



# EMPLOYMENT TRIBUNALS

**Claimant** Mr E Shein

**Respondent** SME Group plc

**Heard at:** Exeter

**On:** 9 & 10 October 2019

**Before:**  
**Employment Judge** Goraj

**Representation**

**Claimant:** in person

**The Respondent:** Mr S Jagpal, consultant

**JUDGMENT** having been sent to the parties on 23 October 2019 and written reasons having been requested in accordance with Rule 62 (3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:-

## REASONS

1. By a claim form which was presented to the Tribunals on 9 June 2019 the claimant alleged that he had been unfairly dismissed by the respondent. The claimant's claim form is at pages 2-13 of the bundle referred to below. The Tribunal has noted in particular, the details contained at paragraph 8.2 of the claim form (page 8).
2. The claim is resisted by the respondent. The respondent's response is at pages 14-23 of the bundle. In summary, the respondent contended that the claimant had been fairly dismissed by reason of alleged gross misconduct in respect of an alleged incident on 26 February 2019.

## DOCUMENTS

3. The Tribunal was provided with an agreed bundle of documents (“the bundle”) to which the Tribunal added a small bundle of additional documents including (a) a copy of a statement of main terms of employment signed by the claimant on 14 July 2018 and (b) extracts from the respondent’s CCTV footage on 26 February 2018 relating to the claimant’s interaction with 2 work colleagues Mr Sandeep Bhatia (“Mr B”) and Mr Kirit Dodiya (“Mr D”).

## WITNESSES

4. The Tribunal has received witness statements and has heard oral evidence from the following witnesses : -
  - (a) The claimant
  - (b) The respondent - Miss Sara Benitez Hinton (recruitment co - ordinator) investigating officer, Mr Fitzroy Licorish, (General Manager) dismissing office, Mr Mostefa Hezili (Operations Manager) appeals officer.

## THE ISSUES

5. The Tribunal clarified the issues which it is required to determine with the parties at the commencement of the Hearing as follows: -
  - 5.1 **The reason for the claimant’s dismissal - sections 98 (1)/ (2) of the Employment Rights Act 1996 (“the Act”).** The respondent contended that the reason for the claimant’s dismissal was his alleged gross misconduct on 26 February 2019 namely, the claimant’s alleged violent/ aggressive conduct in particular, towards Mr B as recorded in the respondent’s CCTV footage. The claimant disputed that the alleged conduct was the real reason for his dismissal. Whilst the claimant accepted that he pushed Mr B on 26 February 2019 he contended that the real reason for his dismissal was that one of the directors in the business Mr Aly had been trying to get rid of him. The claimant relied, in support of his contentions on the alleged procedural matters referred to below. The claimant further contended during the course of the Hearing that the dismissing and appeal officers had been acting on the instructions of Mr Aly.
  - 5.2 **The investigatory/ disciplinary process and decision to dismiss -section 98 (4) of the Act.)** The Tribunal is required to determine whether the respondent conducted a fair investigatory and disciplinary process. The Tribunal is also required to determine whether the sanction of dismissal was, in all the circumstances, fair for the purposes of section 98 (4) of the Act.

- 5.3 In summary, the claimant contends that the respondent did not adopt a fair procedure including in respect of the following :- (a) the manner in which he was notified of his suspension (by another employee rather than HR) (b) that he was denied access to his company emails following his suspension which prohibited him from accessing the evidence which he required properly to defend himself in the subsequent disciplinary proceedings and (c) the respondent's alleged failure to give proper consideration/investigate properly the allegations which the claimant raised during the investigatory, disciplinary and appeal hearing regarding the circumstances of the incident including the alleged unfair treatment and provocation to which he had been subject (including the stopping of the projects for which he was responsible). The claimant also contended that dismissal was not, in all the circumstances of the case, within the range of responses of a reasonable employer in the light of the above-mentioned provocation/ treatment and the further the claimant's previous good conduct and length of service. In brief summary, the respondent contended that it had conducted a fair investigatory and disciplinary procedure and further that the claimant's dismissal was, having regard to the nature of the claimant's conduct on 26 February 2019, fair in all the circumstances of the case.
- 5.4 The claimant raised at the commencement of the hearing, further potential allegations relating to alleged inconsistency of treatment in respect of his dismissal. Such allegations were not pleaded in the claimant's claim form and were not referred to in the claimant's witness statement. The respondent indicated that it would resist any attempt by the claimant to seek to rely on such matters at such stage of the proceedings. The respondent further indicated that it was likely that if the claimant was given leave to proceed with any such allegations by way of amendment to his claim form, it would seek a postponement of the hearing in order to bring further witness evidence to address any such allegations and would also seek costs in respect of any adjournment. The Tribunal explained to the claimant the process which would be required if the claimant wished to pursue such allegations. After being given an opportunity to consider his position the claimant confirmed to the Tribunal that he did not wish to pursue any such allegations.
- 5.5 If the claimant succeeds in his complaint of unfair dismissal, the Tribunal is also required to consider (a) whether there should be any adjustments to any basic or compensatory awards pursuant to sections 122 and/or 123 of the Act (for Polkey and/or contributory conduct) and /or (b) any adjustments for any alleged breaches of the ACAS Code of Practice 1 Code of Practice on Disciplinary and Grievance Procedures 2015 ("the ACAS Code"). The claimant

contended that the respondent did not comply with the provisions of paragraphs 5 and/or 12 of the ACAS Code in respect of the investigation into the matters of concern raised by the claimant relating to his alleged treatment prior to and leading to the events of 26 February 2019.

## **FINDINGS OF FACT**

6. The claimant was employed by the respondent from 14 July 2008 until his dismissal without notice on 15 March 2019 which is the effective date of termination for the purposes of the Act. There was a dispute between the parties as to the claimant's start date as the claimant believed that he had commenced his employment with the respondent prior to the above date. Having had regard however to the additional documentary evidence which was provided by the respondent (including the statement of terms and conditions of employment referred to above) and the lack of any other documentary evidence from the claimant the Tribunal is satisfied, on the balance of probabilities, that the Claimant's employment with the respondent started on the above mentioned date.
7. The documentation which was completed by the claimant in July 2008 included a declaration that he had read the respondent's employee handbook.
8. The claimant has a masters degree in engineering. The claimant was originally employed by the respondent as a hotel receptionist and subsequently a hotel general manager before being appointed as a business development manager.
9. In his role as business development manager, the claimant had management responsibility for the refurbishment of the Costa coffee business/ franchise and for a Hotel in London including the management of staff at the hotel (including with the assistance of HR) employment related issues.
10. Prior to events in question, the claimant had a clear disciplinary record and was well regarded by a number of directors and managers within the business including Mr Sayed Esmail (director/ owner) and Mr Licorish (the dismissing officer)

## **The respondent**

11. The respondent is a privately-owned holding company that operates under franchise license for several retailers within the catering and hotel industry. The respondent employed approximately 1,500 employees at the time of the claimant's dismissal.

### **The respondent's Handbook and associated matters**

12. The respondent has a small HR function. The respondent issued an updated employee handbook in April 2018 which is at pages 27-42 of the bundle. The Tribunal has noted the contents of this handbook including the provisions relating to the respondent's disciplinary procedure (paragraph 14 at pages 39-40 of the bundle) and the examples of gross misconduct (at pages 41-42 of the bundle) which included fighting, physical assault and threatening behaviour.
13. The claimant denied that he received /had knowledge of the respondent's employment handbook dated April 2018. The claimant further contended that the only examples of gross misconduct of which he was aware was in respect of drinking on duty or theft.
14. The respondent contended that the claimant was provided with a copy of/would, in any event, have been aware of the terms of the respondent's Handbook. The Respondent has not produced to the Tribunal any documentary or specific oral evidence to demonstrate that the 2018 edition of the Handbook was issued to/ or was made available to the claimant.
15. The Tribunal is however satisfied that the claimant would, on the balance of probabilities, have been aware of the terms of the respondent's employee handbook dated 2018 relating to investigatory/ disciplinary matters having regard in particular to the following :- (a) the claimant was provided with a copy in 2008 (b) the claimant's management position as a business development manager and (c) the claimant's responsibility and involvement in employee -related matters at the respondent hotel in London as referred to above.
16. The Tribunal is further satisfied, that the claimant, as a highly educated senior manager would/ should in, any event, have reasonably appreciated that fighting, physical assaults or threatening behaviour were matters which were likely to be considered by the respondent as matters of potential gross misconduct.

### **The working relationships**

17. Following the death of Mr Esmail senior in 2014, the ownership/senior management of the business passed to Mr Esmail's widow and two sons Mr Aly and Mr Sayed. The claimant had a good working relationship with Mr Sayed. The claimant had a difficult working relationship with Mr Aly whom the claimant believed had treated him unfairly including by bullying and undermining him in effort to get the claimant to leave the business.

18. The claimant raised concerns on a number of occasions about the way in which he was treated by the respondent including by tendering his resignation (pages 43, 44, 45, 48, 50). This culminated in the notice of resignation dated 7 February 2019 which the claimant gave to Mr Sayed (page 51). The claimant's resignation was subsequently withdrawn following discussions with and reassurances from Mr Sayed. The claimant did not at any time raise a formal grievance via the respondent's grievance procedure regarding his alleged treatment.

#### **The events of 26 February 2019**

19. On 26 February 2019 the respondent became aware of alleged aggressive and threatening behaviour by the claimant, at the respondent's head office, towards Mr B and Mr D.

#### **The claimant's suspension**

20. As a result of such incident, the claimant was suspended on full pay pending an investigation on the basis set out in the letter from Miss Hinton to the claimant dated 26 February 2019 (page 53). The claimant was instructed to refrain from contacting or discussing the matter with any employee or client of the respondent. The claimant was however advised that if he wished to contact any employee whom he thought could assist him in preparing a response to the allegations against him he was invited to contact Miss Hinton in order that arrangements could be made for them to be available for interview.

21. The claimant was advised of his suspension by a member of staff.

22. The claimant wrote to Miss Hinton by email dated 28 February 2019 complaining that his email password had been changed thereby denying him access to company emails and raising concerns that it would inhibit his ability to defend himself against false allegations/defend his actions. This email is at page 54 of the bundle. There was further correspondence between the claimant and Miss Hinton on 28 February 2019 including the email at page 56 of the bundle in which the claimant states that he had been advised by Miss Hinton that the respondent's employment advisers had advised that he should not be given access to his emails prior to their meeting the following day and confirmation from Miss Hinton that it would be discussed at such meeting

#### **The investigatory meetings on 1 March 2019**

23. The Respondent (Miss Hinton and Ms Cord) conducted investigatory meetings with employees on 1 March 2019 including Mr B and Mr D (pages 59 – 63) both of whom alleged that the claimant had acted towards them in an aggressive and threatening manner including that

the claimant had pushed Mr B onto the table and that the claimant had pushed Mr D in the face.

24. Miss Hinton and Ms Cord also met with the claimant subsequently on 1 March 2019. The respondent's notes of the meeting are at pages 65-69 of the bundle. In summary, the claimant explained to them the alleged difficulties which he had encountered including that (a) senior managers/ directors had been interfering with his work and bullying and harassing him and the events leading up to his resignation on 7 February 2019 and (b) that he had tried unsuccessfully to raise such matter with Mr B and Mr D on 26 February 2019.
25. The respondent shared with the claimant the respondent's CCTV footage of the incident on 26 February 2019 in response to which the claimant denied that he had grabbed Mr B or raised his hands in anger to Mr B or Mr D or otherwise threatened them (page 67). The claimant did however accept that he had pushed Mr B. In response to a question from Miss Hinton as to whether he felt that he could have handled the situation in a different way the claimant responded that he did not believe that he had done anything wrong and that if Mr Sayed and Mr Aly sat down and discussed their differences everything would move forward in the company.
26. At the conclusion of the investigatory meeting, the claimant informed the respondent that he understood that a fellow employee (Andrea) was telling people that he had been suspended and would be dismissed (page 68).

### **Subsequent events**

27. The claimant emailed Miss Hinton on 3 March 2019 (page 74 of the bundle) providing further information regarding the concerns which had led to his resignation in February 2019.
28. The respondent undertook further investigations on 4 March 2019. The note of a meeting with Moiz Valliani, in which he stated that Mr B had not acted aggressively towards the claimant on 26 February 2019, is at page 75 of the bundle.

### **Letter dated 5 March 2019**

29. Miss Hinton of the respondent wrote to the claimant by letter dated 5 March 2019 advising him that he was required to attend a disciplinary hearing on 8 February 2018 which would be chaired by Mr Licorish. This letter is at page 76 of the bundle. In summary, Miss Hinton further advised the claimant that the allegations which he would be required to meet were that on 26 February 2019 he had behaved in an aggressive manner towards Mr D and Mr B as set out in that letter including that

he had made physical contact with them. The respondent included with the letter the minutes of the investigation meetings and confirmed that the CCTV footage which had been shown at the investigation meeting would be available for the claimant to view at the disciplinary hearing. The claimant was advised that the respondent viewed the matter as potential gross misconduct which if proven could lead to his dismissal. This letter is at pages 76 -77 of the bundle.

30. The claimant subsequently wrote to Miss Hinton by letter dated 5 March 2019 concerning the email trials between himself and Mr Sayed which he had previously forwarded to her and which had not been included in the disciplinary pack. Miss Hinton wrote to the claimant by email dated 6 March 2019 (page 79 of the bundle) confirming that they had been added to the disciplinary pack. These emails are pages 80 / 81 of the bundle. There is no evidence to indicate that the claimant asked Miss Hinton to include any further documentation in the disciplinary pack.

#### **The disciplinary hearing on 8 February 2019**

31. Mr Licorish conducted a disciplinary hearing on 8 February 2019. The respondent's notes of the meeting at pages 83 - 88 of the bundle. The Tribunal is satisfied that these notes are a broadly accurate account of the meeting. The claimant did not raise any objections to Mr Licorish conducting the hearing.
32. In brief summary: - (a) the claimant denied that he had pushed Mr D's face or that he had otherwise acted aggressively towards him. (b) complained that he had been bombarded with emails from Mr D/ Mr B interfering with the performance of his duties (c) contended that the claims against him had been orchestrated (d) contended that Mr B had said rude things to him/had pushed him over the edge and (e ) accepted that he had pushed Mr B in the chest but not with great force.

#### **The Claimant's letter of dismissal dated 13 March 2019**

33. Mr Licorish wrote to the claimant by letter dated 13 March 2019 (which was received by the claimant on 15 March 2019 which is the effective date of termination) dismissing the claimant with immediate effect by reason of gross misconduct for the reasons set out in his letter. Mr Licorish's conclusions regarding the incident on 26 February 2019 and reasons for the claimant's dismissal are stated at pages 93-94 of the bundle. These included in brief summary, that:- (a) the CCTV footage involving Mr B was very compelling as it clearly showed the claimant acting in an aggressive manner which culminated in the claimant physically assaulting Mr B by pushing him forcefully onto the desk (b) the footage did not show Mr B retaliating and (c) the footage also showed the claimant making intimidating hand gestures as if he was



going to hit Mr B (d) that the claimant went back into the office a second time shortly thereafter when he showed further signs of aggressive behaviour and (e) that whatever Mr D or Mr B may have done to provoke the claimant it did not excuse the claimant's unprofessional behaviour which involved the claimant making physical assaults and threats. Mr Licorish also stated in his letter that he did not consider that the CCTV recording involving Mr D showed conclusively what had taken place or that there was sufficient evidence to uphold the allegations relating to the claimant's alleged threats to Mr D.

34. Mr Licorish consulted with the respondent's employment advisers before the letter of dismissal was finalised. Mr Licorish denies however that he discussed the reasons for his decision (or received instructions from anyone regarding his decision to dismiss the claimant) and contended that it was his decision alone to terminate the claimant's employment. The Tribunal accepted Mr Licorish's evidence on this point including as (a) there is no evidence to suggest that he was subject to any instructions regarding the claimant's dismissal and (b) it is satisfied on the evidence that Mr Licorish gave careful consideration to the allegations including that he gave the claimant the benefit of the doubt with regard to the allegations relating to Mr D.

35. The claimant was advised of his right of appeal.

### **The claimant's appeal**

36. The claimant appealed against his dismissal by email dated 18 March 2019. The claimant's grounds of appeal are set out at pages 95-96 of the bundle. In summary, the claimant set out details of the alleged unfair treatment which he alleged he had experienced and contended that he had been provoked by Mr B and Mr D on 26 February 2019. The claimant further stated that whilst he did not deny pushing Mr B he had been subject to harassment and bullying from Mr B and other employees creating a hostile environment which had prompted his resignation on 7 February 2019. The claimant further stated that the fact that he lost control by pushing Mr B did not justify the disproportionate actions taken against him following the incident as detailed in that email. The claimant concluded his letter of appeal by saying that he had not caused Mr B Sandeep or Mr D any bodily harm and that in his opinion the matter had been blown out of proportion to get rid of him after previous attempts to do so had failed. The claimant did not express any remorse for his actions.

### **Appeal hearing**

37. The claimant subsequently attended an appeal hearing on 25 March 2019 which was conducted Mr Hezili. The notes of the appeal hearing, which are at pages 99 108 of the bundle, were subsequently signed by

the attendees to confirm that they were an accurate account of the meeting. The appeal hearing lasted for approximately five hours.

### **The letter dated 27 March 2019 dismissing the claimant's appeal**

38. Mr Hezili wrote to the claimant by email dated 27 March 2019 dismissing his appeal (pages 109-113 of the bundle). There is no evidence that Mr Hezili discussed the matter with anyone other than the respondent's employment advisers and/or that he was acting on instructions from anyone when deciding to dismiss the claimant's appeal. Mr Hezili's letter is a detailed letter in which he addressed the grounds of appeal raised by the claimant and set out the reasons why he had concluded that the respondent had acted in an aggressive and threatening manner (including physical contact in particular towards Mr B). Mr Hezili also rejected the claimant's complaints relating to the fairness of the procedure including with regard to his suspension. When reaching his decision to reject the claimant's appeal Mr Hezili also took into account that the claimant had shown no remorse or regret for his actions and he was therefore concerned that the claimant could act in a similar manner in the future.

### **THE LAW**

39. The Tribunal has had regard in particular to sections 98, 119 and 122-123 of the Act and also to the provisions of section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 and the ACAS Code.

40. The Tribunal has reminded itself in particular of the following:-

- (1) The starting point is section 98 (1) of the Act. It is for the respondent to establish the reason for the claimant's dismissal or, if more than one, the principal reason for the claimant's dismissal, including that it had a genuine belief in such reason and that it was for one of the potentially fair reasons permitted by section 98 (1)/(2) of the Act.
- (2) If the respondent is able to establish the reason for the claimant's dismissal, the Tribunal has to determine whether such dismissal was, in all the circumstances of the case, fair or unfair having regard to all of the matters set out in section 98 (4) of the Act. This includes whether (a) the respondent's belief that the claimant was guilty of the alleged misconduct was based on reasonable grounds and after undertaking reasonable investigations and (b) the respondent acted fairly or unfairly in all the circumstances

in treating the reason as sufficient for dismissal having regard to the size and administrative resources of the respondent and in accordance with equity and the substantial merits of the case. The burden of proof is neutral at this stage.

- (3) When considering the above, the Tribunal has to determine whether the overall procedure adopted by the respondent and also the decision to dismiss the claimant/to reject his appeal considered together, fell within the range of responses of a reasonable employer. The Tribunal is not entitled to substitute its own decision. When determining the fairness of the procedure adopted by the respondent the Tribunal has to have regard to the overall disciplinary/appeal process including whether the respondent adhered to its own policies and the provisions of the ACAS Code.
- (4) Dismissal for a first offence may be justified, notwithstanding the lack of any previous misconduct, including where (a) the act of misconduct is so serious that dismissal is a reasonable sanction (b) where the rules make it clear that a particular conduct will lead to dismissal and/or(c) where the employee has made it clear that he/she is not prepared to alter their attitude so that a warning is unlikely to lead to any improvement.
- (5) A finding of gross misconduct does not automatically justify dismissal and it is important to consider any mitigating factors which might justify a lesser sanction for reasons specific to the employee or the incident in question.
- (6) If the Tribunal considers that there were defects in the process which were sufficiently serious to render the claimant's dismissal unfair, the Tribunal is required to consider for the purposes of any award of compensation (if it is possible to do so on the evidence available), what is likely to have happened if a fair procedure had been followed. This includes consideration of the percentage chance that the claimant would thereafter have been fairly dismissed for the purposes of any compensatory award pursuant to section 123 (1) of the Act.
- (7) If the Tribunal finds that the claimant has been unfairly dismissed, the Tribunal is also required to determine whether there should be any reduction/further reduction in any basic and/or compensatory award pursuant to sections

122(2) and/or 123(6) of the Act by reason of the claimant's contributory fault. The Tribunal has reminded itself that contributory fault covers a wide range of conduct and can include culpable, blameworthy, foolish or otherwise unreasonable behaviour. The Tribunal has also reminded itself however, that for the purposes of determining any contributory fault it has to be satisfied that the claimant was, on the balance of probabilities, guilty of any such conduct, that it caused or contributed to the dismissal and that it is just and equitable to reduce any award.

**The submissions of the parties**

41. The Tribunal has given careful consideration to the submissions of the parties.

**THE CONCLUSIONS OF THE TRIBUNAL**

42. The Tribunal has given careful consideration to all of the above.

**The reason for the claimant's dismissal**

43. The Tribunal has considered first the reason for the claimant's dismissal for the purposes of section 98 (1)/ (2) of the Act.

44. Having given the matter very careful consideration, the Tribunal is satisfied that the respondent has established for the purposes of section 98 (1)/ (2) of the Act that the reason for the claimant's dismissal was conduct namely, the claimant's alleged threatening and aggressive conduct on 26 February 2019 and in particular, his physical contact with Mr B. The Tribunal is not satisfied on the evidence, as explained above, that the claimant's dismissal was orchestrated by Mr Aly or any other person within the respondent.

**The fairness of the claimant's dismissal**

45. The Tribunal has therefore gone on to consider whether the claimant's dismissal was, in all the circumstances fair for the purposes of section 98 (4) of the Act having regard to the matters identified in that section. The Tribunal has reminded itself that it is not for the Tribunal to decide what it would have done but, with regard to both the procedure and the decision to dismiss, whether in all the circumstances it was within the range of responses of a reasonable employer.

46. The Tribunal is satisfied in the light of the findings of fact which it has made above, that the respondent undertook a reasonable investigation at all stages of the process including that the decision-makers gave proper regard to the contentions made by the claimant regarding the circumstances in which the incident had occurred.

47. The Tribunal is not satisfied, in the light of its findings of fact, that (a) the manner of the communication of the claimant's suspension/ any disclosure of the claimant's suspension or (b) any failure to interview Mr Aly ( or any further witnesses ) or (c) to consider further any emails passing between the parties prior to 26 February 2019, has rendered the claimant's dismissal unfair including that there has been any actionable breach of the ACAS Code.
48. The Tribunal is further satisfied, that the claimant was given a proper opportunity to raise any matters of concern at the disciplinary and appeal stages and that the respondent undertook reasonable and proper investigations including having regard to the witness statements and investigations and careful consideration of the CCTV footage of the incident with the claimant.
49. When reaching the above conclusions, the Tribunal has taken into account in particular that:- (a) the claimant was given an opportunity to explain the background to the events (including to submit the emails relating to his resignation in February 2019) and (b) the reasonableness of the investigatory process falls to be considered in the context of the fact that the claimant admitted that he had pushed Mr B and further that such conduct was confirmed by the CCTV footage which was shared with the claimant.

**The decision to dismiss the claimant/ reject his appeal**

50. The Tribunal has therefore gone on to consider whether dismissal (and the subsequent dismissal of the claimant's appeal) was an appropriate sanction all the circumstances of this case having regard to the matters set out in section 98 (4) of the Act.
51. This is a sad case as the claimant was clearly an able and valued employee who appears to have been highly regarded in particular, by Mr Licorish and also by Mr Sayed Esmail. The Tribunal is however satisfied that, in all the circumstances of this case, the respondent was entitled to conclude that dismissal (including the rejection of the claimant's appeal) was an appropriate sanction.
52. When reaching this conclusion, the Tribunal has taken into account in particular that the respondent was entitled to have regard to the following matters:- (a) the serious nature of the allegations including that the claimant made physical contact with Mr B/ acted in an aggressive manner (b) the seniority of the claimant's position as a business development manager, including his responsibility for the management of staff at the respondent's hotel in London, and (c) the limited recognition by the claimant that he had done anything wrong including any formal offer of apology to Mr B or Mr D.

53. Further, although the Tribunal is satisfied that the claimant would/ should reasonably have known that such conduct was likely to be considered as gross misconduct in accordance with the respondent's employee handbook (having regard to his managerial position in the respondent and responsibility for staff) the Tribunal is satisfied that in the light of such matters the claimant should, in any event, have been aware that his conduct on 26 February 2019 would be regarded as potential gross misconduct.

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Employment Judge Goraj  
Date: 19 December 2019

As reasons for the Judgment were announced orally at the Hearing written reasons shall not be provided unless they are requested by a party within 14 days of the sending of this Judgment to the parties.

### **Online publication of judgments and reasons**

The Employment Tribunal (ET) is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions>

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in anyway prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness