimant was not dismissed simply because of what took place during the assault, although the Governor considered he could be, but for the composite reasons of the assault, the Claimant’s alleged lack of what I will call candour and that his continued employment was untenable.

56. I shall look at these in turn.

57. Turning to the conviction, as indicated, there is no dispute that the Claimant pleaded guilty to common assault. As I have set out above, the principles from the disciplinary procedure, the guidance contained within it and the Respondent’s values mean that any prison officer convicted of an offence falls to be summarily dismissed under the summary dismissal procedure (see 8.9, page 330) and conviction of a criminal offence is one of the examples of gross misconduct [page 338]. Staff of the Respondent must not bring discredit on the service [page 335].

58. It seems to me self-evident that the appellant’s case was one to which the summary dismissal procedure applied, and it was applied. Given that the Claimant pleaded guilty it also seems to me to be clear that the Respondent honestly and reasonably believed the Claimant had been convicted of a criminal offence. That much is plain. Ms Stanley complains that Governor Turner did not make proper findings of fact about what happened during the assault or what she calls the wider factual context. But as I have indicated above, there is no suggestion that Governor Turner did not accept the entirety of the Claimant’s account which he gave in detail at the hearing. He did not err, it seems to me, by not reciting those details in his summation and dismissal reasons. Governor Turner’s decision was to dismiss having taken account of what the Claimant said at the hearing. Critical to that of course was the second limb of the reason for dismissal, the candour point to which I now turn.

59. The points to note here are as follows. The professional standards statement which applied to the Claimant [page 79E and 79F] include that staff “must inform the Governor [...] as soon as possible if they are charged with or convicted [...] of any criminal offence”.

60. Turning first to page 52 of the bundle I note that on 13 December the Claimant wrote an email to Governor Turner saying he had “just received” a letter informing him that he had been charged with common assault and that there would be a hearing the next day. In his oral evidence the Claimant confirmed he received this a few days before he emailed the Governor. The words “just received” are vague and suggest he had received the letter and emailed immediately, but that clearly was not the case. I also note that the summons was posted to the Claimant on 16 November and I consider it very unlikely that he received it only a few days prior to his email of 13 December.

61. The trial commenced on 2 February 2018. The Claimant did not write to the Governor until 9 February [page 76]. He says he pleaded guilty but that "I have not been punished for the offence. In fact the Claimant said at the hearing that on the day of the Trial, following his conviction, he paid into court £205.00. There was some considerable discussion about this evidence. At pages 120 – 122 there is a copy of the conviction and the "Notice of fine and collection order". This is dated 2 February and states that the amount must be paid on or before 2 March 2018. The notice confirms that the Claimant had to pay £100.00 compensation, £20.00 victim surcharge and court costs of £85.00, a total of £205.00. At page 122 it is clear that the only way to pay is either on line or by using a specific payments telephone line, details of which are set out on page 122. The notice also contains a Division Number and an Account Number, both of which are needed to make payment whether doing so on line or by phone. The Claimant said in evidence that he simply paid to the court, immediately after the hearing on 2 February 2018, the total sum of £205.00. He did not see the breakdown until later. As to how he paid, he said that a member of the court staff gave him a piece of paper and his solicitor told him to go to the cashier's office to pay, however that was closed. He says he paid through 'internet banking' and that there was a record on his mobile phone. That record showed a payment date of 8 February, not 2 February. The Claimant, when asked about this apparent discrepancy, said that this happened sometimes, and he had raised it with his bank.

62. None of this detail appeared in the Claimant's witness statement and it also does not appear in a letter from the Claimant's solicitor which details her recollection of the events with which we are concerned [pages 423/424].

63. There are therefore several issue of candour here. First, it took the Claimant a week to tell the Governor what happened at the trial. Second, the Claimant says he was not punished despite having to pay compensation (even thus ignoring the surcharge and court costs) and which the Claimant knew about on 2 February. Finally we have the date of payment issue which, based on the best evidence, was 8 February 2018. I should add that Governor Turner was in possession of the documents at pages 120 – 122 by the time of the disciplinary hearing and was thus aware of these issues.

64. Finally I turn to the Respondent's position that the Claimant's continued employment was untenable. I can deal with this quite shortly. Governor Turner's view was that his prison officers face provocation every day. It is part and parcel of the work. The officers are trained not to react as the consequences of reacting can be extreme. Here, he said, he was faced with an officer who not only put himself into a difficult situation, by voluntarily getting into a car without knowing who was in it, by not leaving when he found out, but who reacted by assaulting the driver after being provoked. From this and the other limbs I have referred to above Governor Turner concluded that the Claimant had crossed a line as he put it, and the Claimant's continued employment became untenable as a result.

65. It is the combination of reasons for dismissal, the composite nature of it, which gave rise to a discussion about the potentially fair reason. The Respondent's reason was conduct. Dealing with that first, I conclude that the evidence is more than sufficient to show that Governor Turner had a genuine and reasonable belief that the Claimant had been convicted of common assault, and indeed the background and thus the circumstances which led to the crime. That belief was based on as much investigation as was reasonable in all the

circumstances. It comprised the documents I have referred to above and the detailed hearing and appeal at which the Claimant was represented by experienced trade union officers.

66. Given the chronology of the charge, trial and outcome, and looking at what the Claimant told the Governor, and when, I find that there was sufficient evidence from which it was reasonable for the Governor to conclude that the Claimant had been less than candid about what had occurred.

67. Given the values of the Respondent, the duties of the Claimant and his training and experience, I find that it was reasonable for the Governor to conclude that the Claimant's response to being provoked, which led to the conviction, was sufficient to justify the conclusion that his continued employment was untenable.

68. For all of those reason I find the dismissal to have been fair in all of the circumstances and dismiss the claim.

Employment Judge Brewer

Date 3 May 2019

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE